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OPINIONS AND ORDERS

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ORDER OF THE SUPREME COURT OF NEW JERSEY (DECEMBER 8, 2020)

SUPREME COURT OF NEW JERSEY

AMERICARE EMERGENCY MEDICAL SERVICE, INC.,

Plaintiff-Petitioner,

v.

THE CITY OF ORANGE TOWNSHIP, BELL MEDICAL TRANSPORTATION, TOWNSHIP OF IRVINGTON, and TOWNSHIP OF SOUTH ORANGE,

Defendants,

and

STATE OF NEW JERSEY DEPARTMENT OF HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES, JAMES SWEENEY, SCOTT PHELPS, and ERIC HICKEN,

Defendants-Respondents.

No. 084600

C-317 September Term 2020

A petition for certification of the judgment in A-000117-19 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 8th day of December, 2020.

/s/ Heather J. Baker
Clerk of the Supreme Court

OPINION OF THE
SUPERIOR COURT OF NEW JERSEY
(MAY 27, 2020)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

AMERICARE EMERGENCY
MEDICAL SERVICE, INC.,

Plaintiff-Respondent,

v.

THE CITY OF ORANGE TOWNSHIP,
BELL MEDICAL TRANSPORTATION,
TOWNSHIP OF IRVINGTON, and
TOWNSHIP OF SOUTH ORANGE,

Defendants,

and

STATE OF NEW JERSEY DEPARTMENT
OF HEALTH OFFICE OF EMERGENCY
MEDICAL SERVICES, JAMES SWEENEY,
SCOTT PHELPS, and ERIC HICKEN,

Defendants-Appellants.

Docket No. A-0117-19T4

On appeal from an interlocutory order of the
Superior Court of New Jersey, Law Division,
Essex County, Docket No. L-2397-19.

Before: WHIPPLE, Gooden BROWN, and MAWLA,[1] Judges.

WHIPPLE, J.A.D.

On leave granted, the New Jersey Department of Health (Department) Office of Emergency Medical Services (OEMS), appeals from a July 16, 2019 Law Division order lifting the summary suspension of plaintiff AmeriCare Emergency Medical Service, Inc.'s (AmeriCare), license to operate as an emergency medical service provider and permitting an action to proceed under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to-2 (CRA). Under the CRA, "the party alleging a claim must show a violation of a substantive right or that someone 'acting under color of law' interfered with or attempted to interfere with a substantive right." *State v. Quaker Valley Farms, LLC*, 235 N.J. 37, 64 (2018). Since AmeriCare did not make that showing, we reverse.

AmeriCare, an entity that provides emergency transportation services, is licensed to operate mobility assistance vehicles (MAV), basic life support vehicles (BLS), and specialty care transport unit vehicles (SCTU). AmeriCare operates six BLS/SCTU vehicles and one MAV vehicle. OEMS, through the Department, has the legislative authority through its rules and regulations to grant, renew, and revoke licenses to entities engaged in performing emergency medical transportation services. OEMS also has the authority

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[1] Judge Mawla did not participate in oral argument. He joins the opinion with counsel's consent. R. 2:13-2(b).

to issue summary suspensions of licenses issued to entities that conduct such services.

In June 2018, OEMS conducted an audit of AmeriCare's overall compliance with applicable regulations as well as an inspection of the emergency vehicles under their operation. OEMS filed a summary suspension of AmeriCare's license to operate and initiated revocation proceedings asserting AmeriCare engaged in a variety of regulatory violations relating to specific vehicles and the company's overall operation such as the credentialing of employees, record keeping, and the maintenance and security of patient-related records. In February 2019, the summary suspension and proposed revocation was withdrawn without a formal enforcement consequence imposed.

On May 30, 2019, OEMS received a complaint that doors on an AmeriCare vehicle were falling off their hinges, oxygen cylinders were empty due to system leaks, and wheels were falling off an AmeriCare ambulance while in use. The complainant informed OEMS that those same vehicles were responsible for providing emergency medical services for the City of Irvington and Village of South Orange. At the time of the initial complaint, one of AmeriCare's BLS/SCTU vehicles, Vehicle 5261, was deemed out of service by the Department for having an inoperable front emergency grill light, missing protective jackets, and a missing fire extinguisher inspection tag.

In response, on May 31, 2019, OEMS conducted an unannounced inspection on two of AmeriCare's BLS/SCTU vehicles, Vehicles 5256 and 5258. The inspectors found serious safety concerns and the vehicles were deemed out of service. Vehicle 5256 had expired vehicle credentials, a loose rear step, an

unsecure oxygen retention system, a balding front tire, an improperly attached side door, a hole in the passenger seat making it pervious to blood borne pathogens, and a map light with exposed wires. OEMS also found similar violations with Vehicle 5258 including a balding front tire, unsecured portable oxygen, a missing front license plate, a hole in the arm rest of the front passenger seat making it pervious to blood borne pathogens, a dashboard radio which falls out while driving, and an unsanitary portable suction unit.

These violations prompted OEMS to conduct an unannounced audit of AmeriCare on June 3, 2019. The investigators claimed they visited AmeriCare's principal place of business, a location in Dumont, but found no AmeriCare official. The investigators visited Americare's location in Irvington, where they found Vehicle 5259, which they inspected and placed out of service after finding serious safety concerns. After the inspection, OEMS scheduled a meeting with an AmeriCare employee, but the meeting did not take place because the employee never arrived.

On June 4, 2019, OEMS, unable to reach representatives of AmeriCare, placed AmeriCare's remaining vehicles out of service to ensure public health, safety and welfare. OEMS also contacted the appropriate dispatch centers as well as both the City of Irvington and the Village of South Orange. On June 5, 2019, South Orange Village terminated its contract with AmeriCare.

After learning OEMS was contacting AmeriCare's clients, Fabrizio Bivona, AmeriCare's founder and CEO, contacted OEMS and arranged for the re-inspection of its vehicles. On June 10 and 12, 2019, additional inspections were performed and Vehicles 5261, 5256,

and 5259 were placed back into service after inspection. The remaining vehicles were not restored at that time. AmeriCare argues that OEMS refused to inspect and pass the remaining vehicles despite failing to identify any violations. AmeriCare further asserts that an OEMS representative spoke with a city attorney for Orange Township noting that over fifty percent of AmeriCare's vehicles remained out of service.

Despite three of the vehicles being reinstated, on June 18, 2019, the Department summarily suspended AmeriCare's license to operate emergency medical transportation services. The suspension letter contained a detailed history of the inspection of AmeriCare's vehicles, as well as a description of the other violations OEMS found during the investigation.

Ultimately, the summary suspension forced AmeriCare to stop operating all vehicles and OEMS notified AmeriCare that it had the "right to apply to the Commissioner of the [Department] for emergency relief to contest this summary suspension," and that "failure to submit a request for a hearing within [thirty] days from the date of this Notice shall result in the continued summary suspension of your . . . provider licenses. . . . " AmeriCare asserts it did not receive the summary suspension letter until a week after the letter was finalized.

Rather than file for emergent relief, AmeriCare filed an order to show cause for injunctive relief and an amended complaint in lieu of prerogative writs in the Law Division seeking to add OEMS and Scott Phelps, Director of OEMS, Eric Hicken, Administrator of OEMS, and James Sweeney, Chief Investigator, as defendants in its prerogative writs complaint. AmeriCare was already involved in litigation which alleged

public bidding violations against the City of Orange and Bell Medical Transportation (Bell). In its bid litigation against the City of Orange and Bell, AmeriCare alleged that in response to a request by the City of Orange to submit sealed bids for a contract to perform emergency medical services, AmeriCare submitted the lowest bid but the contract was awarded to Bell. The City of Orange and AmeriCare were allegedly in settlement negotiations when, according to AmeriCare, OEMS investigator Sweeney began inspecting its vehicles and OEMS took two vehicles out of service. AmeriCare further asserted OEMS advised its clients that AmeriCare was out of business, which ultimately resulted in the loss of municipal contracts. AmeriCare asserts OEMS wrongfully notified its clients of AmeriCare's suspension before it notified AmeriCare and OEMS's actions were invalid and designed to interfere with its business in violation of its civil rights under the CRA and 42 U.S.C. § 1983.

On July 1, 2019, the Law Division judge heard oral argument on the order to show cause and motion for injunctive relief. The court found it had jurisdiction to issue the relief sought and ordered that the summary suspension be lifted to permit AmeriCare to operate the vehicles that were re-inspected and re-authorized by OEMS, provided they remained in compliance with the applicable legal standards. The court also ordered OEMS to re-inspect AmeriCare's remaining vehicles which remained out of service. The court rejected OEMS's argument that AmeriCare was required to exhaust its administrative remedies and on July 16, 2019, entered an order memorializing its July 2, 2019 decision. OEMS sought a stay of the trial court's order on July 17, 2019, and the application was denied. On

July 29, 2019, OEMS moved for leave to appeal and for a stay of the trial court's July 16 order, which we granted. This appeal followed.

I.

On appeal, OEMS asserts we should vacate the trial court's July 16 order for the following reasons: 1) plaintiff failed to exhaust its administrative remedies; 2) even if plaintiff were not required to exhaust its administrative remedies, the trial court lacked jurisdiction to consider plaintiff's claims because review of agency action lies with the Appellate Division; and 3) plaintiff's claims lack merit. At the outset, we first address whether the Law Division had subject matter jurisdiction to adjudicate AmeriCare's complaint. The determination of whether subject matter jurisdiction exists is a legal question, which we review de novo. *Santiago v. N.Y. & N.J. Port Auth.*, 429 N.J. Super. 150, 156 (App. Div. 2012).

OEMS asserts the trial court erroneously concluded AmeriCare was not required to exhaust its administrative remedies and could pursue relief from OEMS's regulatory decisions in the Law Division. OEMS argues that no matter how AmeriCare "styled its claims" the substance of those claims are not civil rights violations but are substantive challenges to the summary suspension itself and that the trial court lacks the expertise to consider the summary suspension as the OEMS's licensing function falls within its technical expertise.

The CRA provides, in pertinent part, a remedy against private and public defendants for a person who has

> been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law. . . .
>
> [N.J.S.A. 10:6-2(c).]

The CRA further provides that actions "may be filed in Superior Court. Upon application of any party, a jury trial shall be directed." N.J.S.A. 10:6-2(d). "[T]he CRA is facially silent about any other procedural requirement that a plaintiff must satisfy in order to bring a CRA cause of action." *Owens v. Feigin*, 194 N.J. 607, 611 (2008).

In *Owens*, 194 N.J. at 611-14, the Court examined the legislative history and the plain language of the CRA to determine whether the Legislature intended for the Tort Claim Act's (TCA), N.J.S.A. 59:1-1 to-12-3, notice-of-claim requirement to apply to CRA causes of action. There, Owens timely filed a notice-of-claims to public entities and employees that were named defendants but did not file a notice-of-claim for one defendant, Feigin, the county medical examiner. *Id.* at 610. The Court held that the notice requirement did not apply to CRA claims as neither the plain language of the CRA nor its legislative history contain any indication that the Legislature intended the TCA's notice requirement to "serve as a prerequisite to a CRA cause of action." *Id.* at 61314. In reaching

this conclusion, the Court noted the "broad remedial purpose of the CRA" supports the conclusion that the Legislature did not condition "the rectifying of an infringement on an individual's vital constitutional rights," on the satisfaction of the notice requirement. *Id.* at 614.

The United States Supreme Court also recognized the need to analyze legislative intent in determining whether a procedural scheme, such as the exhaustion of administrative remedies, is a prerequisite to bringing a claim under a federal civil rights statute. In *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 516 (1982), the Court held the exhaustion of state administrative remedies is not a prerequisite to bringing a 42 U.S.C. § 1983 claim. There, the Court recognized Congress intended the Civil Rights Act of 1871, the precursor to § 1983, to "'open the doors of the United States courts' to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights . . . and to provide these individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary. . . . " *Id.* at 504. (citations omitted). The Court also recognized that although the exhaustion requirement would further various policies such as lessening the burden on federal courts and enabling the state administrative agency, with expertise in the area, to enlighten the federal court's decision, these policy considerations alone cannot justify judicially imposed exhaustion unless the exhaustion is consistent with the legislative intent. *Id.* at 512-13.

Based on our review, we do not find the trial court erred in concluding that plaintiff was not required to exhaust its administrative remedies before

bringing a claim under the CRA in the Law Division. Like the Court in *Patsy*, we decline to read into the CRA an exhaustion of remedies requirement as doing so would be inconsistent with legislative intent. *See Tumpson v. Farina*, 218 N.J. 450, 474 (2014) (noting the interpretation of 42 U.S.C. § 1983 claims may provide guidance in construing our CRA); *Owens,* 194 N.J. at 615 (noting the CRA serves a "broad remedial purpose.").

However, while the exhaustion requirement is not a prerequisite to bringing a CRA claim in the Law Division, we have also refused to allow plaintiffs to avoid the exhaustion of administrative remedies when their claims amount to nothing more than a collateral attack of a State administrative determination. In *Beaver v. Magellan Health Servs., Inc.*, 433 N.J. Super. 430, 432-34 (App. Div. 2013), the plaintiff, an insured former public employee, sued the New Jersey Health Benefits Program and a medical provider after his son's treatment at a substance abuse facility was denied. Beaver appealed the decision and the matter was transferred to the Office of Administrative Law for an evidentiary hearing. *Id.* at 434-35. The Administrative Law Judge (ALJ) recommended denial of the claim and the State Health Benefits Commission (SHBC) adopted the ALJ's findings and conclusions. *Id.* at 435-36.

Beaver later filed a complaint in the Law Division alleging breach of contract, breach of fiduciary duty, unjust enrichment, and a violation of the New Jersey Consumer Fraud Act. *Id.* at 436. The trial judge dismissed those claims for lack of subject matter jurisdiction and plaintiff appealed. *Id.* at 437. On appeal, Beaver asserted his complaint did not "challenge the

SHBC's final administrative action, but rather is a separate action at law alleging statutory and common law causes of action. . . . " *Id.* at 437. He contended the SHBC action was irrelevant to the asserted causes of action and the defendants argued that the language in Beaver's complaint illustrates that, regardless of the claims asserted, he was simply seeking coverage for his son's treatment, and that reversal of the SHBC's determination was essential to his complaint. *Id.* at 439.

We explained that an examination of the causes of action set forth in the complaint is pivotal to a determination of jurisdiction. *Ibid.* Affirming the dismissal, we said:

> [P]laintiff has explicitly stated that his complaint is brought to recover "unpaid benefits" under the Program. Accordingly, to recover, plaintiff must necessarily secure a reversal of the SHBC final agency action upholding the denial of those same benefits. Plaintiff cannot avoid this obvious conclusion by cloaking his claims under the mantle of contract and tort.
>
> [. . . .]
>
> [S]tripped to their barest essentials, plaintiff's claims, sounding in tort and contract, amount to no more than a collateral challenge to the . . . SHBC final agency action upholding the limitation of coverage for plaintiff's health benefit claims. Indeed, absent an attack on that final agency action, plaintiff's tort and contract claims are patently without basis in fact or law.
>
> [. . . .]

> Accordingly, plaintiff's complaint in the Law Division must be dismissed for lack of jurisdiction. To hold otherwise would permit plaintiff to collaterally attack a State administrative determination in the Law Division.

[*Id.* at 441-44.]

In this case, jurisdiction hinges on whether AmeriCare has a colorable CRA claim and if so, the nature of the CRA claim. The Legislature adopted the CRA "for the broad purpose of assuring a state law cause of action for violations of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." *Owens*, 194 N.J. at 611. As noted above, the CRA is modeled after the federal Civil Rights Act, 42 U.S.C. § 1983, and provides a vessel for "vindicating substantive rights and is not a source of rights itself." *Gormley v. Wood-El*, 218 N.J. 72, 98 (2014).

The elements of a substantive due process claim under the CRA are the same as the statute it was modeled after, 42 U.S.C. § 1983. *Rezem Family Assocs., LP v. Borough of Millstone*, 423 N.J. Super. 103, 115 (App. Div. 2011). The first step "is to identify the state actor, 'the person acting under the color of law,' that has caused the alleged deprivation." *Id.* at 114 (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 143 N.J. 352, 363 (1996)). Next the party must "identify a right, privilege or immunity secured to the claimant" by the constitutions of the state and federal governments or by state and federal laws. *Ibid.* (internal quotations omitted) (citations omitted). Therefore, to bring a cause of action under the CRA, the second element requires a party to allege a specific constitutional violation. Our case law is clear

that an individual may prevail on a claim under the CRA only when: (1) the plaintiff has actually been deprived of a right; or (2) one acting under color of law has threatened, intimidated, or coerced a person or attempted to do so, in such a way that it interferes with the person's exercise or enjoyment of his rights. *Felicioni v. Admin. Office of Courts*, 404 N.J. Super. 382, 400 (App. Div. 2008).

In its complaint, AmeriCare's first assertion is OEMS violated N.J.S.A. § 10:6-2 by, among other things, arranging for questionable inspections of its ambulances, giving failing grades based on insignificant and non-material violations, failing to inspect all vehicles, refusing to perform re-inspections, and ultimately suspending AmeriCare despite three of its vehicles being placed back into service just days prior to the suspension. The very essence of these claims is a collateral attack on agency action.

Although not expressly stated in the complaint, even if AmeriCare alleged it was deprived of its right to an occupational license, such a deprivation does not rise to the level of a substantive due process violation. "[A]n occupational license is in the nature of a property right." *Santaniello v. N.J. Dept't of Health & Sr. Servs.*, 416 N.J. Super. 445, 460 (App. Div. 2010) (citation and internal quotations omitted). However, "[t]here is no protectable property right in continuing or future [licensure] since any existing property interest in the [license] is extinguished upon its expiration." *Id.* at 459. Therefore, "constitutional due process protects against only the improper suspension or revocation of a license; it does not protect against a licensing board's summary refusal to reinstate a license that has been revoked." *Id.* at 460 (citation

omitted). Accordingly, AmeriCare would only be able to challenge the procedural process, *i.e.* the improper suspension or revocation. Here, AmeriCare was entitled to emergency relief by the Commissioner of the Department for review of OEMS's period of suspension and was so advised. Since procedural due process claims cannot be brought under the CRA,[2] plaintiff cannot proceed under this theory. AmeriCare was offered the process it was due.

II.

AmeriCare's second assertion is the "Individual Defendants" further violated 42 U.S.C. § 1983 by making statements containing confidential and non-public information to municipal officials, which resulted in AmeriCare being denied contracts with certain municipalities and for existing contracts to be rescinded or terminated. The second assertion, in general terms, alleges the Department's unethical conduct is a violation of AmeriCare's "due process and civil rights."

We decline to offer an opinion on the record before us whether a cause of action based on these allegations has validity. We do recognize, however, the allegations inescapably require the fact-finder to determine the validity of OEMS's summary suspension, a role that falls under the exclusive province of the Department. To prove that OEMS unconstitutionally harmed its business, AmeriCare would be required to attack the agency's determination that it should no longer be licensed. Without the right to operate as a licensed entity, the above-referenced claims are rendered moot.

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[2] The CRA was specifically amended to limit the legislation's scope to substantive due process.

Thus, as we stated in *Beaver*, 433 N.J. Super. at 441, "to recover, plaintiff must necessarily secure a reversal of the . . . agency['s] action."

Reversed. We do not retain jurisdiction.

ORDER OF THE SUPERIOR COURT OF NEW JERSEY GRANTING MOTION (SEPTEMBER 13, 2019)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

AMERICARE EMERGENCY
MEDICAL SERVICE, INC

v.

THE CITY OF ORANGE TOWNSHIP

Docket No. AM-000646-18T4

Motion No. M-008708-18

Before: Carmen H. ALVAREZ,
Greta GOODENBROWN, Judges.

This matter having been duly presented to the court, it is, on this 6th day of September, 2019, hereby ordered as follows:

Motion by Appellant

Motion for Leave to Appeal: Granted

Motion for Stay: Granted

Supplemental:

For the Court:

/s/ Carmen H. Alvarez
P.J.A.D.

ORDER OF THE SUPERIOR COURT OF NEW JERSEY DENYING STAY (JULY 17, 2019)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION–ESSEX COUNTY

AMERICARE EMERGENCY MEDICAL SERVICE, INC.,

Plaintiff,

v.

THE CITY OF ORANGE TOWNSHIP, STATE OF NEW JERSEY DEPARTMENT OF HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES, JAMES SWEENEY, SCOTT PHELPS and ERIC HICKEN,

Defendants,

BELL MEDICAL TRANSPORTATION, TOWNSHIP OF IRVINGTON, TOWNSHIP OF SOUTH ORANGE,

Interested Party Defendants.

Docket No. ESX-L-2397-19

Before: Hon. Keith E. LYNOTT, J.S.C.

A motion for a stay of the Court's July 16, 2019 order having been brought by counsel for the Defendants New Jersey Department of Health, Office of Emergency Medical Services, James Sweeney, Scott Phelps, and Eric Hicken (collectively "OEMS"), by letter dated July 17, 2019, upon notice to all interested parties, and the Court having considered the request the argument of counsel, and for the reasons set forth on the record,

IT IS HEREBY ORDERED on this 17th day of July 2019, that OEMS's request for a stay of the July 16, 2019 order lifting the summary suspension of Plaintiff's license is denied.

/s/ Honorable Keith E. Lynott
J.S.C.

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS (JULY 16, 2019)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION–ESSEX COUNTY

AMERICARE EMERGENCY MEDICAL SERVICE, INC.,

Plaintiff,

v.

THE CITY OF ORANGE TOWNSHIP, STATE OF NEW JERSEY DEPARTMENT OF HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES, JAMES SWEENEY, SCOTT PHELPS and ERIC HICKEN,

Defendants,

BELL MEDICAL TRANSPORTATION, TOWNSHIP OF IRVINGTON, TOWNSHIP OF SOUTH ORANGE,

Interested Party Defendants.

Docket No. ESX-L-2397-19

Before: Hon. Keith E. LYNOTT, J.S.C.

THIS MATTER having being opened to the Court pursuant to R 4:52-2 by Genova Burns LLC and Franzblau Dratch, P.C., attorneys for plaintiff Americare Emergency Medical Service, Inc. ("Plaintiff"), upon notice to defendants, the City of Orange Township, State of New Jersey Department of Health Office of Emergency Medical Services, James Sweeney, Scott Phelps, and Eric Hicken ("Defendants") and the Court having considered Plaintiff's proposed Amended Complaint, Brief, and Certification of Fabrizio Bivona, with exhibits submitted in support thereof; and the Court having considered the opposition papers filed by the State of New Jersey; and the Court having further considered the argument of counsel; and the Court finding that Plaintiff has, and will continue to suffer immediate and irreparable harm unless temporary restraints are entered by this Court; and good cause having been shown; and for the reasons set forth on the record on July 2, 2019;

IT IS on this 16 day of July, 2019,

ORDERED as follows:

1. A temporary injunction lifting the summary suspension of Plaintiff's license shall issue effective July 2, 2019.*

2. Plaintiff's three vehicles (#1FTNE24W66HB 15035, 1FDX4FS5BDA94528, and 1FDXE4FSXBDA 61265) which were in service at the time of the June 18, 2019 summary suspension shall be placed back in use effective July 2, 2019;*

3. Defendants shall perform re-inspections on Plaintiff's vehicles (#1FDXE4FSCXDA31734 and

1FDXE45F93HA75656)–within 72 hours of the entry of this Order;*

4. Defendants shall conduct an inspection of Plaintiff's vehicles in a manner consistent with the law and inspections performed on other EMS companies in the State, and failing vehicles only for material deficiencies;

5. Defendants shall promptly re-inspect any of Plaintiffs ambulances that are found to have material deficiencies in the initial re-inspection;

[. . .]

7. A true copy of the within Order to Show Cause, Amended Complaint and supporting papers shall be served on counsel for Defendants via electronic filing;** and

8. Plaintiff is hereby granted leave to file the proposed Amended Complaint; and

9. The parties shall engage in expedited discovery with respect to the issues in dispute raised in the Amended Complaint;

10. The parties shall submit a proposed discovery Order;

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* These requirements are intended to establish the status quo ante as of the date of such suspensions and do not operate to prohibit the Defendants from conducting or continuing to conduct any audit procedures consistent with the law or from taking any enforcement action authorized by law in the future.

** Although not specifically noted in its bench opinion, the Court grants as of July 2, 2019, leave to amend the Complaint and permits the Amended Complaint submitted with the application to be filed as of such date.

11. There shall be a telephonic Case Management Conference on July 23, 2019 at 10:00 a.m. to address the status of the expedited discovery; and

12. Defendants shall also show cause before this court on the August 15, 2019 at 9:00 a.m. why an Order should not be entered providing preliminary injunctive relief of the above and the following:

[. . .]

B. Such other and further relief as the Court deems just, equitable and proper.

13. Defendants are hereby granted leave to move for dissolution or modification of the aforesaid temporary restraints on two (2) business days' notice to Plaintiff's counsel, which notice shall be served by hand delivery or overnight mail to Rajiv D. Parikh, Esq., Genova Burns LLC, 494 Broad Street, Newark, New Jersey 07102; and

14. A copy of Defendants' responsive briefs and papers in opposition to this Order to Show Cause shall be filed and served on Plaintiff by August 7, 2019; and

15. A copy of any reply papers by Plaintiff shall be filed and served by August 12, 2019.

/s/ Keith E. Lynott
J.S.C.

TRANSCRIPT OF DECISION
(JUNE 2, 2019)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ESSEX COUNTY, NEW JERSEY

AMERICARE EMERGENCY MEDICAL SERVICE, INC.,

Plaintiff,

v.

THE CITY OF ORANGE TOWNSHIP,

Defendants,

BELL MEDICAL TRANSPORTATION,

Interested Party Defendants.

Docket No. ESX-L-2397-19

Before: Hon. Keith E. LYNOTT, J.S.C.

[June 2, 2019 Transcript, p. 4]

AUTOMATED RECORDING: Please enter your participant or moderator code, followed by the # key.

(Pause in proceedings)

AUTOMATED RECORDING: Thank you for calling the Genova Burns (inaudible) Conference Center.

AUTOMATED RECORDING: Please state your name, followed by the # key. (Beeping tone)

THE COURT: Judge Lynott.

Good morning to everyone. Do we have everyone here?

COUNSEL: (Inaudible).

COUNSEL: Thank you, Your Honor.

COUNSEL: Thank you, Your Honor.

THE COURT: All right. We have a little bit of technical difficulty with the phone I normally use not functioning. So the phone we are using is a little bit of distance away. I'm going to go up on the bench for it's easier for me to look at my notes. But if you can't hear me then I'll have to relocate. So just give me one moment.

All right. Is everyone able to hear me all right?

COUNSEL: Yes, Your Honor.

THE COURT: All right. If you, in the course of doing this, you're not able to hear me, don't hesitate to interrupt and we'll see what we can do about that. I am several feet away from the speakerphone for reasons I just explained.

All right. This matter is *Americare Emergency Medical Services, Inc. v. the City of Orange Township and Bell Medical Transportation*, as an interested party defendant. It's L-2397-19.

It is pending before the Court, an application to amend the complaint in this matter to name, as well as defendants in the case the State of New Jersey Department of Health, Office of Emergency

Medical Services, James Sweeney, Scott Phelps and Eric Hicken—hope I pronounced that correctly, as well as the Township of Irvington and Township of South Orange. In the latter case of Irvington and South Orange as what I referred to as interested party defendants.

So that—this case bears Docket Number L-2397-19.

Pending before the Court is an application for entry of an Order to Show Cause with temporary restraints. Those restraints are directed at the State of New Jersey Department of Health, Office of Emergency Medical Services, under the proposed amended complaint in this action.

The Court heard argument yesterday. As—as the parties know, the parties are on the telephone. The Court is going to render an oral bench ruling in the matter, so counsel are present on the telephone.

Would those on the phone identify themselves, please?

MR. PARIKH: Thank you, Your Honor. Rajiv Parikh, Maria Fruci, from Genova Burns, on behalf of Americare.

MR. DESHPANDE: Shay Deshpande from the firm Franzblau Dratch on behalf of AmeriCare.

MR. SULLIVAN: Greg Sullivan, Deputy Attorney—

MR. BARTLETT: Good morning, Your Honor. John W. Bartlett, Orlando Murphy, L.L.C., on behalf of the Township of Irvington.

MR. SULLIVAN: Greg Sullivan, Deputy Attorney General, for the Office of Emergency Medical Services.

MR. WISE: Good morning, Your Honor, Michael Wise, Norris McLaughlin, on behalf of Bell Medical Transportation.

THE COURT: All right. Anyone else?

All right. I am going to provide you with a ruling on this matter. It will take some time to go through it. It's a fairly lengthy recitation of my opinion. As I said, I hope you're all in a place where you can—you can listen comfortably and safely. So, as I said, this will take some time.

I want to let you all know that I am in the midst of a jury trial. We have a jury that is hard at work, deliberating. They occasionally have requests and questions and—and other matters that I need to attend to. Particularly given the fact that they have been here for a number of months, I'm very conscious of my need here to attend to whatever question they may have or need they may have. So if I'm given an indication that I need to do something vis-a-vis the—or with the jury, I am going to have to suspend this proceeding. We'll do it as quickly as we can, of course. I don't want to inconvenience the parties on the phone any more than I need to, but that is a possibility. So I wanted to alert you to it and if that—if that circumstance arises, I'll let you know, and as I said, we'll move it along as quickly as—as we can.

All right. As I said, pending before the Court in this case is an application for entry of an Order

to Show Cause with certain temporary restraints that are directed in this case to the New Jersey State Department of Health, Office of Emergency Medical Services. I'll sometimes refer to the Department of Health in this context as the Department or OEMS, by which I—I mean the same thing here.

The procedural circumstances that, at the moment, the OEMS, a—a—a complaint, an amended complaint in an existing action has been tendered by the plaintiff, American [sic]—AmeriCare Emergency Medical Service, and I'm going to refer to that entity as AmeriCare in the course of this opinion.

As I said, this is an existing action. It was commenced earlier this year against the Township of Orange. I will describe that at some length in a few moments. But, nonetheless, in—in the present context, the plaintiff has filed a—a proposed amended complaint naming the State DOH OEMS and certain individuals as defendants, as well as, as I said earlier, the Township of Irvington and the Township of South Orange as interested party defendants.

The application for restraint, for an Order to Show Cause, seeking a hearing on preliminary injunctive relief and including temporary restraints is, as I said, directed against the State DOH OEMS only.

The Court was presented with a proposed Amended Verified Complaint which it has reviewed and Affidavit of Mr. Bivona, who I understand to be a principal in AmeriCare. Various exhibits were presented, as well as a legal brief.

The Court, upon receipt of this application, scheduled yesterday, July 1, for hearing of this matter. It certainly permitted the State to submit any papers it wished to submit and was in receipt of a letter brief with appended exhibits submitted by the Office of the Attorney General on behalf of the Department of Health, the DOH.

I'll per—perhaps also—I'll perhaps also refer to the Department of Health as the DOH at times. I mean all of those terms to have the same meaning in this regard.

I conducted a [sic] oral argument yesterday, heard from both sides. Counsel for the Township of Orange was also present at that hearing, although this—the Township has not submitted any papers or offered any arguments and, as I said, the relief that's sought in this particular application is not at the moment directed at the City of Orange or any other party, other than the DOH.

I see this case as presenting essentially the intersection or crossroads of the right of a regulated entity to pursue a claim in this Court grounded in an alleged violation of civil rights—of its civil rights under N.J.S.A. 10:6-2 and its comparable Federal provision, referred to as Section 1983, both of which claims under both of which statutes are pleaded in the amended complaint as against the right of the State, in this case the Department of Health, to enforce its regulatory authority and to require a regulated party to exhaust administrative remedies before seeking Court intervention.

I believe the procedural history of this matter is certainly relevant to my findings here. As briefly as I can put it, AmeriCare is a li—is—is a licensed regulated entity. It is licensed to operate mobility assistance vehicles, sometimes referred to as MAV, basic life support vehicles, sometimes referred to as BLS, and specialty care transport unit vehicles, or SCTU. These appear to be three different, although related activities, involving the transport of individual patients in ambulances or, in the case of the Mobility Assistance Program, some other type of vehicle, either for medical care or for transport in an emergency basis to hospitals and/or to transport patients between medical facilities.

As I understand the record here, AmeriCare operates seven vehicle in total. Six of them appear to be ambulances that are engaged in BLS and SCTU services. I note from my understanding of the record that there are different protocols and different regulatory requirements depending upon which of those two functions the vehicle is engaged in at any particular time. AmeriCare also operates one mobility assistance vehicle.

The record reflects—I don't know and the record doesn't reveal the full range of services that AmeriCare currently, or at least until recently provided, but the record does reflect that it was—or was party to a contract to perform certain of these services in the Town—in the Village of South Orange, as well as the Township of Irvington.

This case incepted earlier this year when AmeriCare sought to challenge the bidding procedures of the City of Orange Township, which led to the

award of a contract for these types of emergency services in the City of Orange Township to Bell Medical Transportation. AmeriCare contended that the bidding procedures were not in conformity with applicable public contracting law.

The Court heard, as I believe all parties know, the Court heard previously an application for restraints against the entry into a contract as between the City of Orange Township and Bell Medical Transportation, which at the time was the successful bidder in the proceedings that—by which the City of Orange Township solicited and received and awarded bid—a bid for that particular contract. The Court granted a temporary restraint against that process going forward, having concluded that there was a sufficient showing of certain deficiencies in the process of—the bidding process.

The Court understands from subsequent conversations—on—on—on the record conversations and status conferences with the parties that were previously involved with that component of the case, that is, AmeriCare versus the City of Orange Township, that the parties, at least for some time, were working on a resolution, the—the specific details of which are unknown to the Court, but I understood there was some possible agreement on a resolution of that matter, when the matters that I will describe in a moment, that are the subject matter of the current Amended Verified Complaint and the current application arose.

The other party—principal party to this case is the New Jersey Department of Health and, specif-

ically, it's Office of Emergency Medical Services. Of course, the New Jersey Department of Health has a wide ranging brief of responsibilities, but in this particular arena, it operates under authority—legislative authority granted to it under the Healthcare Facilities Planning Act, which is at N.J.S.A. 26:2H-1 et seq. It operates in the area of advanced life support services, including specialty care—a Specialty Care Transport Program under the authority of N.J.S.A. 26:2K-7 and the med—it also has legislative authority under the Medical Assistance and Health Services Act at N.J.S.A. 30:4D-1.

It has adopted under these authorities pertinent rules and regulations that govern the activities of entities providing services of the type that are at issue in this litigation. Those rules and regulations are generally set forth at N.J.A.C. 8:40 and 8:41.

Specifically, the N.J. D.O.H. has the legislative authority which it implements through its rules and regulation and its overall regulatory program, the power to grant, renew and revoke licenses to entities engaged in performing these services, essentially, emergency medical transport services, through mobility assistance, basic life support, specialty care transport unit services. That authority confers—includes authority—or that—that role by—of the Department of Health includes the authority to suspend on a summary basis the operation of vehicles, pursuant to N.J.A.C. 8:41-12.3, upon a finding of an imminent threat to the public health, safety or welfare.

There is also authority under 8—N.J.A.C. 8:40-7.2b to issue summary suspensions of licensing granted to entities engaged in this area of endeavor upon a—a finding of an imminent or a substantial threat to the public health, safety and welfare from the continued operation of the particular entity.

There are in place under applicable rules and regulations both of the N.J. D.O.H., as well as the Office of Administrative Law a vari—administrative procedures, including a right to—on the part of a regulated entity, to seek emergency relief from any type of summary suspension. The rules of the Department, combined with the rules of the Office of Administrative Law, contemplate an application for such emergency relief to made directly to the Commissioner of the Department, pursuant to N.J.A.C. 8:41-12.4. The Commissioner, under that body of rules and regulations, has the authority to either decide the matter for himself or herself or to refer the matter for a hearing before the Office of Administrative Law and the rules made clear that in that instance there is provision made for the conduct of an expedited hearing of an application for emergency relief.

The same—it—it's apparent from a prior process before the Administrative Law in this very matter, about which I'll say a bit more later, that the Office of Administrative Law heard in this case an—an application last year for emergency relief. As I will note in a few moments, it denied that relief at that time, but it was clear from the opinion that the Court issued, which is

of record in this case, that the Court in that context applied the same standards for granting or denying emergency relief of the sort—the—the type that was requested in that particular circumstance, as this Court would apply, namely, the standards—the well known standards for temporary and preliminary injunctive relief that were—that are set forth *Crowe versus DeGioia*, 90 New Jersey 126 (1982) and certainly other cases as well.

The—the pertinent procedural and factual history of this matter dates back actually to the early part of 2018, when the Department of Health, through its Office of Emergency Medical Services, initiated an—an—an audit—initiated inspections of vehicles that were then operated by AmeriCare and an audit of its overall compliance with the applicable regulatory scheme. Ultimately, in June—May or June of 2018, the Department of—of Health issued a summary suspension of the license to operate that AmeriCare held and ultimately initiated revocation proceedings.

There were a lar—a wide variety of regulatory violations that were alleged in the course of that summary suspension and proposed or sought revocation of the license. They have related to the specific individual vehicles themselves and their compliance with a variety of regulatory requirements, as well as matters going to the more overall operation of AmeriCare, including such matters as—as credentialing of—of employees, of record keeping and the form of standard operating procedures and maintenance and security of patient-related records, as well as

reporting of patient-related data as required, to the Department.

There ensued a—a process between approximately June of 2018 to February of this year, 2019, in which it—it's clear from the record the parties, that is, AmeriCare and the D.O.H., interacted with one—with—with one another as to this pending regulatory in—investigation and regulatory action against it. It was in this context, I should note, that—that AmeriCare did apply for the emergency relief afforded under the applicable regulatory scheme. As I said, that was heard through the Office of Administrative Law and the—the—there is of record the opinion that was authored in that case in which the Court denied that emergency relief, although I would note that it did conclude that there was a showing of irreparable harm, and otherwise didn't find the *Crowe versus DeGioia* standards were met and didn't grant the relief.

There ensued, as I said, what—what appears on the record to be—on the record currently before this Court, to have been interactions between AmeriCare and the Department of Health. It's not entirely clear exactly what these proceedings consisted of, but it does appear to the Court that these parties worked together to resolve the matter to their mutual satisfaction.

As I understand it, and as this record currently reflects, in February of this year the suspension—the summary suspension and the proposed revocation was withdrawn. There is nothing, in this record anyway, to indicate that that process resulted in the payment of any penalty or fine or the entry of any type of Consent Order that re-

quired any sort of corrective action plan that was put in place.

In—in this regard, I'm going to emphasize the limited nature of the record that I have before me and emphasize to all parties that my rulings in this matter are based on that current record and should, and as this matter proceeds, is—and if and were that record to be expanded, I might come to different conclusions.

But on the present record, there is an indication that that matter, prior regulatory matter, was withdrawn, and withdrawn in a manner that didn't reflect any type of enforcement consequence —formal enforcement consequence in the form of a final penalty or a Consent Order or specific corrective action plan that was put in place.

It was at this juncture, at this time frame, shortly after—sometime after February '19, that the matters that actually resulted in the inception of this case prior to the current amendment of the pleadings, which was a—a case as between AmeriCare and the City of Orange Township commenced. As I said a few moments ago, that case had a somewhat different provenance. It arose from essentially a bid protest.

AmeriCare contended it was the lowest bidder among the bidders for the contract that Orange was offering and soliciting bids for to conduct these emergency medical transport services within Orange Township. Orange commen—I'm—I'm sorry—AmeriCare commenced an Action in Lieu of Prerogative Writs against Orange to challenge the bidding procedures that were employed. It

sought and this Court granted an injunction based upon its finding on the record then before it of what I concluded were deficient bid procedures.

I scheduled this matter for further hearing examination by way of application for preliminary injunction. That was scheduled. It wasn't and still hasn't been held. As I indicated earlier, it's been my understanding, or was my understanding through a series of status conferences that the Court held with the parties, that they were working on a settlement, the specific terms of which are unknown to the Court. But I do understand that, at least at the present time, that settlement negotiations have, at—at minimum, been suspended, if not collapsed as a result of the matters that have brought us to the present circumstances.

Beginning at the end of May, specifically May 30, the record in this—at this time reflects that a complaint of an unspecified complainant was made against AmeriCare to the Office of Emergency Medical Services. At that particular time, it appears that one of Americare's vehicles was already placed out of service in what appears to be an unrelated context. These vehicles all have specific numerical designations. I'm going to refer to these vehicles as—by their last two numbers. I believe that should be clear enough for the record.

Vehicle number 6—numbered 61 had been placed out of service, even before this May 30 investigation was commenced. Although I do note and will note later that that particular vehicle was

subsequently reinspected and reinstated as of June 12th, 2019.

Upon the initiation of this investigation, it appears, and once again from the record presently before the Court, that on or about May 31, the Department, through the Office of Emergency Medical Services and an investigative unit consisting of Mr. Sweeney and Mr. Phelps and Mr. Hicken, at various times conducted a—a spot inspection of two of AmeriCare's other vehicles, specifically vehicles 56 and 58, and these were placed out of service as well, bringing the total number of vehicles at that time that would have been placed out of service to three of the—as I understand it, the six emergency vehicles—the six ambulances that—that were then owned, maintained and operated by AmeriCare.

The Department then proceeded, according to the present record, to commence an audit of AmeriCare's operations. There was a visit to—it—it's principal office at—which is also, as I understand it, a residence in Dumont. That was followed by a visit to one of—to its Irvington, New Jersey location. And at that point, the Department conducted an inspection of a fourth vehicle, which was number fifty-ni—59, which it also placed out of service at that time.

The Department avers in—in its letter relating to the—of June 18, 2019, relating to the summary suspension that it has imposed here, that it was unable to continue its investigation as it alleged or asserts that—that AmeriCare was unresponsive or uncooperative in this regard. It was—it is averred in that document that there was a—an

intended meeting between a representative of—of AmeriCare and—and regulatory authorities and the investigative team to be—take place in—in South Orange. That—that that didn't go forward because the individual, it is averred, didn't appear.

On the next day, June 4th, approximately, at least as the record reflects, as I've said, this meeting was—was—had been set up and the individual, according to the State's recitation of these events, didn't—didn't appear. At this point, the State determined that it was going to place all of the vehicles of—of AmeriCare out of service because it couldn't locate them for purposes of inspection and, thus, at least two of the vehi—at least two of the ambulance vehicles and the—the mobility assistance vehicle were placed out of service without having actually been inspected and found to be in their—individually in violation of any regulatory standard.

At this point, it appears that the investigators informed the Village of South Orange and the Township of Irvington that these vehicles of AmeriCare had been placed, or determined to not be operable, or placed out of service. Obviously, the—the Department was aware of the engagement of AmeriCare in the Village of South Orange and the Township of Irvington and it appears it notified the Village and the Township of these events.

There is evidence in the record that a day or so earlier, because of the issues that I've just recounted, South Orange came to the conclusion that—that—that—that AmeriCare wasn't able

to respond and it was asking questions about that inability to respond. As I said, as the investigation progressed, the remaining vehicles were put out of service. Notice of this was apparently given to South Orange. The record reflects that on June 5th of 2019, South Orange terminated its contract with AmeriCare.

Several days later, into the June 10 through 12 period—well, it appears that prior to—prior to that time, Mr. Bivona, on behalf of AmeriCare, was in touch with these investigators. The record reflects that there was some arrangement attempted to be worked out to reinspect the vehicles at about the June 5th time frame. It's asserted in the June 18 letter of the Department of Health that AmeriCare was not prepared for that inspection or didn't—didn't enable it to go forward.

But in all events, it's also clear that as between June 10 and 12, approximately, three of the vehicle—the—the—three of the vehicles were reinspected and were returned to service. Specifically, vehicle 61, 59 and 56. And, thus, as of that timeframe, three of the vehicles were cleared for continuing operations. The remaining vehicles were not restored at this time.

AmeriCare asserts that the State, that the investigators, declined to inspect the remaining vehicles, at least on the present record, but I find there's no evidence to refute that there was—that this is what happened. That they—they declined to inspect the remaining vehicles.

During this period, the record before the Court also indicates that certain third parties were made aware of these ongoing matters and proceedings, as I already noted. It appears that representatives of the OEMS informed Village of South Orange and the Township of Irvington that it had placed all of the AmeriCare vehicles out of service.

There's also an indication in the record that a representative of the Robert Wood Johnson organization became aware of a—the existence of a problem involving AmeriCare and was asking questions of AmeriCare. The precise nature of the relationship between Robert Wood Johnson and AmeriCare is not on the record, but it's clear that a representative of Robert Wood Johnson was aware of these events and was asking questions as to the current status and capabilities of AmeriCare.

It's also of record that an attorney representing Bell Medical Transportation, which is a business competitor of AmeriCare and, indeed, was the—as I indicated earlier, was the—at the time, the—the successful bidder in the Orange Township contract, was in direct communication with Investigator Sweeney. There is a June 10 e-mail exchange in—in which Investigator Sweeney acknowledged—he acknowledged limitations on his ability to provide certain information, but did go on to say that the matter involving AmeriCare was an active investigation that that investigation was in progress. That the vehicles of AmeriCare had been placed—had been placed off—out of service as a result of what were said

to be significant safety issues and due to a potential threat to the public welfare.

I want to take a moment to emphasize here that there was no claim made in—in this proceeding, and I make no finding in any way that there was anything wrong with counsel for Bell Medical Transportation making inquiries of the Department, and I make no such finding. The issue raised here is not the legitimate inquiries and—of—of—of Bell Medical Transportation, but the nature and extent of the information that was provided by representatives of the State in this context to counsel for a business competitor.

Even putting aside the propriety of the disclosures that were made to other third parties, it doesn't appear from the record currently before the Court that the investigators ever corrected the information that they disseminated to inform anyone—the—of the reinstatement of the three vehicles. At least, as I said, not on the basis of the record presently before the Court.

On June 18th, 2019, the Department issued a summary suspension letter which summarily suspended the licensure of AmeriCare to operate in this important public space of providing emergency medical transportation services. That letter is, of course, in the record. The letter notes the history of the proceedings until the present time, to some degree. It contains a very detailed recitation of the problems with the individual vehicles and it also notes that three of the vehicles had been reinstated for operation, but the remaining four vehicles had not.

The letter also contains what I find to be rather vague allegations of other problems, not related to the vehicles themselves, as to which I do conclude there was quite a detailed recitation of the regulatory infractions associated with the vehicles. But the—the letter also contains rather less descriptive allegations of other problems with credentialing of staff, with lack of a standard operating procedure, with unsecured patient records, with lack of reporting of patient care data, and lack of cooperation in the investigation.

I—I find the discussion of these matters to be noticeably vague, particularly in comparison to the summary suspension of a year earlier, in May 2018, which contained—or June 2018, which contained very detailed allegations as to the specific defects in the individual vehicles, and all the other matters which were then alleged by the State and became the subject matter of subsequent regulatory proceedings.

In—in papers presented in this case, they actually relate more to the pending subpoenas to individual witnesses. In their present application to quash that subpoena, I noted that the defendant calls the June 18 document meticulous, and in some respects I agree it is. Certainly with respect to the recitation of the problems with the vehicles, the document is quite detailed and meticulous. But I come to a different conclusion when—or in regard to the non-vehicle related allegations.

Indeed, some of the allegations were—it appeared, anyway, to have been the subject of a lengthy prior proceeding, specifically, the alleged lack of standard operating procedures and the lack of

care with respect to patient records and reporting of patient data. Those matters had been included among the matters, of—as the record reflects, were the subject of very significant and lengthy regulatory proceedings which, as I noted earlier, ended without at least formal compliance obligations, or fines, or penalties and, thus, it appears to the mutual satisfaction of the parties, including the satisfaction of the State at the time, and that time was only a few months before the events that are the subject of this litigation incepted.

The allegation of a lack of cooperation as well appears at—at—at odds to the extent that not only was Mr. Bivona at a very early stage in—in touch with the regulatory authorities, but there were re-inspections of the vehicles that were arranged and, at least in the case of three of those vehicles, those re-inspections were successful. So in the absence of—of further detail, it's difficult to credit the contention laid out in that letter as the basis for the summary suspension—that there was a lack of cooperation that warranted further regulatory sanction.

Once the letter was issued on June 18th, it—it—there is some dispute about how quickly that letter was disseminated to AmeriCare. AmeriCare contends it didn't receive the letter for several days and it wasn't even dispatched to it until a couple of days later. The record here does reflect that Irvington was informed of the action taken by the Department as early as June 19th and it acted quite quickly to terminate its contract with AmeriCare that it had in place at the time.

Following that, the next event of pertinence here was on—on June 25th, that notice was given—informal notice. It is in the record it's of an informal nature, indicating that the investigators who had participated in this investigation had been removed from further participation in the case.

At argument, counsel indicated—counsel for the State indicated that this was a standard procedure whenever the ac—actions of an investigator had been called into question and, indeed, they had been called into question. But, nonetheless, the fact remains on the present record that the investigators who participated in this investigation and subsequent regulatory action were removed from the case at this time.

This case might be examined through two different types of lenses or—or according to two different paradigms. The first is the plaintiff's proffered lens or paradigm, which is embodied in its—in its Motion to Amend the Complaint to add the Department of Health as a party to the case, alleging claims sounding in violations of plaintiff's civil rights.

The plaintiff makes clear in its application that it's not seeking Court intervention to manage individual vehicle inspections. He contends that it's asserting a larger issue, improprieties in the investigation that was recently conducted and violation of its civil rights that it contends are actionable in an action in the Superior Court. As I said, it seeks injunctive relief, which it has characterized as limited in nature. Specifically, it's seeking an Order of this Court limiting—

lifting the summary suspension of July—June 18th, 2019, and reinstating the operation of AmeriCare, in particular the three vehicles that had been reinstated already prior to the summary suspension, and also requiring a reinspection of the remaining four vehicles and their reinstatement, should they—or their reinstatement should they—they—they survive or—or—or—or should they pass the inspection.

On the other hand, the different lens and a different paradigm is that offered by the Department of Health and the defendants who are—are defending this action at the present time on grounds of a failure of exhaustion of available administrative remedies. They cite to the undoubted right of the State, in this case, the Department of Health, to regulate in this area and to regulate this particular activity and this particular entity. They cite the presumed administrative expertise of the Department of Health in this area to make discretionary judgments on the basis of its regulatory standards. It cites the need for agency fact-finding here to determine the validity or not of both the underlying facts relating to AmeriCare's operation, as well as the validity or not of the investigatory steps that were taken by—by the investigative team.

They note the availability of emergency relief to AmeriCare through the applicable rules and regulations, and through the Office of the Commissioner, and if the Commissioner so determines, the Office of Administrative Law, followed by a right of appeal to the Appellate Division—all of which would be subject to the very same legal

standards that the plaintiff asks the Court—this Court to apply here.

I would note in this regard that although the State has only thus far opposed the application itself on grounds of lack of exhaustion, it didn't cross-moving and I'm not—this isn't criticism of any party. The time was short. It didn't cross-move to dismiss the—or—or to ask the Court to reject the proposed amended complaint. But the logical outcome of its position is that the Court should dismiss this putative action as against the Department in favor of the application of the administrative regulatory scheme and judicial review through the Office of Administrative Law and, ultimately, if necessary, the Appellate Division.

So, as I said, these parties present two significantly different antipodal paradigms for this Court to examine. I think the starting place here is the New Jersey Civil Rights Act which is at 10:6-2. That statute provides in pertinent part, if a person, whether or not acting under color of law subjects or causes to be subjected any other person to the deprivation of any substantive due process or equal protection rights, privileges, or immunities secured by the Constitution or laws of the United State—United States or any sub—substantive rights, privileges, or immunities secured by the Constitution or laws of this State, the Attorney General may bring a civil action for damages, for injunctive or other appropriate relief.

But subsection C of—of 10:6-2 also permits any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or

laws of the United States or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of these substantive rights, privileges or immunities has been interfered with or attempted to be interfered with by threats, intimidation or coercion by a person acting under color of law may bring a civil action for damages and for injunctive or other appropriate relief.

Subsection D specifically provides that an action brought pursuant to this Act may be filed in the Superior Court and upon application of a party, a jury trial shall be directed.

It's clear from case law that's been cited to the Court, and which I have examined, that the rights of a party against a public entity under the New Jersey Civil Rights Act, specifically 10:6-2C and D are not subject to Tort Claims Act procedures. *Owens versus Feigin*, 194 N.J. 607 (2007) makes this clear, and in so doing the Supreme Court indicated the expansive remedial nature of the C.R.A. The Court writes at page—looks like page 611—611 as follows. In 2004, the legislature adopted the C.R.A. for the broad purpose of assuring a State law cause of action for violations of State and Federal Constitutional laws and to fill any gaps in State statutory anti-discrimination protection. Citations to the—the—the session law, as well as the Senate Judiciary Committee statement to Assembly Bill Number 2073, I'm quoting—stating that to protect and assure against deprivation of the free exercises of civil ri—of civil rights which are guaranteed and secured under the New Jersey Constitution and

Federal Constitution this Bill provides a remedy when one person interferes with the civil rights of another and, further, is intended to address potential gaps which may exist under the [the New Jersey Law against Discrimination and bias statutory crime causes of action]. N.J.S.A. 10:6-2C provides a remedy against private and public defendants to a person who demonstrates that he or she has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with by threats, intimidation, or coercion by a person acting under color of law.

The Court goes on to state that notably, the C.R.A.'s sole procedural component is found in subsection D, N.J.S.A. 10:6-2D, which states that C.R.A. actions may be filed in Superior Court and directs the Court to hold a jury trial upon application of any party. Otherwise, the C.R.A. is facially silent about any other procedural requirement that a plaintiff must satisfy in order to bring a C.R.A. cause of action.

The Court goes on to state at page 613 that the C.R.A.'s purpose includes rectifying violations of Constitutional rights, the protection of which has never depended on the satisfaction of a T.C.A.'s—meaning the Tort Claims Act procedural and substantive requirements.

And the Court goes on to say at 613-614 that given the stark field of case law universally rejecting the importation of the T.C.A.'s Notice of Claim requirement into other statutory claims, or for any Constitutional claim, we think that the legislature would have spoken expressly on the subject had it intended that the T.C.A.'s notice requirement serve as a prerequisite to the C.R.A. cause of action.

Instead, neither the plain language of N.J.S.A. 10:6-2, nor the statutes legislative history contains any indication of such intent by the legislature. In light of the broad, remedial purpose of the C.R.A. and absent any legislative expression to the contrary, we are unconvinced that the legislature chose to condition the rectifying of an infringement of an individual's vital Constitutional rights or of injurious discriminatory conduct on the satisfaction of the T.C.A.'s Notice of Claim requirement. If we are incorrect in that conclusion, we are confident the legislature will clarify its intent through amendment.

Now, this case doesn't involve any argument, at least at this point, under the Tort Claims Act, but I find the—the discussion in *Owens* to be instructive to the Court insofar as it—it—it validates the statutory intention to afford a cause of action in the Superior Court without otherwise recognized procedural prerequisites in cases involving—of actual or alleged violations of civil rights.

I find this that bears on the application or not of the Exhaustion Doctrine in this case. As I indicated, the State in its opposition to this

application has contended—has contended that the—the action—the—the application, at minimum, if not the action—the proposed action as a whole, should be dismissed on the basis of a failure to exhaust administrative remedies. And that would appear to be somewhat at odds with the *Owens* case, which indicates that these types of procedural prerequisites are not apposite in circumstances involving claims of violation of civil right.

But, equally important, examining the case law on the Exhaustion Doctrine, I come to the following conclusions. I find in this regard, for example, *Brunetti versus New Milford*, at 68 N.J. 576 (1975), to be pertinent in its discussion of the boundaries of the Exhaustion Doctrine.

Now, that Court makes it clear that the exhaustion requirement is—is an—certainly an important requirement. It notes—the Court notes Rule 4:69-5, which provides that except where it is manifest that the interest of justice requires otherwise, actions under Rule 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.

The Court notes that this—that it—the Supreme Court has recognized that the exhaustion of remedies requirement is a rule of practice designed to allow administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the Courts. Citation omitted.

It goes on to state, therefore, while it is neither a jurisdictional nor an absolute requirement, there is, nonetheless, a strong presumption favoring the requirement of exhaustion of remedies.

But the Court goes on to say admittedly, the exhaustion requirement will be waived where the interest of justice so requires. Quotation and citation omitted. The Court notes that has been held to mean that exhaustion of remedies will not be required where administrative review will be futile, where there is a need for prompt decision in the public interest, where issues do not involve administrative expertise or discretion and only a question of law is involved, and where irreparable harm would otherwise result from denial of immediate judicial relief.

So, having examined those case—that—the case law as to the Exhaustion Doctrine, I note that the exhaustion of remedies is—is—is—is presumptive, that is, that a party should party presumptively have satisfied and followed, pursued all available administrative remedies before pursuing this type of judicial relief, but that such—such—such action by the party is not a jurisdictional matter and it is not always required and is not required in circumstances involving irreparable harm.

I find that this is—this particular type of matter is ordinarily one that would be and should be addressed through the established administrative process, with its deference to the legislatively established mandate in this case of the Department of Health to protect public health and welfare, and its administrative expertise in the

matters that are at issue, such as the matters that are at issue in this case.

The question for me is whether there are distinguishing features of this case that warrant permitting this matter to proceed against a public entity as a claim for violation of the New Jersey Civil Rights Act in this Court with its powers in appropriate cases to grant temporary or preliminary and, ultimately, final injunctive relief.

I'm going to note in this regard that no party has lodged any claim thus far in this case that the matters before this Court should be heard in any place other than the Law Division. That is, no application has been made that this matter should be heard in the Chancery Division.

I find, having examined the present record, that there is a sufficient basis in that record to permit this case to proceed in this Court as a cognizable claim for violation of civil rights, and to differentiate it from the far more typical case of a regulatory oversight and enforcement action properly venued in the requisite administrative agency and subject to its administrative procedures.

I emphasize that I come to this conclusion on the basis of the limited record presently before the Court. A more robust, completed record could certainly alter my conclusions in this regard. But I find the following circumstances warrant this conclusion.

First, I find that the plaintiff, Ameri—AmeriCare, has suffered and/or could suffer through further proceedings in this matter, imminent irreparable

harm. It has already suffered significant harm through the suspension of its license. It has been rendered unable to conduct its business activities. There has been a termination of its contract with—to provide emergency medical transportation services by both the Village of South Orange and the Township of Irvington. And, as I said, it's presently disabled from conducting any of its business activities through the summary suspension.

There is also the apparent collapse of the then under negotiation settlement with the Township of Orange in the underlying matter involving the bid procedures and the prior litigation that I've previously described.

It is certainly foreseeable that if this matter were to proceed further, absent some type of intervention by the Court, that AmeriCare could quickly be out of business entirely.

I find that this is a circumstance in which money damages are not adequate relief in the circumstances. And I conclude that not only does this circumstance support a conclusion that this is a New Jersey Civil Rights Act case, but it provides a recognized basis for the Court to decline to do that, which it would do in almost all other cases, and that is to cli—to decline jurisdiction in favor of requiring the party to pursue administrative remedies.

There are other factors that inform my decision. I conclude that the parties have just engaged in a lengthy regulatory process that, at least on the present record, resulted in no adverse findings, formal findings, penalties or corrective actions.

Some of the very same deficiencies that were alleged in the prior proceedings and that were presumably addressed to the Department's satisfaction in those proceedings are alleged again here, albeit in what I find to be rather vague, imprecise terms. And I find that is another circumstance that warrants viewing this case as properly submitted as a [sic] action under the Civil Rights statute that is cognizable in this Court with this Court's procedures.

Other facts that I find are pertinent to this conclusion. There was a—on the record, at least presently before the Court, a failure to inspect the remaining vehicles of AmeriCare before putting all of them out of service. On the basis of what I find to be a rather unspecified claim of their unavailability to be inspected, which seems to be at odds with the fact that the other vehicles were presented for reinspection and were, in fact, reinspected.

There was also a failure to reinspect the vehicles after the three vehicles were reinspected and were restored to service.

As the condition of these vehicles appears to be fundamentally the basis for the summary suspension and the determination that was made of an immediate and serious threat to public welfare, that under *Geurds* (phonetic) that regulatory action, I conclude that the failure in these circumstances to inspect or reinspect the vehicles in the circumstances, as I said, appears to be an arbitrary action.

Other facts I have noted in the record. I have noted the—what I find to be the vague and unsupported

claims of lack of cooperation, unattributed complainants, results of interviews with employees of an unspecified nature concerning credentialing, and the fact that certain of the issues that are specified as a basis for this regulatory action were relating to recordkeeping matters and standard operating procedures, were presumably already extensively reviewed in the prior regulatory proceedings and resolved to the parties, including the State's satisfaction.

One need only examine and compare the highly factual recitation of the alleged violations in 2018 and even the specific vehicle related violations in the present suspension letter to raise what I find to be a legitimate question about the propriety of the underlying investigation and findings that resulted in the summary suspension.

It also appears that the summary suspension was the product of rather hasty decision-making, coming almost only approximately two weeks after the inception of the original investigation. When one examines the prior investigation of the prior regulatory proceedings going back into 2018, the summary suspension was not issued until after what appears to be a considerably longer, more deliberative process that—that took place at that time, prior to the issuance and the suspension that appears to have taken place here.

There is also the fact that the investigative team was removed here following—certainly following the issuance of this suspension, and there is the fact that there were communications with certain third parties that are in the record. I'm not talking in this regard about the contacts that were made

to South Orange and Irvington, which appear to me to have been accurate statements of what had happened and given to other governmental bodies that were known to have contracts with AmeriCare for their information.

But there are also contacts with Robert Wood Johnson and counsel for a business competitor and, once again, I find no fault here with counsel, but it does appear to me that the information that was conveyed to that counsel resulted, at minimum, in conveying an incomplete picture of the circumstances by commenting on the status of an ongoing investigation and not thereafter, at least according to the present record, create—correcting the record by informing that same party or parties about the reinstatement of certain of the vehicles.

These matters in the present record, including the irreparable harm which is I find is at issue here, cause the Court to conclude that this case is properly viewed through the prism of a legitimate civil rights claim, which is properly venued in this Court, and to find a sufficient basis not to direct the—not to decline the exercise of this Court's jurisdiction in favor of exhaustion of administrative remedies.

I emphasize in that regard the limited nature of my conclusion in this respect. I find that courts can and should be wary of claims that are cloaked in the mantel of civil rights, and I conclude that very few cases involving highly regulated entities, such as AmeriCare, should be directed in any way from the prescribed regulatory process on the grounds of a civil rights claim.

There certainly could be circumstances in—that—that are more akin to a—an attempt by a regulated entity to bypass authorized and well established administrative mechanisms simply because they don't like or they fear the outcome. But I conclude, at least at this time, on the basis of the record before me, that that is not the case in this circumstance.

So with that lengthy background, I turn to the specific application for the limited restraints that are sought here by the plaintiff. Of course, I apply the standards of *Crowe versus DeGioia*, which is at 90 New Jersey 126 (1982). I'm also informed in my analysis by *Waste Management of New Jersey, Inc. versus Morris County Utilities Authority*, which is 433 N.J. Super. 445. Of course, *Crowe versus DeGioia* is the well known case, sets out the standards for the relief that's sought in this case of—of a temporary or preliminary injunctive nature, requires a showing by clear and convincing evidence of several factors.

First, there must be a showing of irreparable harm. There must be a showing of a settled legal right. There must be a showing of—of a reasonable probability of success on—on the merits, which the Court in that case made clear involved the absence of significant and material disputes of fact as to the underlying matter. And there must be an assessment of the relative hardships of the parties, the hardships to the applicant from denial of the relief, weighed against the hardship to the opponent from the granting of the relief. That balance of hardships has to weigh in favor of the applicant by clear and convincing evidence.

And the Court must also in appropriate cases, and this is certainly an appropriate case, weigh the public interest which may be at issue.

Waste Management makes clear that in certain circumstances involving the possible destruction of the res of the subject matter of the litigation or in other circumstances, the Court as a matter of equity can apply and should apply a less rigid approach to the *Crowe* factors.

That case involved a bidding dispute among parties in which the—the—the losing bidder, or bidders sought relief against the contract that had been awarded going forward, sought temporary and preliminary injunctive relief. The essential grounds that they asserted were that the successful bidder hadn't complied with the bidding requirements for a showing of adequate financial resources to carry out the contract at issue, which was a—a—a—Waste Management operating facility, and the judge, the trial judge in that case found that the plaintiffs hadn't established a sufficient probability of success on the merits and thus denied the application.

On appeal, the Appellate Division reversed, actually, entered an injunction, and determined that the trial judge had inappropriately not examined all of the other *Crowe* factors. And in so—in—in so holding, the Court came to the following conclusions. The—the obser—it—it found that the observation it had made that the trial judge on the record—that it was not going to second guess the trial judge's determination that there was a lack of showing of a probability of success on the merits, nonetheless concluded

that that observation doesn't end the matter. Instead, and we're here at page 453, as Judge Clapp explained many years ago, the reason we consider whether a movant's right to injunctive relief is clear, doubt—doubtless lies in the fact that a interlocutory injunction is so drastic a remedy. Citation omitted.

But our Courts have also long recognized that there are exceptions, as where the subject matter of the litigation would be destroyed or substantially impaired if a preliminary injunction did not issue. Citations omitted. That is, a Court may take a less rigid view of the *Crowe* factors and the general rule that all factors favor injunctive relief when the interlocutory injunction is merely designed to preserve the status quo. The power to—quotation or cite—quotation and citation omitted. The power to impose restraints pending the disposition of a claim on its merits is flexible. It should be exercised whenever necessary to subserve the int—the ends of justice, and justice is not served if the subject matter of the litigation is destroyed or substantially impaired during the pendency of the suit.

On to page 454, the Court continued: The less rigid approach, for example, permits injunctive relief, preserving the status quo, even if the claim appears doubtful when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed.

And I find that analysis applicable to the circumstances here. First, I conclude that there has been a showing of irreparable harm, as I've already said. I find that there is no adequate remedy at law in the circumstances presented. The license to continue to operate in this—in this space, albeit regulated space, has been suspended. There is a substantial danger that the entire business of AmeriCare could be crippled or even destroyed during the pendency of this case. It has already lost two or possibly even three major business engagements as a result of the circumstances of this case.

And, thus, I concluded it is appropriate for the Court to act to avoid the irreparable harm to the business, pending further examination of the matters that are the subject of this case, and until the case can be fully adjudicated.

As to the question of a substantial or a settled legal right. Of course, there is no right to a—to a—a governmental license, nor is there a right to operate a regulated business without full compliance with all applicable material regulatory standards. But there is a right to operate a business when the authority—when the—under the authority of a license that has already been granted, without improper, un—unfair or arbitrary interference, possibly involving retribution—although I make no such finding as to the latter point at this time by regulatory authorities or investigators.

When I examine the merits of this case, I—I—I find the facts are certainly disputed among the parties. There is material disputes among the

facts. But I am applying the *Waste Management* standard here. A less rigid approach to the element of reasonable probability of success on the merits in view of what I find to be is the grave harm at issue. I find that a less rigorous approach to this factor is warranted to avoid essentially the destruction of the res in this case, which is the business of AmeriCare, pendente lite.

As noted, I find there are substantial grounds present in the record for this case to proceed on a theory of violation of civil rights.

When I consider the balance of hardships, I find that there would be a substantial hardship to the plaintiff from denial of the relief. As I said, what has been an interruption of its business could quickly become the destruction of that business, as a practical matter, through its inability to operate in the foreseeable future. And I also note the limited nature of the relief that I am going to grant here.

I am going to lift the—the present summary suspension and permit the plaintiff to operate the reinspected and re-authorized vehicles, provided that they are and remain in compliance with all applicable legal standards, and I'm going to require the prompt reinspection of the remaining vehicles.

It is not my intention in entering this relief to undertake oversight of the normal functioning of the Department of Health and the implementation of its statutory and regulatory mandate. Should the agency find that the vehicles that I am requiring be reinspected aren't in compliance, or can't operate, or—or find that there are other grounds

for recourse to its administrative mechanisms, including a summary suspension, it is not the intention of this Court to stand in the way of that.

It only sets aside here the suspension that is currently in place in order to restore what I believe is—appropriate is the status quo and to—and to preserve the—or—or to protect against what I find to be the imminent irreparable harm that the plaintiff would suffer if the Court did not act.

There is certainly hardship to the agency here that the Court must examine, but I find it is limited to the burden of the immediate reinspection of the vehicles. I—I find that the balance of hardships here to—to weigh substantially in favor of granting the relief.

I am highly cognizant of the public interest at stake here. There are different public interests at stake which the Court must consider. First, there is the undoubted public interest in the safe, responsible operation of providers like AmeriCare of a very vital service, which is critical to the public safety, health and welfare. An irresponsible material and non—non-compliant operator has absolutely no business operating in this critical field of endeavor and the—the safe and responsible operation of operators such as AmeriCare is and should be normally vested entirely with appropriate rights to judicial review in the administrative agency with both the oversight responsibility and the expertise to conduct that oversight, which agency is charged with acting to protect the public safety in this critical, sensitive area.

But there is also a public interest in having a robust industry of service providers in this area, and providing fully compliant services as responsible operators, free from undue and improper regulatory oversight.

Given what I believe is the tenor of the present record, once again emphasizing the preliminary nature of that record, indicating the—indicating on the basis of that record the possibility of the improper exercise of regulatory authority, implicating the civil rights of the plaintiff, I believe that the public interest is best ser—served in this context by granting the limited relief that is sought and that I am granting.

I emphasize again the limited nature of the relief that I am granting. I am setting aside the present suspension, summary suspension of AmeriCare. I am permitting the operation of the reinspected and cleared vehicles, and permitting them to resume operation, and I'm requiring the prompt reinspection of the other vehicles. But, as noted, I do not intend, absent a sufficient showing by the plaintiffs to the contrary, to intervene beyond this in the normal functioning of the agency and in the implementation of its regulatory responsibilities and its mandate.

And so, for those reasons, I—I am going to grant the application of the plaintiff to the extent that I have indicated.

I will enter an Order to that effect. I am going to set this down for a prompt hearing on a preliminary injunction application. I will also provide in the Order that should the defendant, State of

New Jersey, Department Health wish, on two days notice it can seek with appropriate proofs to dissolve or modify these restraints in—in any way that it wishes on—on appropriate notice.

In terms of scheduling, having given some thought to the schedule, I believe there will be a need for some limited discovery in this matter. I'm going to set this down for a preliminary injunction application and hearing on August 2nd at 9:00.

I am going to require that any opposition papers on behalf of the State be submitted by—going to make that July—we'll make that July 20—we'll make it July 19th, and any further reply papers on behalf of the plaintiff, following the performance of any discovery that the parties wish to engage in, we'll make that July 26th.

I will convene—I'm going to ask the parties to consult with one another about appropriate discovery and timing for discovery. I'm going to convene a Case Management Conference to hear any issues about discovery. We'll make that Monday—we'll make it Tuesday, July 9th, at—we can do this telephonically, although you're welcome to come to Court, if you wish. We'll make that 9:30.

And I'm going to ask that counsel for the plaintiff in the first instance prepare a Form of the Order, submit it to the defendant—defendants for any type of review and submit it to me as quickly as possible. All right?

COUNSEL: Thank you. We will.

COUNSEL: Thank you.

THE COURT: Thank you, Your Honor.

THE COURT: Are there any questions?

COUNSEL: No, Your Honor.

THE COURT: All right. Thank you all.

MR. BARTLETT: Thank you, Your Honor. Your

Honor? Your Honor?

THE COURT: Yes, sir?

COUNSEL: Are we still on?

THE COURT: Yes?

MR. BARTLETT: Yes. Hi. This is John Bartlett, on behalf of Township of Irvington. What's Your Honor's expectation of—we're named as a interested party defendant? What is Your Honor's expectation in terms of responsive pleading for future appearances by the Township of Irvington?

COUNSEL: Well, I guess, we're going to (inaudible) this thought.

THE COURT: I am going to expect that you be notified of appearances and I'll expect that if you wish to attend them that you are free to do so. But there—no relief is sought against you and, therefore, I don't find there is any need for you to file a pleading. Should there be, and I don't—I don't believe there is anything before me that would indicate a need for it, but should there be a need for discovery from the Township of Irvington, we'll take that up as—as it appears to be necessary. All right?

MR. BARTLETT: Sure. Of course. Thank you very much for clarifying that, Judge.

THE COURT: All right. Very well. So long.

COUNSEL: Thank you, Your Honor.

THE COURT: All right. So long.

COUNSEL: Thank you, Your Honor.

COUNSEL: Good day, Your Honor.

THE COURT: So long.

COUNSEL: Okay. Bye-bye. All right.

(Proceedings Concluded)

APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION (JULY 17, 2019)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

To: Appellate Division Emergent Judge

From: Patrick Jhoo, DAG

Telephone: 609.376.3200

The following questions are to be answered by the attorney or self-represented litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION. There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed unless directed by the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one.

See njcourts.com for notice of appeal and Court Rules. You must also pay the applicable filing fee ($50 for a motion for leave to appeal; $250 for a notice of appeal), direct the charging of an attorney's account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

Case Name:

AmeriCare Emergency Medical Service, Inc. v. OEMS et al.

Trial Court or Agency Docket Number:

ESX-L-2397-19

1. What is the vicinage of the matter? (*i.e.*, what judge, in what county or what agency entered the decision?)

   Vicinage: Hon. Keith E. Lynott, J.S.C., Essex County Law Division.

2.

   a) What is your name, address, including any e-mail address, phone number and fax number?

   Patrick Jhoo, DAG
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b) Who do you represent? (*i.e.*, client, yourself)

New Jersey Department of Health, Office of Emergency Medical Services, Scot Phelps, James Sweeney, and Eric Hicken.

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

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4. What is the nature of the emergency?

On June 18, 2019, OEMS issued a decision summarily suspending AmeriCare's license to provide Mobility Assistance Vehicle (MAV), Basic Life Support (BLS), and Specialty Care Transport Unit (SCTU) services in New Jersey. Essentially,

the company's vehicles and operators of those vehicles are responsible for responding to 9-1-1 emergency calls and providing BLS, specialty care, and transport services to seriously ill and injured patients in the state. The suspension was issued based on serious vehicle safety issues of three of AmeriCare's six emergency vehicles, which included missing lug nuts on tires and improperly secured doors, failure to implement standard operating procedures, and failure to electronically submit patient care report data to the Department. The suspension was also necessary due to AmeriCare's failure to cooperate with the audit, preventing OEMS from verifying allegations of non-credentialed or improperly credentialed staff, unsecured patient care reports, and complaints of non-compliance lodged against the agency.

Notwithstanding OEMS's position that the Law Division lacks jurisdiction to overturn an agency decision, on July 16, 2019, the Court issued an order lifting OEMS's summary suspension of AmeriCare's license and ordered that three of the vehicles be placed back in operation. While the vehicles at issue were reinspected and eventually passed inspection and found to be in compliance with DOH standards, OEMS has not yet received any confirmation regarding the credentials of AmeriCare staff, placing the public at risk of receiving medical treatment by individuals who are not qualified. Additionally, there is concern that that AmeriCare could be operating a business without any standard operating procedures, thus placing the public at risk of "on the fly" decisions by individuals who may not even be qualified to

provide the services. Finally, AmeriCare is not in compliance with the statutory requirements for electronic submissions of claims reports to OEMS and has also not established compliance with patient confidentiality requirements. For all of these reasons, the Court's order poses an immediate and substantial risk of harm. By lifting the summary suspension, the Court supplanted the regulatory judgment of OEMS and allowed an ambulance company to conduct business in a way that is a direct threat to the seriously ill and injured who call 911 for emergency care or patients that require interfacility transfer due to serious and life-threatening medical conditions such as ventilator-dependent patients. This order is manifestly contrary to the regulatory judgment of OEMS, which is the agency responsible, by statute and rule, for emergency-medical services. *See* N.J.S.A. 26:2H-1 to-140.

5. What is the irreparable harm, and when do you expect this harm to occur?

The irreparable harm posed in this matter is the improvident judicial removal of the summary suspension against AmeriCare and the allowance of the company to operate as a provider of emergency-medical services to New Jersey residents. Judge Lynott has essentially permitted an ambulance company to go back into business that OEMS has reason to believe is so deficient in the quality and safety of its vehicles, and its lack of cooperation with the regulatory officials as to warrant removal from the provision of <u>any</u> services to the public. The July 16, 2019 order lifting of the suspension creates an immediate threat to public health

and safety by allowing AmeriCare to provide emergency-medical services to the citizens of New Jersey.

6. What relief do you seek?

   OEMS seeks an immediate interim stay of the Court's July 19, 2019 order imposing temporary restraints and lifting the summary suspension.

   Additionally, OEMS seeks reversal of the Court's July 2, 2019 decision denying OEMS's motion to dismiss the matter for lack of jurisdiction, or alternatively, transfer the matter to the Department of Health consistent with N.J.S.A. 26:2H-14 and R. 1:13-4(a).

7. Do you have a written order or judgment entered by the trial judge or a written agency decision? You must attach a copy of the order, judgment or decision.

   Yes, please see the attached order of July 16, 2019 and attached transcript of the Court's July 2, 2019 ruling on jurisdiction.

8.

   a) Have you filed for a stay before the trial court or agency?

      Yes.

   b) If so, do you have a court order or agency decision denying or granting same? Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision or other evidence of the ruling

on your stay application. (Court Rules 2:9-5 and 2:9-7)

Stay has been denied.

9. If you did not immediately seek a stay from the trial court or agency, or if you did not immediately file this application with the Appellate Division after the trial court or agency denied your stay application, explain the reasons for the delay.

   OEMS received the Court's July 16, 2019 Order today, July 17, 2019. It immediately sought a stay with the trial court and filed this application.

10. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?

    If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought. (Court Rules 2:2-4 and 2:5-6)

    Yes. The relief granted in the July 16, 2019 was emergent only and did not address all the parties or issues in the case.

11. If the order or agency decision is interlocutory (*i.e.*, not final), are you filing a motion for leave to appeal?

    Yes. OEMS will be filing a motion for leave to appeal.

12. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

    Yes

13. If the order, judgment or agency decision is final, have you filed a notice of appeal?

    N/A.

14. What is the essence of the order, judgment or agency decision?

    Judge Lynott issued a temporary-restraining order lifting the summary suspension against AmeriCare by OEMS. As a result of this order, AmeriCare is permitted to provide emergency-medical services to the citizens of the State of New Jersey contrary to the determination of OEMS.

15.

    a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

       No.

    b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part of the Appellate Division?

       No.

16.

    a) Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?

       Yes.

    b) If so, specify method of service.

The method of service on the Court and counsel was electronic filing on eCourts.

17.

a) Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?

Yes, the transcript of Judge Lynott's oral opinion issued on July 2, 2019 has been ordered by OEMS and received. A copy is submitted with this Application.

b) If so, when will the transcript(s) be available?

N/A.

18. Please give a brief summary of the facts of your case.

Following the receipt of a complaint regarding the atrocious conditions of some of the ambulances utilized by AmeriCare, OEMS commenced an audit of the fitness and adequacy of the company's equipment and personnel pursuant to N.J.S.A. 26:2H-5 and N.J.A.C. 8:40 and 41, et seq. As a result of the OEMS attempted audit, three ambulances were placed out of service. During the course of the attempted audit, OEMS also received additional complaints regarding AmeriCare's credentialing methods of employees (*e.g.*, as emergency-medical technicians). OEMS attempted to conduct an audit based on the serious complaints that were lodged against AmeriCare but due to Americare's lack of cooperation, OEMS was unable to investigate the complaints. Due to the deficiencies of the vehicles, the concern about valid employee credentials, as well as a lack of cooperation with the audit on

the part of AmeriCare, OEMS issued a summary suspension of AmeriCare's license as a Mobility Assistance Vehicle Service, Basic Life Support, and Specialty Care Transport Unit Agency on June 18, 2019. *See* Notice of Summary Suspension (June 18, 2019) attached.

Rather than pursuing the administrative remedies outlined in the June 18, 2019 Notice of Summary Suspension for filing for emergency relief with the Commissioner of the Department of Health as required by N.J.S.A. 26:2H-14, AmeriCare filed an amended verified complaint (the underlying and unrelated complaint was filed in March 2019 against the City of Orange and Bell Medical Transportation alleging violations of the public bidding process) and order to show cause seeking temporary restraints against OEMS in the Superior Court of New Jersey, Law Division. Following briefing (in which OEMS argued that the exhaustion requirement necessitated the dismissal of the application) and oral argument, the Hon. Keith E. Lynott, J.S.C., found that he had jurisdiction to issue the relief sought and that AmeriCare had satisfied the factors of *Crowe v. DeGioia*, 90 N.J. 126 (1982). On July 16, 2019, Judge Lynott entered an order lifting the summary suspension and permitting AmeriCare to operate three of its vehicles. Judge Lynott further ordered OEMS to inspect all remaining Americare vehicles.

19. What legal citation (*i.e.*, statute, regulation, court case) is most important for the proposition that you are likely to prevail on appeal?

1. This matter does not belong in the trial court: The Supreme Court has assigned the Appellate Division exclusive review over state agency or officer final decisions or actions. *See* N.J. Const., art. VI, § 5, ¶ 4; R. 2:2-3; *Prado v. State*, 186 N.J. 413, 422 (2006) (observing that R. 2:2-3(a)(2) "vests the Appellate Division with exclusive jurisdiction over all such decisions or actions."); *DeNike v. Bd. of Trs., State Employment Ret. Sys.*, 62 N.J. Super. 280, 291 (App. Div. 1960) (reiterating that "if the defendant is a state agency, plaintiff should proceed in the Appellate Division."), aff'd, 35 N.J. 430 (1961). The rule entertains no exceptions, and the Supreme Court has disapproved efforts of lower courts to create them. *See, e.g., Infinity Broad. Corp. v. N.J. Meadowlands Comm'n*, 187 N.J. 212, 225 (2006); Prado, 186 N.J. at 421.

Judicial review in the Appellate Division of the actions of State officers is exclusive and does not depend on nature of the action or the relief sought. *Mutschler v. Department of Environmental Protection*, 337 N.J. Super. 1, 9 (App. Div.), *certif. denied*, 168 N.J. 292 (2001). The Law Division, it noted, lacks jurisdiction to review the actions of State agencies, *id.* at 8-9, and, furthermore, has the "responsibility" to transfer to the Appellate Division a challenge to the action of a State agency. *Id.* at 10.

2. The Department of Health has exclusive jurisdiction to regulate emergency medical services: N.J.S.A. 26:2H-14 authorizes the Commissioner to summarily suspend the license of a health care provider if he or she determines that alleged

violations of agency standards pose an immediate threat to the health, safety and welfare of the public and requires that any denial of such allegations shall be heard by the Commissioner. More generally, OEMS has comprehensive regulatory authority over emergency-medical services to ensure the quality of those services. N.J.S.A. 26H-1 to-140 and N.J.S.A 26:2K. As defined in N.J.S.A. 26:2H-2(b), health-care services include prehospital basic-life-support-ambulance services. N.J.S.A. 26:2H-5 grants the Commissioner of the Department of Health the power to inquire into health-care services and to conduct periodic inspections with respect to the fitness and adequacy of the equipment and personnel employed by those services. Moreover, the Department is authorized to establish the standards for equipment, supplies, and vehicles of mobility-assistance-vehicle-service providers. N.J.S.A. 30:4D-6.4. To effectuate these statutory objectives, the Department has adopted regulations that govern the licensure and inspection of ambulance, specialty-care-transport, and mobility-assistance-vehicle-service providers and their vehicles. Those regulations are set forth in their entirety at N.J.A.C. 8:40 and 8:41.

3. AmeriCare is required to exhaust administrative remedies before seeking judicial relief: Where the plaintiff has available to him the right of review before an administrative agency, a court of law may not grant relief upon such a complaint. Rule 4:69-5 requires that plaintiffs exhaust any available review process before an administrative agency prior to bringing an action in state court. The doctrine requires parties to

pursue available administrative remedies before seeking relief in court. *Paterson Redevelopment Agency v. Shulman*, 78 N.J. 378 (1979), cert. den. 444 U.S. 900 (1979); *Roadway Express v. Kingsley*, 37 N.J. 136, 141 (1962); *Central R.R. v. Neeld*, 26 N.J. 172, 178 (1958), *cert.* den. 357 U.S. 928 (1958). The doctrine is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. *Boldt v. Correspondence Management, Inc*, 320 N.J. Super. 74, 83 (1999). The doctrine applies where a claim is cognizable in the first instance by an administrative agency alone. *Ibid.* When the doctrine is applied, judicial interference with the issue is withheld until the administrative process has run its course. *Ibid.*

By signing below, I certify that this application is made in good faith, and not for any improper purpose such as to harass or to cause unnecessary delay or expense. I further certify that the factual statements contained in this application are true to the best of my knowledge.

/s/
Patrick Jhoo
Deputy Attorney General

/s/
Signature of Attorney or
Self-Represented Litigant

Date: July 17, 2019

LETTER FROM THE DEPARTMENT OF HEALTH REGARDING NOTICE OF SUMMARY SUSPENSION (JUNE 18, 2019)

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
PO Box 360
Trenton, NJ 08625-0360
www.nj.gov/health

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

Shereef M. Elnahal, MD, MBA
Commissioner

Fabrizio Bivona
Americare
35 Essex Place
Dumont, NJ 07628

Re: Notice of Summary Suspension:
Mobility Assistance Vehicle/Basic Life Support/ Specialty Care Transport Unit Service Provider
Investigation Control # 2019-0091V

Dear Mr. Bivona:

The New Jersey Department of Health (the Department) is vested with the responsibility of carrying out the provisions of the Health Care Facilities Planning Act, N.J.S.A. 26:21-1-1 et seq., which was

enacted, in part, to ensure that hospital and related health care services rendered in New Jersey are of the highest quality. As defined at N.J.S.A. 26:2H-2b, health care services include pre-hospital basic life support ambulance services. N.J.S.A. 26:2H-5 further grants the Commissioner of Health the power to inquire into health care services and to conduct periodic inspections with respect to the fitness and adequacy of the equipment and personnel employed by those services. Additionally, N.J.S.A. 26:2K-7 et seq. governs the provision of advanced life support services within the State of New Jersey, including the development and maintenance of a specialty care transport program by an approved healthcare provider. Even more, the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:40-1, et seq., requires the Department to establish the requirements for the equipment, supplies, and vehicles of mobility assistance vehicle service providers. *See* N.J.S.A. 30:4D-6.4. In furtherance of each of the aforementioned statutory objectives, the Department adopted regulations that govern the licensure and inspection of ambulance, specialty care transport and mobility assistance vehicle (MAV) service providers and their vehicles. Those regulations are set forth in their entirety at N.J.A.C. 8:40 and 8:41.

On May 30, 2019, the Department's Office of Emergency Medical Services (OEMS) received a complaint about serious safety issues with Americare's vehicles. Specifically, the complainant reported that doors of an Americare ambulance were falling of their hinges, main oxygen cylinders were empty due to known leaks in the system, and wheels were falling off an ambulance while in use. The complainant

further provided that these vehicles were responsible for providing 911 emergency medical services for the City of Irvington and Village of South Orange. Consistent with regulatory authority and the OEMS policy, the OEMS opened an investigation in response to this complaint.

Upon opening the investigation, the OEMS investigator confirmed that you are currently licensed to provide Mobility Assistance Vehicle (MAV), Basic Life Support (BLS) and Specialty Care Transport Unit (SCTU) service in New Jersey. According to the OEMS licensing system (hereby referred to as the licensing system), you operate six BLS/SCTU vehicles (#5253, #5256, #5258, #5259, #5260, #5261) and one MAV vehicle (#M001), At the time of the initial complaint, vehicle #5261 had already been placed on a Department Initiated Out of Service (DIOOS) status after an inspection in Jersey City, New Jersey found the following violations:

Vehicle #5261:

1. Inoperable front emergency grill lights, in violations of N.J.A.C. 8:40-6.12(f);
2. Missing protective jackets, in violation of N.J.A.C. 8:40-6.15(b)(2)(v); and
3. A fire extinguisher missing inspection tag, in violation of N.J.A.C. 8:40-4.4.

Note: This vehicle was re-inspected on June 10, 2019 but failed due to a missing lug nut on the driver side rear tire, in violation of N.J.A.C. 8:40-4.4, and a half inch tear on the stretcher mattress making it pervious to blood borne pathogens, in violation of N.J.A.C. 8:40-4.5. The vehicle

was placed back in service on June 12, 2019 after passing inspection.

In response to the complaint, an unannounced spot check was conducted on May 31, 2019 on vehicles #5256 and #5258 at University Hospital and Newark-Beth Israel Medical Center, respectively. At the time of inspection, serious safety concerns were found, and the vehicles were placed on a DIOOS. The deficiencies are listed below:

Vehicle #5256:

1. Expired vehicle registration and insurance card, in violation of N.J.A.C.8:40-4.3 and N.J.A.C. 8:40-3.3, respectively;
2. The rear step to the back of the vehicle gives way when in use causing a safety hazard, in violation of N.J.A.C. 8:40-4.4;
3. The main oxygen retention system did not secure the cylinder, in violation of N.J.A.C. 8:40-4.4. The retention system appears to be designed to secure two cylinders and only one was present;
4. The driver side front tire is balding, in violation of N.J.A.C. 8:40-4.7;
5. The sliding side door is difficult to open, and it was discovered that it was not attached properly as it almost came off the vehicle when the investigator was finally able to open it, in violation of N.J.A.C. 8:40-4.4;
6. There is a hole in the passenger seat making it pervious to blood borne pathogens, in violation of N.J.A.C. 8:40-4.5; and

7. The map light is hanging with exposed wires, in violation of N.J.A.C. 8:40-4.4.

Note: This vehicle finally passed reinspection on June 12, 2019.

Vehicle #5258:

1. The crew was unable to locate the vehicle registration, in violation of N.J.A.C. 8:40-4.3;
2. The passenger front tire is balding, in violation of N.J.A.C. 8:40-4.7;
3. The passenger front door gasket is torn, in violation of N.J.A.C. 8:40-4.4;
4. The portable oxygen is not secured in an appropriate retention system. Instead, cylinders were placed into an oxygen bag and placed on the bench seat, in violation of N.J.A.C. 8:40-4.4;
5. The front license plate is missing, in violation of N.J.A.C. 8:40-4.4;
6. There is a hole in the arm rest of the front passenger seat making it pervious to blood borne pathogens, in violation of N.J.A.C. 8:40-4.5;
7. The music radio in the dashboard had fallen into the dashboard and was reported by the crew to fall out while driving, in violation of N.J.A.C. 8:40-4.4; and
8. The portable suction unit smelled like emesis when turned on making it unsanitary and, therefore, inoperable, in violation of N.J.A.C. 8:40-4.5.

Note: This vehicle remains out of service.

The severity of the violations found during the vehicle inspections prompted OEMS to conduct an unannounced audit of Americare. Accordingly, on June 3, 2019, OEMS investigators presented at 35 Essex Place in Dumont, New Jersey, which is Americare's principle place of business as entered in the licensing system, to conduct the audit. Upon arrival, it appeared that the address was a residence. Investigators attempted to gain access, but no one answered the door. The investigators had received notification from the complainant that you also operated out of a station on Rosehill Place in Irvington. Investigators attempted to locate your company by arriving at the station but, upon arrival, the building was unlocked and vacant with no vehicles in the bay.

Later that day, investigators returned to Rosehill Place and found vehicle #5259 from Americare and vehicle #700 from Virgo Medical Services (Virgo) parked on the apron of the station. The crew sitting in the Virgo vehicle were wearing Americare uniforms and advised investigators that you borrowed the vehicle from Virgo and directed them to use it to provide emergency services to Irvington. Investigators then contacted. Virgo to discuss this arrangement. They advised that you had contacted them on June 2, 2019 and arranged for them to provide emergency coverage for Irvington from 3:00 PM on June 2 to 7:00 AM on June 3. They also informed investigators there was a possibility of providing additional coverage the afternoon of June 3, 2019 from 3:00 p.m. to 11:00 p.m. As such, they kept vehicle #700 at the Rosehill station with the keys in case this additional coverage was needed. Once Virgo was informed that personnel

wearing Americare uniforms was found operating vehicle #700, investigators were informed that you did not have permission to operate this vehicle with your staff.

The investigators also inspected vehicle #5259 and found serious safety concerns, which resulted in it being placed on DIOOS status. The deficiencies are as follows:

Vehicle #5259:

1. The insurance card was expired as of August 2018, in violation of N.J.A.C. 8:40-3.3;
2. The fire extinguisher was not fully charged and did not have an inspection tag, in violation of N.J.A.C. 8:40-4.4;
3. Lug nuts were missing on the right rear tire, in violation of N.J.A.C. 8:40-4.4;
4. The interior surface was unsanitary with what appeared to be multiple dirty gloves, making it a health concern, in violation of N.J.A.C. 8:40-4.5;
5. There was no positive action latch on the CPR seat, in violation of N.J.A.C. 8:40-4.4;
6. The left front tire was balding, in violation of N.J.A.C. 8:40-4.7;
7. There were multiple open, unmarked bottles of liquid in the cabinets, in violation of N.J.A.C. 8:40-6.5; and
8. The BLS crew had access to multiple pieces of SCTU equipment, such as an intravenous pump and ventilator tubing, in violation of N.J.A.C. 8:40-6.5(c).

At this point, the crew was able to contact someone by phone who they identified as a supervisor named Stephanie. Investigators spoke with Stephanie and advised her of the attempt to conduct an audit. She advised them that you were in an all-day meeting and could not be interrupted. instead, she said she could handle the audit. She advised investigators that she was in the field but would be able to meet them at the South Orange station, since you are responsible for providing emergency medical services to the Village of South Orange. Arrangements were made with her to meet the investigators twenty minutes after the phone call at the station located on Crest Drive in South Orange, New Jersey. Investigators arrived at the station within twenty minutes, waited for over an hour and Stephanie never arrived or called investigators to explain her absence.

On June 4, 2019, investigators attempted, again, to conduct an audit of Americare. Investigators placed multiple phone calls to the phone numbers listed in the licensing system. Upon calling the cell phone number, investigators were met with an automated message advising that the number was no longer in service. When the work number was called, someone answered and sounded as though they were attempting to disguise themselves by using a high-pitched voice that was unintelligible. When the investigators asked to speak with you, the voice continued to be unintelligible, causing the investigators to end the call. Because the vehicles that could be inspected had major deficiencies and investigators were unable to contact you, could not locate all your vehicles, and were not met by the supervisor as agreed, they had no choice but to place the remaining vehicles in a DIOOS status to ensure

public health, safety and welfare. The appropriate dispatch centers were contacted as well as the City of Irvington and Village of South Orange. The Emergency Medical Services (EMS) County Coordinator was contacted to work with municipalities to ensure EMS coverage was still accessible to the public for your 911 basic life support coverage areas.

During the investigation, investigators were also advised that you borrowed a vehicle from another company named RescueHeart (RescueHeart) Medical Services and staffed it with your employees wearing Americare uniforms. The crew, who was wearing Americare uniforms, advised investigators they were directed by you to use the vehicle and provide service to Irvington.

Later the afternoon of June 4, 2019, you contacted OEMS and spoke with the OEMS investigators. You stated that you did not understand what the issue was and were upset because your "contracted clients" were contacted by OEMS. Even though there was no availability on the inspection schedule, you were scheduled for reinspection of two vehicles as a courtesy. Specifically, you were given appointment times of 10:00 a.m. and 11:00 a.m. on June 5, 2019. On June 5, 2019 you failed to arrive for either of these appointments. Instead, you arrived after 3:00 p.m. but were turned away as there was no one available to inspect the vehicles. Thereafter, you rescheduled your reinspection's multiple times and OEMS was finally able to place vehicles 5261, 5256, and 5259 back into service after they passed inspection. However, vehicles 5253, 5258, 5260 and M001 remain out of service.

During the investigation, OEMS was also contacted by several individuals voicing concerns about the

conditions at Americare. Investigators were provided with photographs of Americare vehicles with a left rear tire that had fallen off, broken lug nuts and unsecured patient care reports strewn about the ambulance compartment. A picture of an incident report was also given to investigators. The report states that you were notified that a hub cap, valve stem and outer tire had broken off the vehicle, to which you advised the crew to "slowly drive back." Due to the significant safety risks associated with this vehicle, you should have had the vehicle towed, rather than telling your crew to drive it back to the garage. Such actions placed not only your crew, but the public, in harm's way.

In addition to concerns with the vehicles, employees who were interviewed by the investigators reported that you do not have proper credentials for your staff. They reported they were never asked to provide their credentials during employment with Americare. Furthermore, it is said to be common practice to have friends of employees' staff vehicles without knowing whether they are properly credentialed. Due to your avoidance of an OEMS audit, the investigators have not had access to Americare's staff roster and credentials on file. As such, OEMS has been denied the ability to verify that your crews are properly credentialed and appropriately staffing your vehicles, as required by N.J.A.C. 8:40-3.8.

During interviews, it was also reported to the investigators that Americare does not have standard operating procedures, as required by N.J.A.C. 8:40-3.5. Instead, you make operational decisions on the fly. Additionally, it was reported that patient care reports were kept unsecured in one of the stations

with little concern for ensuring patient confidentiality or patient identity, as required by N.J.A.C. 8:40-3.9. Again, because Americare is evading an OEMS audit, OEMS investigators have no way to determine whether Americare is in violation of these requirements.

From this complaint investigation, OEMS also discovered that Americare is in violation of N.J.S.A. 26:2K-67, which requires all emergency medical service providers to electronically submit patient care report data to the Department. As of the date of this letter, you have not reported any data to the Department and are, therefore, violating the law.

Based upon the investigators' ongoing investigation, OEMS has found the following violations to date:

1. Failure to maintain patient care reports, in violation of N.J.A.C. 8:40-3.6;
2. Failure to submit electronic patient care reports, in violation of N.J.S. 26:2K-67;
3. Failure to produce documentation requested by OEMS investigators for inspection, in violation of N.J.A.C. 8:40-2.6(c);
4. Hindering an OEMS investigation, in violation of N.J.A.C. 8:40-2.6(c);
5. Failure to maintain vehicles in a safe, clean and properly functioning mariner, as required by N.J.A.C. 8:40A-4.4, 4.5 and 4.6; and

Based upon the foregoing, the Department has determined that Americare's license as a Mobility Assistance Vehicle Service, Basic Life Support, and Specialty Care Transport Unit Agency must be summarily suspended. Pursuant to N.J.A.C. 8:40-7.2(b),

"[t]he Commissioner or his or her designee may summarily suspend the license of any provider when, in his or her opinion, the continued licensure of that provider poses an immediate or serious threat to the public health, safety or welfare." In the present matter, the above cited deficiencies demonstrate a serious disregard for the Department's regulations. Even more, you are intentionally inhibiting OEMS's audit of your agency, which is necessary to determine the extent of Americare's non-compliance with OEMS' rules. Given the nature of the complaints lodged against Americare, the serious violations found to date and your evasion of an OEMS audit, the Department finds that Americare's continued licensure as a MAV/BLS/SCTU service provider constitutes an immediate and serious threat to the health, safety and welfare of the public. Therefore, Americare's license as a Mobility Assistance Vehicle Service, Basic Life Support and Specialty Care Transport Agency is immediately suspended. During this period of suspension, OEMS will continue to investigate this matter and will advise you as to what action(s), if any, will be taken with respect to your MAV/BLS/SCTU licenses. Such action may include the imposition of monetary penalties and/or revocation of your licenses. Additionally, Americare must comply with OEMS's audit and provide it with full access to its agency files and vehicles, as required by N.J.A.C. 8:40-2.6.

Please be advised that you may not, under any circumstances, operate as a MAV, BLS or SCTU service provider anywhere within the State of New Jersey during this period of suspension. You have the right to apply to the Commissioner of the Department of Health for emergency relief to contest this summary

suspension. A request for emergency relief shall be submitted in writing and shall be accompanied by a response to the charges contained in this notice. Please include the control number 2019-0091V on your correspondence and forward your request to:

New Jersey Department of Health
Office of Legal & Regulatory Compliance
P.O. Box 360, Room 805
Trenton, NJ 08625-0360
Attn: Ms. Tamara Roach

Finally, please note that failure to submit a request for a hearing within 30 days from the date of this Notice shall result in the continued summary suspension of your MAV/BLS/SCTU provider licenses, therefore forfeiting all rights to emergency relief. If you have any questions concerning this matter, please contact Dr. Jo-Bea Sciarrotta, Regulations Officer at (609) 633-7777.

Sincerely,

/s/ Christopher Neuwirth, MA, MEP, CBCP, CEM
Assisitant Commissioner
PHILEP Division

c: Scot Phelps, JD, MPH Paramedic, Director, OEMS
Jo-Bea Sciarrotta, OEMS
Eric Hicken, OEMS
James Sweeney, OEMS
Tami Roach, OLRC
City of Irvington
Village of South Orange