Bill as Introduced

SB 400-LOCAL – AS INTRODUCED

2000 SESSION

00-2497
01/09

SENATE BILL ***400-LOCAL***

AN ACT relative to access to emergency medical and trauma services.

SPONSORS: Sen. Trombly, Dist 7

COMMITTEE: Public Institutions, Health and Human Services

ANALYSIS

This bill clarifies access to emergency medical and trauma services.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

00-2497
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to access to emergency medical and trauma services.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Definition Added; Quality Assurance. Amend RSA 153-A:2 by inserting after paragraph XVIII the following new paragraph:

XVIII-a. "Quality assurance" means an organized method of auditing and evaluating care provided within the emergency medical service unit.

2 Revocation of License; Clarification. Amend the introductory paragraph of RSA 153-A:13, I to read as follows:

I. The commissioner shall deny an application for issuance or renewal of a license, or suspend or revoke a license, ***or suspend or revoke a person's authority to operate under any state or local protocol,*** when the commissioner finds that the applicant is guilty of any of the following acts or offenses:

3 Rulemaking; Clarification. Amend RSA 153-A:20, V to read as follows:

V. Length of licensure and procedures for issuance, renewal, limitation, suspension, and revocation of licensure ***and suspension and revocation of authority to operate under local protocols*** authorized under this chapter.

4 Effective Date. This act shall take effect January 1, 2001.

Amendments

Public Institutions, Health and Human Services
March 16, 2000
2000-3842s
01/09

Amendment to SB 400-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to emergency medical and trauma services.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition Added; Quality Assurance. Amend RSA 153-A:2 by inserting after paragraph XVIII the following new paragraph:

XVIII-a. "Quality assurance" means an organized method of auditing and evaluating care provided within the emergency medical service unit.

2 Revocation of License; Clarification. Amend the introductory paragraph of RSA 153-A:13, I to read as follows:

I. The commissioner [~~shall~~] ***may*** deny an application for issuance or renewal of a license, or suspend or revoke a license, ***or, after a hearing and a recommendation by the emergency medical services medical control board, suspend or revoke a person's authority to operate under any state or local protocol,*** when the commissioner finds that the applicant is guilty of any of the following acts or offenses:

3 Rulemaking; Clarification. Amend RSA 153-A:20, V to read as follows:

V. Length of licensure and procedures for issuance, renewal, limitation, suspension, and revocation of licensure ***and, pursuant to RSA 153-A:13, I, procedures, including hearing procedures, for the suspension and revocation of authority to operate under local protocols*** authorized under this chapter.

4 Effective Date. This act shall take effect January 1, 2001.

2000-3842s

AMENDED ANALYSIS

This bill authorizes the commissioner of health and human services to suspend or revoke a person's authority to operate under state or local protocols, after a hearing and a recommendation by the emergency medical services medical control board.

Committee Minutes

Date: February 8, 2000
Time: 1:00 PM
Room: LOB 102

The Senate Committee on Public Institutions/Health Human Services held a hearing on the following:

SB 400-L relative to access to emergency medical and trauma services.

Members of Committee present: Senator Squires
Senator Wheeler
Senator Krueger
Senator McCarley

The Chair, Senator James Squires, opened the hearing.

Senator Rick A. Trombly, D. 7: Thank you Senator Squires. Thank you Mr. Chairman, members of the Committee. My name is Rick Trombly, Senate District 7. I will be very brief. I understand there's been some talking from some various interested groups in this legislation and there may be some agreement reached by those groups so what you have before you may not be what ultimately the legislation would reflect.

Basically, EMT and paramedics are licensed under the Division of Emergency Medical Services and they are the disciplinary board if the paramedic violates any law or rules and also, locally certain protocols are required to be developed. Under the current law it's a gray area as to whether or not disciplinary action can be brought against somebody for failure to follow local protocols in performing their services. This legislation would have put that procedure, where it would rest for a law or a rule, in the Division of Emergency Medical Services. That would clear up that ambiguity. It does provide for due-process if a complaint is brought for the individual and it's a fair process but it's vague at this point. The intent of this bill is simply to clarify a sort of gray area in the law by saying that not only if a rule or law is violated but if a local protocol is also violated then there would be due-process given by the Division of Emergency Medical Services.

That, Mr. Chairman, is my testimony.

Senator James W. Squires, D. 12: I have a question, Senator Trombly, but I can also address it to Representative McGough or to you?

Senator Rick A. Trombly, D. 7: Probably to him.

Senator James W. Squires, D. 12: The issue is I gather there is some local procedures/protocols that are not set forth in statute and so when someone has followed the statute but has violated the local then there is a question as to who...is that the essence of the problem?

Senator Rick A. Trombly, D. 7: Yes. That's it. May I be excused from the hearing? Thank you.

Senator James W. Squires, D. 12: Representative McGough.

Representative Tim McGough, Hills. D. 18: Thank you Mr. Chairman. For the record my name is Representative Tim McGough from Hillsborough County District 18. I should also tell you that I am a licensed NH State Paramedic. So I certainly have a vested interest and hopefully a little bit of expertise that I can lend to this issue.

Currently, as you're probably aware, paramedics and EMT operate under the license and the purview of the local medical resource hospital and the local medical control physician. That's typically an emergency room physician who oversees the quality assurance and the practice of the emergency medical care providers in his catchment area. For instance, if you're working for a private service in the city of Nashua or Manchester, one of the local ER doctors may read some of your run sheets with the people that you bring your patients to, oversees how you practice and if you have any difficulties or errors in that type of practice, he may choose to revoke that privilege to operate under his license. If that privilege to operate under those local protocols is revoked for whatever reason, there's currently no recourse. There's no process to appeal that revocation set in statute, anyhow.

This bill is an attempt to provide some sort of hearing process or oversight to allow for that sort of redress and to help prevent any sort of subjectivity that might come into play or if there were any kind of favoritism or any kind of good guy, bad guy dynamic that might come into play this would, hopefully, put that to rest.

The bill as written, as I interpret it, compels the Commissioner to suspend or revoke a person's authority, should be an emergency medical care provider's authority to operate under state or local protocol when they find they're

guilty of any of the list of reasons. Amongst that list, under RSA 153-A, this bill will add V which includes authority to operate under local protocols. So, restated, if you have your authority to operate under local protocols suspended or revoked and the Commissioner finds out about it, he, under this bill, has to suspend or revoke your license. Therefore, because of that suspension or revocation that allows you to avail yourself of the hearing process set forth in the rules of the Department of Safety and under that rulemaking authority in 541-A, I think it is.

An amendment that I have prepared, **See Attachment A,** I did give one to the Chairman but I think I will hold off in distributing the rest of them simply because the group of interested parties met prior to this hearing and we all agree in concept, I believe and they can speak for themselves, but I believe that we agree in concept that there should be some sort of hearing process but exactly how to get to that end, we're not certain. My amendment is simply one suggestion that would involve the Emergency Medical Services, Medical Control Board which is a group of five (5) or six (6) physicians that oversee the operation of Emergency Medical Services in the State.

I hope that's sort of clear. I can give you an example of how this might play out if the Committee's interested.

Say your average paramedic has an unfortunate occurrence, has a medication error, gives the wrong medication and the local doctor suspends his ability to operate under those local protocols. Right now there's no clearly defined process for that paramedic or no uniform process for that paramedic to get that privilege back, or if he disagrees with that decision, to appeal that decision. This bill would provide for an administrative hearing process out of the Department of Safety and under some future amendment, possibly involving the Medical Control Board which are physicians such like the physicians that would have suspended the protocols in the first place. We involve that expertise, we involve that physician oversight and we give the affected party some sort of recourse.

Senator Katherine W. Wheeler, D. 21: Thank you Mr. Chair. What is your intent, in the amendment, Representative McGough?

Representative McGough: Let me just qualify this amendment in that it is not perfect. We don't all agree that this is necessarily the absolute solution. I drafted it earlier today as one possibility that we might involve a hearing process prior to the suspension or revocation as opposed to compelling the Commissioner to suspend or revoke your license just so you could get a hearing on your local protocols. My thought was let's involve this hearing process before that suspension or revocation happens and let's involve some

of the people who know most about it, the Emergency Medical Services and Medical Control Board, that's defined in statute.

Senator Caroline McCarley, D. 6: I'm sorry to delay you, Representative McGough. Do you have a view on this bill as it currently stands?

Representative McGough: As it currently stands, yes I do. I think that we're headed in the right direction and I support the concept behind it. I think the current language is probably not the best way to get there simply because it requires that someone have their license suspended or revoked in order to get a hearing and I think that's a little bit harsh. It potentially could be. So if you want to appeal the decision by your medical resource physician – if you would like to appeal his or her decision to revoke your protocols you have to go get your license revoked to get into that 541 hearing process. I think it's a little bit harsh.

Senator James W. Squires, D. 12: I'm trying to imagine how this might work out. Supposing that you're operating under the auspices of Dr. Kern, we both know he's an ER Physician at the Medical Center, and it's the hospital's protocol that you notify them of a major accident so they then call trauma protocols. For some reason, you – not you personally but the ambulance attendant – declines to do that, not once, not twice but just rushes in and brings his patient. Dr. Kerns says I've had it. I don't trust you with acting on our behalf. What then? Now, under your bill, is he compelled to continue to work with you until this hearing process is laid out? Can you be temporarily suspended from acting on behalf of the community and the hospital? What is going to happen in a time manner so he's comfortable that the person out there bringing patients to the hospital is in fact operating according to his wishes?

Representative McGough: In short, I really don't know. That's a very good question. I think that it will warrant very careful consideration to determine how the physician maintains that right to determine who operates under his license and who doesn't and I'm sure that the Director of the Division of Emergency Medical Services, Marty Singer, can shed some light on how that might work.

Senator James W. Squires, D. 12: Thank you. Mr. Singer is not down here to testify. Could you persuade him to do so? (laughter) But David Lang is.

David Lang, Professional Fire Fighters of NH: Thank you Senator. Good afternoon Senators. For the record my name is David Lang. I'm the Secretary Treasurer of the Professional Fire Fighters of NH. Our organization represents fire fighters, paramedics and EMT throughout the

state of New Hampshire with approximately 1200 members. We represent 35 local unions which are passed out throughout all the major cities of this State from Berlin down through Manchester, Nashua and along the Seacoast and so forth.

We come before you today in support of SB 400 that Senator Trombly has submitted. The very basic reason of why we are in support of that is we believe fire fighter, paramedics and EMT are entitled to due-process like any professional. The fire fighting profession is no secret as becoming known as the nation's first responder. First responder on fire calls and on EMS calls as well. We're becoming a profession all amongst ourselves. Our members are committing long periods of time, their own time in some instances, to develop these certifications similar to the medical community does with a doctor. Some paramedics have chosen to go through a 4 year degree program. Some give up a whole year of their life going through a hospital-based paramedic program to obtain these certifications.

So once they get these certifications and they're afforded the opportunity to work in their communities with these local protocols that have been given authority to the medical community or the medical control doctor at the hospital it's unfair for this paramedic not to be given that due-process like any other profession or EMT would be given if a question comes up with respect to patient care.

If I can given you a hypothetical example as to what I'm talking about, the State develops state-wide protocols. These are rules under which they talk about different medical practices, whether it be the administration of epinephrine, whether it be endotracheal enterbation and so forth. Those state-wide protocols are then disseminated down to the local communities and to the local hospitals which they can adopt locally and authorize and give permission to paramedics and EMT to do these procedures. What happens is when the state-wide protocol comes out, sometimes the local hospital protocol is not written in such detail as a state-wide protocol would be. So then we have a dispute. Dr. claims that EMT or paramedic didn't follow a protocol. What ends up happening and it has happened in one case that I know of and has happened across the country in some other areas, is that we have a labor grievance positioned in the community that call for due-process in the event hat an employee gets disciplined for this. So the doctor comes along and proceeds to perform this type of discipline. They're left with no other choice but to take this very conservative approach by saying, and in your words Senator, I don't trust you to work on behalf of us anymore so we're going to take back that protocol. They take back that protocol. The Department under which this employee works at is now faced with "what do I do with an employee that no longer has the certification that I've hired an employee to

do?" Whether that be a paramedic or EMT. In case, in one specific instance, that employee is terminated. He's given the corporate punishment and is terminated. He loses his job, goes to arbitration. The arbitrator awards him his job back and says he did nothing wrong. How does the fire fighter, EMT or paramedic gets made whole because the doctor ultimately, even though that due-process was taken into consideration on one side of it? We have a dilemma. We have an employer that has an employee that has been made whole yet, in a medical community that the doctor may not give him his protocol back.

So all we're asking for under Senate Bill 400 would be to afford us that same due-process that I believe exists for physicians, currently, and attorneys and other professions. That's basically the premise and I won't belabor the point. I'd love to answer any questions if I can.

Senator Katherine W. Wheeler, D. 21: Thank you. Mr. Lang, your testimony is in regard Senate Bill 400 as presented to us, not the amendment?

Mr. Lang: That's correct. I agree with Representative McGough's representation that we did meet before hand and we agree conceptually that this situation needs to be addressed but we had not really had a lot of discussion whether his approach was better than ours.

Senator James W. Squires, D. 12: Mr. Lang, would it not be possible to think of some action short of revocation of the license? The administrative equivalent of paid administrative leave or something like that until the problem can be sorted out so you don't go through the issue of having to be made whole again? That sounds reasonable to me if you've lost your license that's a significant event and it may be over a personality dispute, it may be of some substance but could we not think of some way to have an interim step so if there is a question it could be resolved short of that so the individuals in question, perhaps, could both still function but at some other part of city or district office? I don't know – I had PA's working under my license. I've never had to do anything about it but if I saw something that I didn't like that I thought was clearly not in the public's interest, my license is at stake here. I don't want to go to some arbitration board and say "well Dr. Squires, you have to work with him." No way would I do that. So what I'm looking for is I understand the problem, could you help us with some intermediate category that would, in effect, give us some breathing room, cooling off period, keep the licensure in tact and then have a review process made up of somebody to be determined to sort it out?

Mr. Lang: I don't think that we would be opposed to looking into something like that and we could possibly not figure out a way to do that. I don completely understand a physician's concern that it's their license and stopping short of rewriting the whole state law so as to develop a new type of certification board which I, today, am not prepared to argue but I think I would support that so that it would remove the liability from the physicians and place it with a state licensing board. I would, like I said, on face value I would like to support that but I think we could develop on something that addresses your concern. The problem that I have with putting in a paid administrative leave is to have to go out an negotiate that into 33 different local contracts that while someone's licensure was being investigated or being suspended for the interim until their satisfaction, that that individual would be paid administratively.

Senator James W. Squires, D. 12: I used the paid administrative leave just as a concept but where there's not an assumption of guilt or if something happened and the individual needs to be protected but so too does perhaps – you see it in the school system. A teacher is accused, something happens and so their license remains in tact they're just not, for some period of time, involved in the activity of teaching.

Mr. Lang: I'd be interested in, and I don't mean to put you on the spot, but would you have any idea as to how we could protect the physician and at the same time protect the rights of the individual and meet that goal with the respect of the licensure because my experience with the physicians that I work with they're wonderful. If there's an issue that crops up everything is clearly defined for us and our catchment area but unfortunately, not everyone does it the same way as the physicians that I work under do. Not everybody has the same rules and not everybody follows those same type of rules. We were coming here as kind of a form to develop that system and that rules under which we could all operate.

I don't know with the physicians if they would feel more comfortable allowing a group of their peers to be – they would justify what their action was and say "listen. I don't want this individual out there working." Trust me, if these individuals are not maintaining the certifications or qualifications, we join them in not wanting them out practicing patient care. It's a very important part of the emergency system of pre-hospital care.

Senator James W. Squires, D. 12: Senator Krueger.

Senator Patricia Krueger, D. 16: I really don't have any questions. I think it's complex but I again would ask you, following up on our Chairman's

question, do you think what you would like literally forces the responsibility of the physician in this? That's still my basic concern.

Mr. Lang: Could you restate your question?

Senator Patricia Krueger, D. 16: Well, basically I agree with Dr. Squires that it would be important for me to know that if the physician were to believe that someone was sort of egregious in performing his duties that he had the recourse not to have to work with that person or anyone else and yet I appreciate the position of the individual involved. I wasn't clear with your answer, really, so I thought I'd address that.

Mr. Lang: I don't have the answer to tell you how we build that so that we take into consideration the physician's concern balanced with the fairness and equity for the firefighter, paramedic, EMT. We thought that this – there's currently in existence a hearing process built in under the Department of Safety and we believe going on this approach buttresses that and puts into that hearings process and allows for these folks to be represented. There's some issues out there that could spill over into legal issues that we really haven't addressed here in this bill that with respect to guaranty rights for the individuals that are told that their testimony won't be held against them, that they're not giving up or waiving any constitutional rights when they're brought in. We're talking about people that, in some cases, could be in some serious problems if they made an error.

Senator Patricia Krueger, D. 16: Thank you.

Senator James W. Squires, D. 12: Thank you Mr. Lang. Those are the only three individuals signed up. Anybody else wish to address this issue? Seeing none, I'll close the hearing on Senate Bill 400.

Hearing closed at 1:20 pm.

Respectfully submitted,

Merideth A. Chandler,
Committee Secretary

Attachment A

Rep. McGough, Hills. 18
February 8, 2000
2000-3353h
01/09

Amendment to SB 400-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to emergency medical and trauma services.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition Added; Quality Assurance. Amend RSA 153-A:2 by inserting after paragraph XVIII the following new paragraph:

XVIII-a. "Quality assurance" means an organized method of auditing and evaluating care provided within the emergency medical service unit.

2 Revocation of License; Clarification. Amend the introductory paragraph of RSA 153-A:13, I to read as follows:

I. The commissioner [~~shall~~] ***may*** deny an application for issuance or renewal of a license, or suspend or revoke a license, ***or, after a hearing and a recommendation by the emergency medical services medical control board, suspend or revoke a person's authority to operate under any state or local protocol,*** when the commissioner finds that the applicant is guilty of any of the following acts or offenses:

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V. Length of licensure and procedures for issuance, renewal, limitation, suspension, and revocation of licensure ***and, pursuant to RSA 153-A:13, I, procedures, including hearing procedures, for the suspension and revocation of authority to operate under local protocols*** authorized under this chapter.

4 Effective Date. This act shall take effect January 1, 2001.

2000-3353h

AMENDED ANALYSIS

This bill authorizes the commissioner of health and human services to suspend or revoke a person's authority to operate under state or local protocols, after a hearing and a recommendation by the emergency medical services medical control board.

Speakers

SENATE PI-HHS COMMITTEE

Date 2/8/00 Time 1:00 PM Public Hearing on SB 400

Appearing in FAVOR: (Please print) **Please check box at left to speak.**

Speaking?	Name	Address	Representing
☒	Rick Trombly	Spring Dist 7	Self
☒	Rep. Tim McGough	Hills- 18	Self
☒	David Lang	66 Park Ave Hampton	Prof. F.F. of N.H.
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Appearing in OPPOSITION: (Please Print) **Please check box at left to speak.**

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Committee Report

Date: Febraury 8, 2000 Time: 1:00 PM

The Senate Committee on Public Institutions/Health Human Services held its hearing in Room 102, LOB, Concord, New Hampshire.

BILL NO.: SB 400-L TITLE: relative to access to emergency medical and trauma services.

Members of the Committee present: Senator Squires
Senator Wheeler
Senator Krueger
Senator McCarley

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☒ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: March 15, 2000

THE COMMITTEE ON Public Institutions/Health Human Services

to which was referred Senate Bill 400-L

AN ACT relative to access to emergency medical and trauma services.

VOTE: 5-1

2000-3842s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Katie Wheeler
For the Committee