

SEP 17 2013

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA EMS AMBULANCE, INC.,	:	
Petitioner,	:	Kevin Westin, Esq. / State Counsel
	:	
v.	:	Docket No.: OSAH-DPH-EMS-1311102-33-
	:	Howells
	:	
GEORGIA DEPARTMENT OF PUBLIC	:	
HEALTH, OFFICE OF EMERGENCY	:	
MEDICAL SERVICES AND TRAUMA	:	
Respondent.	:	

INITIAL DECISION

Petitioner Georgia EMS Ambulance, Inc. (“Petitioner” or “GA EMS”) appeals the decision of the Georgia Department of Public Health, Office of Emergency Medical Services and Trauma (“Department” or “Respondent”) to place its service license on probation for twelve months and to impose a fine of \$6,000, \$1,000 for each alleged violation of the Department Rules and Regulations.¹ A hearing on this matter was held on November 14 and December 4, 2012.² Petitioner was represented by Myles Eastwood, Esq., and Respondent was represented by Zain Farooqui, Associate General Counsel for the Department. For the reasons stated below, Respondent’s decision to sanction Petitioner is **AFFIRMED**.

Findings of Fact

A. Emergency Medical Services Zoning Plan

1.

In Georgia, emergency medical services (“EMS”) are zoned. There are designated EMS providers for distinct geographic regions. The creation of a zoning scheme in Georgia was in

¹ Respondent initially charged Petitioner with eight violations but has since reduced the number to six. (See Ex. R-6.)

² The record was held open until December 21, 2012 for the submission of the parties’ proposed Findings of Fact and Conclusions of Law, as well as for Petitioner’s written closing argument.

response to the chaos which ensued in the absence of a system of designated ambulance providers, as was the case through the 1970s. Competing ambulance companies were in the practice of sending emergency vehicles speeding to an emergency, creating public safety concerns. In addition, there would be disputes over which carrier was permitted to transport the patient to the hospital. To rectify this problem, the Georgia General Assembly enacted legislation establishing the Emergency Medical Services Communication Program (known in the industry as "Ambulance Zoning Laws"). The goals of the zoning laws are to promote: (1) public welfare and safety; (2) economy, by having only one ambulance respond, thereby conserving public resources; and (3) efficiency, having one unit respond to each call, leaving all other unit available to respond to other emergencies. (Testimony of Robert Wages.)

2.

MetroAtlanta Ambulance Service ("Metro") began providing ambulance services within Cobb County in 2001, when the EMS Council for Region 3 initially approved a zoning plan. The Region 3 EMS Council designated Metro as the provider for Battalions 3, 4, and 5, which encompass the northern region of Cobb County. The other two battalions, which are reserved for Puckett EMS and, possibly, Gold Cross, are not at issue in the present case. The EMS Council for Zone 3 reapproved the plan in 2010.³ (Testimony of Christina Welsh; Exs. R-1, R-2.)

B. History of Petitioner in the City of Kennesaw

3.

Petitioner is a licensed Georgia ambulance service provider. From January to May of 2012, the period at issue in this case, Petitioner responded to 9-1-1 emergency calls within the

³ Even if the Zoning Plan is not current with regard to Gold Cross ambulance service, as Petitioner contends, Petitioner does not argue that it is a zoned provider under any Department-approved plan. Furthermore, there is nothing in the Georgia Code or Department regulations to suggest that a Zoning Plan is void because it does not reflect changes to an ambulance service in a neighboring battalion.

City of Kennesaw, located in Cobb County. (Testimony of Bobbi Duke; Testimony of Amir Adiri.)

4.

The City of Kennesaw chose Petitioner as the designated ambulance provider for the city in a competitive bidding process. Petitioner has been the City's designated provider for fourteen years. (Testimony of Christina Welsh.)

5.

The City, however, did not get permission from the State of Georgia to approve Petitioner as its designated provider. In response to the City's 1998 resolution declaring Petitioner as its provider, the State sent the City cease and desist letters. At the time, the dispute was resolved informally and the matter has only now, once again, become a point of contention between the State and the City of Kennesaw. (Testimony of Christina Welsh.)

6.

Following the six violations at issue in this case, Respondent sent the mayor of the City of Kennesaw a letter, ordering the City to comply with the Emergency Medical Services System Zoning Plan for Zone 3 ("Zoning Plan"), which encompasses Cobb County and the City of Kennesaw. Pursuant to the Zoning Plan, Metro is the Designated Zone Provider for the geographic area in which the City of Kennesaw lies. Relying on this designation, Respondent demanded that Kennesaw 9-1-1 direct all emergency calls to Metro rather than to Petitioner, as had been the City's practice. (Ex. R-9; Testimony of Mickey Moore.)

C. Method of Dispatching Emergency Calls

7.

There are three general means by which an ambulance may be dispatched to an

emergency. First, an individual desiring emergency services may call the ambulance service directly by dialing a ten-digit phone number. When the patient does so, that company is authorized to transport the patient to the hospital without the need for outside approval. Second, an ambulance may happen upon the scene of an emergency and, upon stopping to render aid, may call the ambulance communication center and receive approval for the dispatch. If the ambulance team merely calls to report the scene, they would not be considered a dispatched unit. Finally, in most situations, the Public Safety Answering Point (“PSAP”) receives a 9-1-1 call and may either dispatch the designated zone provider directly by calling the ambulance crew, or may transfer the call to a company-specific ambulance communication center, which then dispatches the ambulance. (Testimony of Robert Wages; Testimony of Mickey Moore.)

8.

There are several PSAPs in the City of Kennesaw area, including Cobb 9-1-1, Kennesaw 9-1-1, and Acworth 9-1-1. Cobb 9-1-1, upon receiving a call for emergency services, will generally dispatch both a fire engine and EMS (i.e., an ambulance). (Testimony of Mickey Moore.) Dispatch services use a system of computer-aided dispatch, which automatically generates both a law enforcement and an ambulance call; however, in the event one of the services is not needed, the communications operator may cancel the call before the unit is actually dispatched. (Testimony of Bobbi Duke.) Specifically, Cobb 9-1-1 may cancel an EMS unit if there is already another team of emergency medical personnel present on the scene. To cancel a unit, the PSAP will not generally call the unit directly, but will call the provider’s communication center. The communications center relays the information to the EMS unit, which acknowledges the cancelation. An acknowledgment of the cancelation is not an indication of approval. (Testimony of David O’Neill.)

D. Terminology

9.

In logging emergency activity, the Cobb 9-1-1 system uses certain terminology to indicate various directives and occurrences. Specifically, the term “clear,” when used in conjunction with the name of an ambulance service (e.g., “Metro/clear”), indicates that the unit registered its understanding of an instruction.⁴ Therefore, the phrase “clear to cancel” does not mean that the cancellation was approved, but only that the EMS provider acknowledged that it had been canceled. While the term “canceled” indicates that the provider is no longer needed at the scene, it does not mean that the provider subject to the cancellation approved the cancellation. The term “freed” indicates that the service was released from the location and was authorized to proceed on other business. (Testimony of Mickey Moore; Testimony of David O’Neill.)

E. Emergency Service Forms and Procedures

1. Prehospital (Patient) Care Reports

10.

The Prehospital (Patient) Care Report (“PCR”), pursuant to standard procedure, is always filed by the responding unit following an emergency call. The PCR documents the conditions of the call, the response of the medic team, the evaluation of the patient, and treatment provided by medics at the scene. The form fulfills three functions: (1) it records the condition and treatment of the patient prior to the patient’s arrival at the hospital, better enabling the receiving emergency room and the treating physician to diagnose and treat the patient; (2) billing; and (3) it is useful in the event of a legal dispute. Petitioner’s emergency units filed PCRs in all six incidents at issue in this case. No explanations of the incidents were filed with the PCRs. (Testimony of Dr.

⁴ The term “Metro/clear” on a 9-1-1 log could also mean that the particular ambulance unit is back in service and available for another call. (Testimony of Bobbi Duke.)

Mabley; Ex. R-3, Ex. P-18.)

2. Patient Transport Consent Form

11.

Prior to, during, or shortly after the transport of a patient, Petitioner's ambulance teams have the patient sign a consent form, which states: "By signing this document I acknowledge that I am formally requesting an Emergency Medical Response, Treatment, and Transport to the [closest] appropriate medical facility by Georgia EMS Ambulance Service." Petitioner's medics do not ask patients to sign the transport consent form if the patient is incoherent. Petitioner's medics consider an incoherent patient as an emergency situation and transport the patient without a signed consent form. (Testimony of Michael Weil.) In each of the six instances, the patient signed a transport consent form. (Exs. P-6, P-3, P-7, P-13, P-15, P-16.)

3. Medical Control

12.

The term "medical control" means physician direction of the clinical management of patients in the pre-hospital setting. In the industry, medical control can be in two different forms: (1) written protocols, created by the medical director of the EMS provider, which provide field directions for patient care, or (2) direct contact with a live physician, either the provider's medical director or, more typically, the emergency room physician at the receiving hospital. For each of the six incidents at issue, Petitioner's emergency medical personnel on the scene made no attempt to contact medical control. (Testimony of Dr. Mabley; Testimony of Robert Wages; Testimony of Phillip Wilbur; Exs. R-3, P-18.) Philip Wilbur, a paramedic for GA EMS, testified that they would not have contacted a live physician, as they were working within their protocols. According to EMT Weil, Petitioner's medics only contact medical control when they need

specific orders for patients with serious conditions or injuries (e.g., heart attack, stroke, or blunt head injury). (Testimony of Philip Wilbur; Testimony of Michael Weil.)

F. Six Violations

1. January 10, 2012

13.

On January 10, 2012, one of Petitioner's units came upon the scene of a multi-car collision at the junction of Cobb Parkway and Barrett Parkway. Cobb fire department was already on the scene and waved Petitioner's unit over. (Testimony of Philip Wilbur.) Barry Quarles, a paramedic with Metro, recalled being dispatched by Cobb 9-1-1 to the scene of the incident. When he arrived, Petitioner's unit was already on the scene rendering aid. He asked Petitioner's medic if they needed help, to which the medic responded, "no." Thereafter, paramedic Quarles allowed Petitioner's unit to transport the patient. He did not make an effort to transport the patient because he did not think it was appropriate "to make a scene in the middle of a busy thoroughfare over who was going to transport the patient." (Testimony of Barry Quarles.)

14.

At the scene, Petitioner's medic assessed the twenty-two year old female patient. The patient's condition is recorded in the PCR. Dr. Jill Mabley, Respondent's Deputy Medical Director, reviewed the PCR and opined that the patient was not suffering from a life-threatening condition. She based her opinion on multiple factors. First, the patient was ambulatory. Second, the patient never lost consciousness. Third, the patient's vital signs were normal, with the exception of a slightly elevated pulse rate of 112. Finally, the patient's Revised Trauma Score, which may be used as a surrogate for the severity of the individual's injuries, as well as an

indicator of the urgency of transport, was twelve, indicating that delayed transport, as opposed to emergency transport, would be sufficient. In the absence of overt swelling or bruising, the fact that the Patient complained of pain throughout her body was not indicative of a need for immediate transport, although Dr. Mabley could not definitively rule out internal organ damage. (Testimony of Dr. Mabley; Ex. R-3.)

15.

Philip Wilbur, the GA EMS paramedic, who treated the patient at the scene, stated that they did not try to contact a physician, as their protocols provided sufficient direction for the treatment of the patient. (Testimony of Philip Wilbur.)

2. January 25, 2012

16.

On January 25, 2012, one of Petitioner's units came upon the scene of a multi-vehicle collision near Chastain Road and Interstate-75. Upon their approach, a fire department employee, who was already on the scene, flagged them over and requested assistance. At the scene, paramedic Philip Wilbur immobilized and assessed the twenty-one year old female. Thereafter, Petitioner's unit transported the patient to the hospital. (Testimony of Michael Weil; Testimony of Philip Wilbur.)

17.

A Metro unit was initially dispatched to the scene at approximately 10:47 a.m. As the Metro unit was approaching the scene of the accident, it received a radio call from Cobb County Fire on the scene, canceling their services. Metro continued to the scene regardless, and, when they finally arrived, the firemen told them that Petitioner had already transported the patient, whereupon they contacted the Metro dispatch center to alert it of the cancelation. (Testimony of

Corey Payne.)

18.

Based on her review of the PCR and a fire department report, Dr. Mabley opined that the twenty-one year old female patient was not in a life-threatening condition at the time she was transported by Petitioner's unit. Her opinion was based on the fact that the woman was ambulatory and her vital signs were normal. The PCR contained inconsistencies relating to the tenderness versus softness of the woman's abdomen upon physical inspection. Still, nothing in the PCR indicated that the treating paramedic believed the woman to have internal injuries. The medics did immobilize the woman on a spine board, as she complained of neck and abdominal pain, but as no additional treatment was rendered at the scene, it appears that the patient's condition was stable. (Testimony of Dr. Mabley; Ex. R-3.) The treating medics did not contradict this testimony. (See Testimony of Michael Weil; Testimony of Philip Wilbur.)

3. April 12, 2012

19.

On April 12, 2012, at approximately 1:12 p.m., Cobb 9-1-1 received a call from a location on Baker Road, regarding a middle-aged man falling through a roof. A Metro unit was dispatched to the location of the call. Upon arriving at the scene, Shannon Cichosz, a Metro paramedic, noted that one of Petitioner's units was already on the scene and had initiated patient care. Rather than engage in an argument over who should treat and transport the patient. Mr. Cichosz and his partner remained on the scene in a supportive capacity. (Testimony of Shannon Cichosz; Exs. R-3, R-5.)

20.

According to Dr. Mabley, the fifty-five year old male patient was not in a life-threatening

condition, having only fallen approximately ten feet.⁵ The patient complained only of injury to his right leg, for which he was not given any pain medication during transport. In addition, the patient was alert, had normal vital signs, and a trauma score of twelve, indicating non-urgent transport. Nothing in the PCR indicated a need for immediate transport, such as a pulse or motor deficit in the injured limb. Thus, based on the available information, Dr. Mabley concluded that the patient was not in a life-threatening condition at the time he was transported. (Testimony of Dr. Mabley; Ex. R-3.)

4. April 18, 2012

21.

On April 18, 2012, one of Petitioner's units came across a motor vehicle collision near Jiles Road and Cherokee Street. Cobb Fire Department was already on the scene. As Petitioner's unit approached, bystanders waved them over to inform them that the man in one of the vehicles, which had collided with a pole, had been rendered unconscious. (Testimony of Philip Wilbur.) By the time Petitioner's medics saw the patient, he had regained consciousness, and although the patient suffered some initial memory loss, he soon became reoriented to his surroundings. (Ex. R-3.)

22.

One of Metro's units had been dispatched to the accident; however, prior to the unit's arrival, the Metro dispatch center informed them that they were canceled.⁶ (Testimony of James Eunice; Ex. R-5.)

⁵ In contrast, a twenty-foot fall for an adult could be a surrogate measure of the need for immediate transport. (Testimony of Dr. Mabley.)

⁶ It is unclear whether the Metro unit proceeded to the scene despite having been cancelled. Metro paramedic James Eunice testified that they did not go to the scene after they were cancelled. (Testimony of James Eunice). On the other hand, GA EMS paramedic Phillip Wilbur testified that he recalls seeing a Metro ambulance arrive on the scene before GA EMS transported the patient. (Testimony of Phillip Wilbur.)

23.

According to Dr. Mabley, the patient's condition was not life-threatening and did not warrant immediate transport. Specifically, patient's neurologic status was normal, as indicated by a coma score of fifteen, although there was some conflict within the report as to whether the patient showed signs of confusion. There was also no evidence that patient's condition was deteriorating. In fact, the patient's mental awareness seemed to improve. A patient with a head injury will typically worsen over time. While there are cases where a patient may temporarily improve, such cases are usually paired with certain indicators not present here. (Testimony of Dr. Mabley; Ex. R-3.)

24.

The PCR reflects that the patient's pulse was elevated. Whether it was increasing or decreasing could not be determined from the report, because the PCR included only one set of vital signs. A continued increase in pulse rate might indicate serious internal injuries. In the absence of additional vital signs, there was nothing within the report that indicated that the treating medic believed the patient had a possible closed head injury, a suspicion that medics would ordinarily note if present. (Testimony of Dr. Mabley; Ex. R-3.)

5. April 23, 2012

25.

On April 23, 2012, a GA EMS unit was exiting a Kroger parking lot when the medics observed a fire truck proceeding down Giles Road with its lights flashing. Bernard Walker, a paramedic for GA EMS, admitted that they had heard something over the radio, but claimed that it had not been clear to them what was going on until the fire engine passed. Mr. Walker further testified that the fireman waved them over. They followed the engine about a hundred yards, until they came to the scene of a motorcycle accident. Bystanders explained to the GA EMS

personnel that the rider had gone over an embankment; fire department employees meanwhile went to care for the crash victim. (Testimony of Bernard Walker.) Although, according to Cobb 9-1-1 call logs, Metro was freed from the incident, a Metro unit arrived pursuant to a dispatch. (Ex. R-5; Testimony of Corey Payne.) Upon arrival, Metro EMT Corey Payne assisted GA EMS and the Cobb County Fire Department in raising the patient out of the embankment. Metro, however, did not transport the patient, because GA EMS “had already initiated primary care for the patient.” To avoid a confrontation, Metro did not force the transportation issue. (Testimony of Corey Payne.)

26.

According to Dr. Mabley, the condition of the twenty-four year old male patient was not life-threatening and did not require immediate transport. He was alert and had normal vital signs, a normal coma score, and a trauma score of twelve, which indicates delayed transport. His face was bleeding and bruised with a possible fracture, but the bleeding did not obstruct his breathing. There is no indication that GA EMS personnel attempted to contact medical control. (Testimony of Dr. Mabley; Ex. R-3; Ex. R-4.)

6. May 8, 2012

27.

On May 8, 2012, Cobb 9-1-1 dispatched Metro to a respiratory distress call on Shillings Chase Court.⁷ (Ex. P-5.) A Metro unit proceeded to the scene, arriving first.⁸ Cobb County Fire Department engine No. 24 arrived shortly thereafter, as the Metro medics were gathering their equipment out of the back of the truck. (Testimony of Amy Aiken.) A GA EMS unit,

⁷ The Cobb 9-1-1 call logs indicate that Metro was “freed” from the incident almost immediately. (Ex. R-5.)

⁸ At the hearing, Michael Weil testified that GA EMS was the first to arrive on the scene and that he did not see the Metro crew until he and his partner were driving away with the patient. Based on Ms. Aiken’s detailed account of the facts and the confident manner in which she testified, the undersigned found Ms. Aiken’s account to be more credible.

which was already in the area making sales calls, also proceeded to the scene after hearing the emergency call over the radio. (Testimony of Michael Weil.) According to Amy Aiken, a Metro paramedic, the GA EMS team arrived as they were unloading a stretcher and their equipment. One of the GA EMS medics quickly crossed the street, went into the home, and was speaking with the patient by the time paramedic Aiken entered the house. After a second GA EMS medic came in with equipment, the Metro medics asked if they were needed. In response, a GA EMS medic said, “Your services are no longer needed here.” At that point the Metro crew left the scene. Paramedic Aiken felt they needed to back out: too many people were on the scene and they did not want to create a confrontation or cause the patient discomfort. (Testimony of Amy Aiken.)

28.

The fifty-seven year old female patient, who had reported having difficulty breathing, showed normal respiration and blood oxygenation upon examination. Specifically, the PCR shows her respiratory rate at nineteen initially and, after a period of time receiving oxygen, at seventeen. This range is normal and the fluctuation is not clinically significant.⁹ Therefore, the patient’s condition was not life-threatening and emergency transport was not necessary. (Testimony of Dr. Mabley; Testimony of Michael Weil; Ex. R-3.) As Michael Weil of GA EMS testified, they did not contact medical control—an action reserved for serious conditions warranting medical direction. (Testimony of Michael Weil.)

G. Delay in Docketing Case with OSAH

29.

Respondent sent Petitioner notice of the alleged Zone Plan violations by letter, dated May

⁹ In contrast, a respiratory rate greater than 29 or less than 10 would be cause for concern. (Testimony of Dr. Mabley.)

16, 2012. In response, on June 6, 2012, Petitioner filed a request for a hearing with Respondent. The case was referred to OSAH on September 10, 2012. (OSAH Form 1 with attachments; Exs. P-8, P-9, P-10, P-11, P-12.)

Conclusions of Law

A. Compliance with Regional Zoning Plan

1.

Respondent seeks to sanction Petitioner by imposing a fine and placing Petitioner's service license on probation for twelve months. Respondent, therefore, bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

Respondent alleges that on six separate occasions in 2012—January 10 and 25, April 12, 18, and 23, and May 8—Petitioner's ambulances arrived at the scene of a Cobb County 9-1-1 emergency, and, without a private patient or mutual aid request, transported the patient to the hospital, even though Petitioner is not a designated provider in Cobb County according to the Zoning Plan.

1. Public policy and creation of health districts

3.

The Georgia General Assembly has declared that the public policy of the State with regard to emergency medical communications systems ("EMCS") is to encourage services which are "coordinated, orderly, economical, and without unnecessary duplication of services and facilities." O.C.G.A. § 31-11-1(b). In ensuring that such systems operate to the benefit of public welfare, the legislature mandated the creation of "geographical territories to be serviced by

participating ambulance providers,” and placed the Department of Public Health in charge of administering an EMCS program. O.C.G.A. § 31-11-1(a); see also O.C.G.A. § 31-11-2(11) (“‘health districts’ means the geographical districts designated by the department in accord with Code Section 31-3-15.”) The Board of Public Health “[coordinates and administers] the EMCS program for each health district designated by the Department of Health,” acting upon the recommendations of local coordinating entities, which gather information from local ambulance providers. O.C.G.A. § 31-11-3(a), (b). The Department must act upon “the recommendations of the local entity which coordinates the [emergency services program].” O.C.G.A. § 31-11-1(a). All ambulance services are included within the coordinated system. Id.

2. Ambulance services must abide by Department regulations

4.

All licensed ambulance service providers in Georgia are required to abide by Department rules and regulations, including all regional ambulance zoning plans. O.C.G.A. § 31-11-34; Ga. Comp. R. & Regs. r. 511-9-2-.18(1), (21). The Department is entitled to revoke the license of any licensee for failure to comply with Georgia Code provisions relating to emergency medical services, Department regulations, or “approved ambulance zoning plans.” Ga. Comp. R. & Regs. r. 511-9-2-.19(1); see also O.C.G.A. § 31-11-9 (Department is charged with “[enforcing] compliance with this chapter and rules and regulations promulgated under [Chapter 11: Emergency Medical Services].) The Department also has the discretion to “impose a lesser sanction, where the circumstances of the violation do not merit revocation, including probation . . . or suspension.” Ga. Comp. R. & Regs. r. 511-9-2-.19(2). Additionally, the Department may impose a fine of up to \$1,000 per day for violations. Ga. Comp. R. & Regs. r. 511-9-2-.19(3). Any such “enforcement action shall be a contested case under . . . the ‘Georgia Administrative

Procedure Act,” which may be referred to OSAH for a hearing. O.C.G.A. § 31-11-9; O.C.G.A. § 50-13-41(a). When a hearing is requested, the licensee must be given “at least twenty days’ prior notice of the time and place of the hearing.” Ga. Comp. R. & Regs. r. 511-9-2-.19(4)(iii).

3. Procedure for non-designated ambulance providers

5.

Department regulations specify the appropriate procedure to be followed by a non-designated ambulance provider upon arrival at the scene of an emergency. The non-designated ambulance provider must administer care at the scene to “sustain and stabilize the patient until the arrival of the designated ambulance provider” but must not “transport a patient from the scene of a medical emergency,” unless it meets one of two exceptions. The exceptions are as follows:

1. The designated ambulance is canceled by the appropriate dispatching authority with approval of the responding designated ambulance provider; or
2. Medical control determines that the patient's condition is life-threatening or otherwise subject to rapid and significant deterioration and there is clear indication that, in view of the estimated time of arrival of the designated ambulance, the patient's condition warrants immediate transport. In the event the medic is unable to contact medical control, the medic will make this decision. The transporting ambulance service shall [send] a copy of the patient care report including an explanation of the incident to the department within seven calendar days of the transport.

Ga. Comp. R. & Regs. r. 511-9-2-.07(j)(emphasis added).

6.

On six separate occasions between January and May of 2012, Petitioner, a non-designated ambulance service provider, transported patients from an incident location to the hospital. In each of these incidents, Petitioner was not specifically requested by the patient in advance. Further, a signed transport consent form does not change the fact that the ambulance

“[arrived] at the scene of an emergency without having been requested.”¹⁰ Ga. Comp. R. & Regs. r. 511-9-2-.07(j). Depending on the incident, Petitioner’s witnesses testified that they had (1) inadvertently come across the site of the medical emergency, (2) been dispatched by a PSAP, or (3) continued to the scene after overhearing communications on their radio. Thus, Petitioners must meet one of the exceptions to establish that they appropriately transported the patient.

4. Exception one: cancelation and approval

7.

The first exception, cancelation of the designated ambulance “by the appropriate dispatching authority with approval of the responding designated ambulance provider,” does not apply. While the appropriate dispatching authority, Cobb 9-1-1, may or may not have canceled Metro ambulance services, Metro did not “approve” the cancelation, it merely registered that it received the notice and would comply. In light of all the testimony, approval appears to indicate a situation of mutual aid, where an ambulance does not have sufficient resources to respond to a call and therefore requests assistance from a non-designated provider.¹¹ While Metro employees testified that they did not contest cancelations or insist on transporting a patient on the scene, they did so to avoid creating a hazardous or unprofessional situation, as well as to avoid causing the patient any discomfort. Safety and patient care were repeatedly cited as overarching company policies. Further, the acquiescence of individual Metro medics, allowing Petitioner’s

¹⁰ Further, the undersigned does not consider the fire department or bystanders waving the ambulance over to be a “request” as contemplated by the rule. When the rule refers to an ambulance that “arrives at the scene of an emergency without having been requested,” it is exempting situations where a private citizen requests the ambulance service directly, prior to the ambulance arriving on the scene. To conclude otherwise, would promote situations like the six incidents at issue here. In other words, the non-designated ambulance provider could race to the scene after hearing about it on the radio or come upon an accident and count on being waved over by the fire department. Thereafter, the non-designated ambulance provider could initiate patient care and transport the patient. While such an interpretation may seem counterintuitive, in that the fastest ambulance service provider should be allowed to care for the patient, the rule does allow for the first-arriving non-designated provider to render emergency care at the scene, it simply prohibits the non-designated provider from transporting the patient unless it meets one of the two exceptions.

¹¹ There may have been an oral mutual aid agreement between Metro and GA EMS at some point in the past, but there was no evidence that Metro actually requested mutual aid in any of the six incidents.

medics to transport patients, in an effort to remain professional, does not amount to “approval” as contemplated by the rule. To conclude otherwise would vitiate the purpose of the zoning laws. Stated differently, if this Court concluded that the acquiescence of the individual Metro medics amount to approval of the designated provider, then a non-designated provider could always race to the scene, rely on the professionalism of the designated provider’s medics, and ultimately transport the patient. This is exactly the type of scenario the Georgia General Assembly sought to remedy when it enacted the zoning laws.

5. Exception two: immediate life threat and estimated time of arrival

8.

The second exception is also inapplicable. First, the respective patients’ conditions were not life-threatening or rapidly deteriorating. On all six occasions, it is uncontested GA EMS did not contact medical control, nor did they attempt to do so. Petitioner’s medics only contact live medical control when they need specific orders for patients with serious conditions or injuries. Furthermore, when a patient is incoherent, Petitioner’s medics do not require the patient to sign the transport consent form. In each of the six incidents, Petitioner’s medics had the patients sign the transport consent form. Thus, it appears that the GA EMS medics did not consider the patients to be in life threatening conditions. Furthermore, according to Dr. Mabley the patients’ conditions were not life threatening. The medics at the scene either corroborated or did not contradict this testimony. The one exception was the testimony of Philip Wilbur regarding the April 18 incident, where he stated that he believed that the patient had to be transported immediately given that he had lost consciousness. On that date, however, no attempt was made to contact medical control, as would be required by both the law and GA EMS’s protocols. Further, Petitioner never filed explanations for patient transport in any of the six incidents as

required by the regulation.

9.

Second, in addition to evidence that a patient's condition is serious enough to warrant immediate transport, EMS Rule 511-9-2-.07(6)(j)(2) requires the non-designated provider to make the determination to transport "in view of the estimated time of arrival of the designated ambulance." In other words, the second exception applies only where a combination of circumstances exists: (1) the patient's condition is life-threatening or deteriorating and (2) the designated provider cannot arrive promptly. The evidence in the record shows that in at least four of the incidents Metro actually arrived on the scene while GA EMS was still present. Thus, there was no requirement for Petitioner's to transport those patients "in view of the estimated time of arrival" of Metro (i.e. the designated provider), as Metro had arrived prior to the patients being transported. For the other two incidents on January 25, 2012 and April 18, 2012, the first prong of the second exception—a life threatening or deteriorating condition—was not met.

10.

Because there is no evidence that any of the patients were in life threatening or deteriorating conditions, requiring immediate transport in light of the arrival time of the designated provider, Petitioner was not acting within the second exception. Thus, this Court concludes that Petitioner violated the Zoning Plan by transporting patients within Cobb County in the absence of a prior request or authorization.¹²

B. Procedural and Administrative Due Process

11.

Petitioner requested the hearing on June 6, 2012 and the case was referred to OSAH on

¹² The Court notes that Petitioner's internal company protocol directs medics to never delay transport on the chance that they may not have the training or knowledge to know when a patient is suffering from a life-threatening condition. (Ex. P-14). However, Petitioner's internal protocol cannot supersede Department regulations.

September 10, 2012. Petitioner asserts that it was denied procedural and administrative due process, first, because Respondent did not properly investigate this matter prior to referring it to OSAH, and second, because of an alleged lengthy delay in referring the matter to OSAH. Petitioner cites no law requiring the agency to complete its investigation prior to referring the matter to OSAH. Nor has Petitioner cited law requiring Respondent to refer an appeal to OSAH within twenty days of its receipt. The full evidentiary hearing before the undersigned administrative law judge provided Petitioner with due process. Furthermore, Petitioner has not demonstrated it suffered prejudice due to any delay in referring this matter to OSAH.

C. Constitutional Claims

12.

Petitioner argued that the current zoning scheme violates the Home Rule of the Georgia Constitution, Article 9, Section 2, paragraph III, which provides that a county or municipality may provide ambulance services. The Home Rule also states that the General Assembly may enact general laws relating to such services “but [] may not withdraw any such powers.” Petitioner argues that the City of Kennesaw’s decision to designate Petitioner as its ambulance provider cannot be overridden by a Department-approved Zoning Plan.

13.

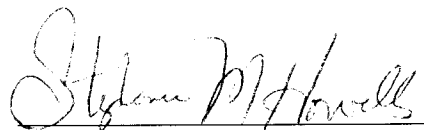
This Court has no authority to resolve constitutional challenges to statutes or agency rules. Ga. Comp. R. & Regs. r. 616-1-2-.22(3); see also Flint River Mills v. Henry, 234 Ga. 385, 386 (1975). Thus, this Court refrains from addressing the constitutional challenges raised by Petitioner.

Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the

Department's decision to sanction Petitioner by imposing a \$6,000 fine, \$1,000 per infraction, and to place Petitioner's license on probation for a period of twelve months is hereby **AFFIRMED.**

SO ORDERED, this 17th day of January, 2013.



STEPHANIE M. HOWELLS
Administrative Law Judge