

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

**GEORGIA DEPARTMENT OF
PUBLIC HEALTH,
Petitioner,**

v.

**CHARLES MILLER,
Respondent.**

**Docket No.: 2117423
2117423-OSAH-DPH-EMS-78-Barnes**

Agency Reference No.: P031034

FINAL DECISION

I. Introduction



The Georgia Department of Public Health (“Department” or “Petitioner”) suspended on an emergency basis Respondent Charles Miller’s paramedic license due to alleged violations of the Georgia scope of practice for paramedics. The Department brings this action seeking a revocation of Respondent’s paramedic license. Respondent contests the emergency suspension and proposed revocation. A video hearing was conducted on April 29, 2021 before the undersigned administrative law judge. Tamara Denson, Esq. appeared on behalf of Petitioner. Respondent represented himself. Samantha R. Johnson, Esq. represented Grady Health System.

Witnesses at the hearing were as follows: Dr. Lekshmi Kumar, emergency medicine physician and Medical Director for Grady EMS; Dr. Hadley Eichengreen, emergency medicine resident at Emory School of Medicine; Dr. Patrick McDougal, emergency medicine physician at Northside Hospital, Medical Director for Gwinnett County Fire and Emergency Services, and chairman for the Georgia scope of practice committee; David Newton, Director of the Department’s Office of EMS and Trauma and Deputy Director of the Division of Health Protection; Brandon Walker, an Advanced Emergency Medical Technician at Grady EMS; Kelly

Joiner, Deputy Director of the Department's Office of EMS and Trauma; Erin Vickery, Director of Operations at Grady EMS; and Respondent.

For the reasons stated herein, the Department's decision to suspend Respondent's paramedic license is **AFFIRMED**. As such, Respondent's paramedic license is hereby revoked.

II. Findings of Fact

1.

On March 13, 2020, Respondent applied for an emergency medical services (hereinafter "EMS") license to practice as a paramedic in the state of Georgia (hereinafter "paramedic license"). As part of his application, Respondent signed that he acknowledged and understood the Department's rules and regulations. Respondent was issued the paramedic license number P031034 on March 24, 2020. (Testimony of Kelly Joiner; Petitioner's Motion for Summary Determination ("MSD") Exhibits 7, 9.)

The January 22, 2021 Surgical Cricothyrotomy

2.

On January 22, 2021, Respondent and his ambulance partner, Brandon Walker, worked a shift together. During that shift, they responded to a dispatch call regarding a patient presenting with acute angioedema, or severe swelling of the tongue often caused by an allergic reaction to lisinopril. Respondent and Mr. Walker arrived on scene at the patient's home. After Respondent examined the patient and spoke with his daughter, the patient stated that he was able to walk to the ambulance, rather than be taken on a stretcher. At some point after the initial examination, Respondent called a doctor at Grady Memorial Hospital to ask whether he should administer an epinephrine injection, given the patient's high blood pressure and medical history of congestive heart failure and hypertension. The doctor advised Respondent to hold off on administering an

epinephrine injection unless the patient's condition worsened. Respondent failed to inform the doctor that the patient was in distress and actively struggling to breathe. On the way to the hospital, the patient became unconscious and ceased breathing. Respondent asked Mr. Walker to pull over the ambulance and assist him in the back of the ambulance. Respondent performed a surgical cricothyrotomy—a procedure involving a surgical incision of the cricothyroid membrane—on the patient and established an opening between the patient's lungs and the outside world. Thereafter, Mr. Walker returned to the driver's seat and drove the less than ten minutes to Grady Memorial Hospital. Upon the ambulance's arrival at Grady Memorial Hospital, Dr. Hadley Eichengreen observed the tube was not securely placed during the surgical cricothyrotomy, the incision was much larger than the procedure allowed,¹ and the patient was in critical condition. Fortunately, the patient made a successful recovery. (Testimony of Dr. Hadley Eichengreen; Testimony of David Newton; Testimony of Brandon Walker; Testimony of Respondent; Petitioner's MSD Exhibits 2, 3, 5, 6, 8; Respondent's Exhibit 8.)

3.

The Department argues that surgical cricothyrotomies without the permission of a physician are outside the Georgia scope of practice for paramedics. Several witnesses testified that a less risky procedure, such as using a bag-valve mask, should have been attempted. If such attempts failed, then a needle cricothyrotomy could have been performed to open the patient's airway for the duration of the ride to the hospital. The Georgia scope of practice permits paramedics to perform percutaneous cricothyrotomies, which is the proper medical terminology for a needle cricothyrotomy. The only difference between a percutaneous and needle

¹ The risks of such a large incision in the cricothyroid membrane include significant bleeding obscuring the membrane and making further attempts of performing this procedure—and thus breathing for the patient—more difficult. There is also a possibility that fluid enters the lungs, leading to present issues with oxygenation and long-term complications. (Testimony of Dr. Hadley Eichengreen; Testimony of Dr. Lekshmi Kumar; Testimony of Dr. Patrick McDougal.)

cricothyrotomy is that a commercial kit is typically used for a percutaneous cricothyrotomy, whereas a needle cricothyrotomy can be performed with commonly found equipment, including equipment stocked in Grady EMS ambulances and Respondent's jump bag. Prior to each shift, Respondent had a duty to verify the equipment on the ambulance and report any missing equipment. Finally, David Newton and Dr. Patrick McDougal both testified that a surgical cricothyrotomy is outside the Georgia scope of practice for paramedics because the risks outweighed the benefits of paramedics performing this procedure. (Testimony of Dr. Hadley Eichengreen; Testimony of Kelly Joiner; Testimony of Dr. Lekshmi Kumar; Testimony of Dr. Patrick McDougal; Testimony of David Newton; Testimony of Erin Vickery; Testimony of Respondent; Petitioner's MSD Exhibit 8; Respondent's Exhibit 8.)

4.

Respondent testified that prior to performing the surgical cricothyrotomy, he did not seek authorization from a duly licensed Georgia physician or attempt a less risky procedure prior due to the urgency of the situation. Respondent claimed he knew ahead of time that a needle cricothyrotomy was impossible to perform with the equipment available on the ambulance. Respondent also asserted that the Georgia scope of practice for paramedics is inclusive and exclusive, specifically arguing that a needle cricothyrotomy was not permitted because the scope of practice does not explicitly say so. However, Respondent failed to address how a surgical cricothyrotomy is permissible when the interpretive guidelines to the Georgia scope of practice explicitly prohibit the procedure. (Testimony of Respondent; Petitioner's MSD Exhibit 8; Respondent's Exhibit 8.)

The January 22, 2021 Shoulder Reduction

5.

During the same shift on January 22, 2021, Respondent responded to a call regarding a patient with a shoulder injury. The patient told Respondent that he frequently dislocates his shoulder. As such, Respondent examined his shoulder for fractures, and after feeling none, explained to the patient that he could perform a shoulder reduction procedure at their location, thus eliminating the need for the patient to incur ambulance or hospital bills. The patient agreed, and Respondent performed a shoulder reduction at the location, rather than at Grady Memorial Hospital. The patient reportedly felt little to no pain during the shoulder reduction and thereafter signed a refusal of transport and medical care form. (Testimony of Respondent; Petitioner's MSD Exhibits 2, 3, 4; Respondent's Exhibit 8.)

6.

The Department asserts that shoulder reductions in the field are outside the scope of practice for paramedics in Georgia. Dr. McDougal and Dr. Lekshmi Kumar testified that x-rays are required before and after a shoulder reduction due to the possibility of fractures and neurological damage. Respondent did not address these witnesses' testimonies. Rather, Respondent explained that he performed a shoulder reduction in the field due to the pain and expense the patient would endure if he had to wait until he reached a hospital to receive a shoulder reduction. (Testimony of Dr. Lekshmi Kumar; Testimony of Dr. Patrick McDougal; Testimony of Respondent; Petitioner's MSD Exhibit 8; Respondent's Exhibit 8.)

7.

Furthermore, Mr. Newton testified that the scope of practice for paramedics in Georgia is "a ceiling, not a floor;" thus, if a practice is not listed, then it is prohibited. Respondent argued

that because the Georgia scope of practice remains silent on whether shoulder reductions in the field are prohibited, then it must be permitted. However, Respondent provided no evidence to support this argument. (Testimony of David Newton; Testimony of Respondent; Petitioner's MSD Exhibit 8; Respondent's Exhibit 8.)

Investigation and Sanction

8.

On January 23, 2021, the Grady Quality Assurance Department became aware of the surgical cricothyrotomy and shoulder reduction in the field performed by Respondent. Because these services were outside the scope of practice for paramedics in Georgia, Respondent was suspended by his employer, Grady Health System, pending further investigation. On January 29, 2021, the Department was notified of Respondent's performance of a surgical cricothyrotomy and shoulder reduction in the field, both of which occurred during the same work shift. At that time, Dr. Kumar recommended Respondent no longer be credentialed as a paramedic. (Petitioner's MSD Exhibits 2, 3, 8; Respondent's Exhibit 8.)

9.

On February 1, 2021, the Department issued a Notice of Emergency Suspension to Respondent, immediately suspending his paramedic license. A hearing was later scheduled at the Office of State Administrative Hearings to consider whether Respondent's paramedic license should be revoked. (Petitioner's MSD Exhibit 1.)

10.

At the hearing, numerous witnesses testified that Respondent posed an imminent threat to the safety and welfare of the public due to his failure to act within the Georgia scope of practice for paramedics, warranting the emergency suspension and revocation of his paramedic license. In

response, Respondent testified that he acted in the best interests of his patients, that no harm came from these services, and that he saved the life of one patient and reduced the pain of another. As such, Respondent requested that he keep his paramedic license. (Testimony of Dr. Lekshmi Kumar; Testimony of David Newton; Testimony of Kelly Joiner; Testimony of Respondent; Petitioner’s MSD Exhibit 8; Respondent’s Exhibit 8.)

III. Conclusions of Law

1.

Because this case involves the revocation of Respondent’s paramedic license, the Department bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof in this case is a preponderance of the evidence. *Id.* at 616-1-2-.21(4).

2.

The authority to adopt and promulgate rules and regulations was bestowed on the Department to “effect prevention, abatement, and correction of situations and conditions which, if not promptly checked, would militate against the health of the people of this state.” O.C.G.A. § 31-2A-6(a). The Department has promulgated rules establishing the Georgia scope of practice permitted for each EMS licensure level, including paramedics. *See* Ga. Comp. R. & Regs. 511-9-2-.01, -.12; *see Scope of Practice for EMS Personnel*, GA. OFF. OF EMS AND TRAUMA (effective Apr. 23, 2020) (hereinafter “*Scope of Practice*”).

3.

In this case, the Department asserts that Respondent violated the following regulations:

(8) A licensee shall not provide any type or level of service that is not authorized by its license or by law.

(22) A licensee shall take no action that would jeopardize the health or safety of a patient, including without limitation that abandonment or mistreatment of a patient.

(31) A licensee shall not violate any statute or regulation, state or federal, which pertains to Emergency Medical Services.

Ga. Comp. R. & Regs. 511-9-2-.18(8), (22), (31). Specifically, regarding paramedic licensure, the Department contends that surgical cricothyrotomies and shoulder reductions in the field are outside the scope of practice for paramedics in Georgia, that Respondent put his patients in danger by performing these services, and that performing these services violates its regulations.

4.

The Department has the authority to suspend a paramedic's license on an emergency basis if "the public safety, health, and welfare" require it. O.C.G.A. § 50-13-18(c)(1); Ga. Comp. R. & Regs. 511-9-2-.19(5)(b). The issuance of an emergency suspension is effective immediately, and a hearing is promptly conducted to decide whether the license should be revoked. O.C.G.A. §§ 31-11-36(a), 31-11-57, 50-13-18(c)(1); Ga. Comp. R. & Regs. 511-9-2-.19(5)(b).

Scope of Practice: Cricothyrotomies

5.

According to the Department's scope of practice for EMS personnel, paramedics are permitted to perform percutaneous cricothyrotomies. The interpretive guidelines state:

This would include retrograde intubation techniques and devices that puncture the skin and/or cricothyroid membrane. Paramedics are not permitted to make a surgical incision of the cricothyroid membrane. Paramedics may perform skin incisions with a surgical blade for percutaneous cricothyrotomy.

Scope of Practice at 4. Evidence was presented at the hearing that a needle cricothyrotomy is included under the Georgia scope of practice, because it is a procedure that "punctures" the cricothyroid membrane. To the contrary, because a surgical cricothyrotomy requires a surgical incision of the cricothyroid membrane, it is explicitly prohibited under the interpretive guidelines.

See id.

6.

Respondent argued at the hearing that a needle cricothyrotomy in the field is not permitted under the Georgia scope of practice for paramedics and that he was unable to perform a needle cricothyrotomy due to a lack of sufficient supplies. Respondent offered no direct evidence to support these claims. Even if Respondent's assertions were true, the Georgia scope of practice explicitly prohibits paramedics from performing surgical cricothyrotomies. At the very least, Respondent needed permission and oversight from a duly licensed Georgia physician to perform a surgical cricothyrotomy, which he did not obtain. The fact that the patient survived and Respondent believed he was acting in the patient's best interests is immaterial to whether a surgical cricothyrotomy is within the Department's scope of practice for paramedics.

7.

Respondent's performance of a surgical cricothyrotomy was outside the scope of practice for paramedics in Georgia. As such, Respondent jeopardized the health and safety of this patient and violated the Department's regulations. *See* Ga. Comp. R. & Regs. 511-9-2-.18(8), (22), (31). Thus, the Court concludes that the Department's suspension was appropriate, and a revocation is warranted.

Scope of Practice: Shoulder Reductions

8.

According to the Department's scope of practice for EMS personnel, shoulder reductions are not listed as a skill a paramedic may perform in the field. *See Scope of Practice*. Testimony was presented at the hearing that shoulder reductions are not permitted in the field due to possible fractures and neurological damage. X-rays are required before and after the shoulder reduction to prevent further injury.

9.

Respondent argues that a shoulder reduction is not excluded from the Georgia scope of practice for paramedics, because it is not specifically prohibited by the Department's policies. This argument is unpersuasive. The Department's scope of practice specifies that "EMS personnel are *permitted to perform only those skills listed* under their licensure." Thus, the Georgia scope of practice is meant to be inclusive of what skills a paramedic may perform. *See Scope of Practice*. When the Georgia scope of practice's interpretive guidelines specify that certain practices are prohibited, it is to further clarify which practices are permitted. *See, e.g., id.* at 4 (detailing that cricothyrotomies involving a puncture of the cricothyroid membrane are permitted under the scope of practice, but surgical incisions of the cricothyroid membrane are explicitly prohibited).

10.

Respondent's performance of a shoulder reduction was outside the scope of practice for paramedics in Georgia. As such, Respondent jeopardized the health and safety of this patient and violated the Department's regulations. *See Ga. Comp. R. & Regs. 511-9-2-.18(8), (22), (31)*. Thus, the Court concludes that the Department's suspension was appropriate, and a revocation is warranted.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's decision to suspend Respondent's paramedic license is **AFFIRMED**. Furthermore, it is hereby ordered that Respondent's paramedic license is **REVOKED**.

SO ORDERED this 26th day of May, 2021.


Shakara M. Barnes
Administrative Law Judge

