



State of New Jersey
DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
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JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

September 1, 2020

VIA ELECTRONIC, CERTIFIED AND REGULAR MAIL

Fabrizio Bivona
Americare
35 Essex Place
Dumont, NJ 07628

Re: **Notice of Revocation:**
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. 26:2H-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 transportation program by an approved healthcare provider. Even more, the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-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 transportation units (SCTU) 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.

As you are already aware, on May 30, 2019, the Department's Office of Emergency Medical Services (OEMS) received a complaint alleging serious safety

issues with Americare's vehicles. Specifically, the complainant reported that doors of an ambulance were falling off their hinges, main oxygen cylinders were empty due to known leaks in the system, and wheels were falling off an ambulance while in use. At the time this complaint was made, these vehicles were responsible for providing 911 emergency medical services for the City of Irvington and Village of South Orange. Yet, Americare failed to notify OEMS that it was providing these 911 services, as it is required to do under N.J.A.C. 8:40-6.15(d).

OEMS opened an investigation in response to the complaint. OEMS began its investigation at two acute care hospitals, where it conducted unannounced spot inspections of two Americare vehicles on May 31, 2019. The investigators found significant safety issues with the vehicles, such as balding tires, a door that came off its hinges when it was opened and unsecured oxygen cylinders, which resulted in the vehicles being placed out of service, pursuant to N.J.A.C. 8:41-12.3 and N.J.A.C. 8:40-7.2. Because two of Americare's vehicles were found to have significant violations, coupled with the complaints received about Americare's vehicles, OEMS determined that all of Americare's seven OEMS licensed vehicles required inspection and that Americare's agency required an audit to ensure that it was operating in accordance with OEMS's rules and providing safe and proper emergency medical care.

Despite the Department's statutory and regulatory authority to investigate Americare, as set forth in N.J.S.A. 26:2H-5, N.J.A.C. 8:40-2.6 and N.J.A.C. 8:41-2.6, Americare evaded and outright prevented OEMS from conducting its investigation. Specifically, OEMS investigators arrived at Americare's principal place of business, as listed by Americare in OEMS's licensing system, on June 3, 2019 to inspect the vehicles and conduct an audit. However, the address was a residence, and no one was home. OEMS also went to a secondary business location listed by Americare in the OEMS licensing system, but the address was an abandoned building. Thereafter, OEMS was provided with a tip that Americare was operating out of a garage at 38 Rosehill Place in Irvington. Upon its second visit to this location, OEMS investigators located an Americare vehicle, which was inspected and also placed out of service due to serious safety violations. After placing the vehicle out of service, investigators were able to make contact with an Americare supervisor, who directed the investigators to a location on Crest Drive in South Orange to conduct the audit and inspect the remaining vehicles. But, when OEMS investigators arrived at the South Orange location shortly thereafter, the building appeared empty and an Americare ambulance was locked in the garage area of the building. Because no one appeared to be in the building, the investigators could not inspect the vehicle or conduct the audit. Thereafter, OEMS made multiple attempts to inspect the remaining vehicles and audit the agency, but Americare evaded OEMS's investigation. Because the three vehicles that could be inspected had serious violations and OEMS was prevented from inspecting the remaining vehicles to ensure that they were safe to operate, OEMS had no choice but to place the entire fleet out of service.

During the course of its attempted inspections and audit, OEMS received several more complaints about Americare. The complaints included allegations that Americare's vehicles had serious safety issues, Americare's paper patient care reports were not properly stored or maintained to protect patient confidentiality, Americare was permitting uncertified individuals to staff its ambulances, MAVs and SCTU vehicles, and there were no standard operating procedure manuals for the agency. Due to Americare's failure to comply with OEMS's audit, OEMS investigators had no way to

access Americare's staff roster, credentials for its crewmembers and patient care reports, to ensure that staffing for its vehicles was proper under N.J.A.C. 8:40-3.8 and N.J.A.C. 8:41-10.8. Americare's impediment of the investigation also prevented the investigators from reviewing Americare's standard operating procedures, as required by N.J.A.C. 8:40-3.5 and N.J.A.C. 8:41-3.12, and determining whether patient care reports were properly stored and maintained, in accordance with N.J.A.C. 8:40-3.9 and N.J.A.C. 8:41-3.11.

OEMS also discovered that Americare was 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 January 2018, as it has never reported patient care data to the Department.

Based upon the serious allegations lodged against Americare and Americare's outright refusal to submit to an audit to ensure that it was in compliance with OEMS's rules and, in turn, providing safe and proper care to the seriously ill and injured patients that call upon it for emergency medical care, OEMS issued Americare a summary suspension of its basic life support ambulance (BLS), MAV and SCTU licenses on June 18, 2019. Such action was necessary to protect the public's health, safety and welfare.

The summary suspension notice advised Americare that it was required to submit a request for an emergent hearing to the Department, which is consistent with N.J.S.A. 26:2H-14, N.J.A.C. 8:40-7.3 and N.J.A.C. 8:41-12.4, if it contested the Department's enforcement action. Instead, Americare sought emergent relief in the Superior Court, Law Division by moving to join the Department as a defendant in an existing, unrelated lawsuit involving a public bidding dispute with the City of Orange and another emergency medical services provider, asserting civil rights claims against the Department and sought relief from the Department's summary suspension, among other relief. On July 2, 2019, the Court issued an oral decision finding that the Department's summary suspension should be lifted to permit Americare to operate three vehicles (one MAV and two dually licensed BLS/SCTU vehicles) that were in service prior to the issuance of the summary suspension. The Court also required OEMS to re-inspect two additional vehicles that remained out of service, even though OEMS had been attempting to do so but was unsuccessful due to Americare's lack of cooperation. On July 16, 2020, the court reduced its decision to a written order. In addition to memorializing the above findings, the Order also provided that OEMS was not prohibited 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."

Consistent with the Order, OEMS made several attempts to inspect the two vehicles referenced in the Order and complete an audit of Americare to investigate the multiple complaints lodged against it and ensure that the agency was not a threat to public health, safety and welfare. After multiple attempts to set a date and time for the audit and vehicle inspections, Americare and OEMS agreed that OEMS would arrive at Americare's purported place of business, 38 Rosehill Place in Irvington, at 1:00 p.m. on July 18, 2019. Prior to the audit, Americare's MAV Vehicle #M001 arrived; this was one of the vehicles the Court had ordered back into service when it lifted the summary suspension. The driver, Stephanie Ulbricht, stated to the OEMS investigators that she was there to have the vehicle inspected and was not aware that an audit was to take place. The vehicle was inspected, failed and placed out of service for an expired DMV decal, an inoperable latch on an overhead compartment, an inappropriate pocket mask

that was missing a 1-way valve necessary to prevent a provider's exposure to blood borne pathogens, and oral airways that were not authorized for use on an MAV. At the end of the inspection, Ms. Ulbricht departed and no other Americare staff arrived for the audit.

Because Americare once again impeded OEMS's audit and failed to present the vehicles listed in the Court's order for inspection, OEMS again made several attempts to reschedule the audit and inspect the two vehicles. OEMS provided a date for the end of July but was advised that you were out of the country on vacation during that time and could not comply with the audit. Americare finally agreed, through its counsel, to submit to the audit and inspection of the two vehicles on August 8, 2019 at 10:00 a.m. at the Irvington address. OEMS investigators arrived at the Irvington location at 10:00 a.m., but once again only MAV Vehicle #M001 was presented for an inspection. The driver, Stephanie Ulbricht, stated she was there to have the vehicle inspected, did not work for Americare and was a "volunteer" to get the truck inspected. When questioned about the audit, she stated she was not aware that an audit was to take place. As a result, the OEMS investigators asked to speak with you. You spoke with them and advised that there was a miscommunication, that your attorney informed you no audit was to take place and that the inspection was to comply "with the court order". The vehicle was inspected, failed and placed out of service again for an inoperable latch on the overhead compartment and an inappropriate pocket mask with a missing 1-way valve, which were the same violations that existed when the vehicle was inspected on July 18, 2019. At the end of the inspection, Ms. Ulbricht departed and no other Americare staff arrived for the audit.

Shortly thereafter, OEMS investigators discovered that Americare no longer maintains a place of business at 38 Rosehill Place in Irvington. And, the business address on file with OEMS for Americare is the private residence mentioned above where investigators were unsuccessful in contacting anyone on the date of the inspection and audit, June 3, 2019. Thus, to date, Americare has failed to inform OEMS where its true principle place of business is located as required by N.J.A.C. 8:40-3.2 and N.J.A.C. 8:41-3.23.

Because Americare was continuing to hinder and evade OEMS's investigation into the serious complaints lodged against it, OEMS issued Americare another summary suspension of its BLS, MAV and SCTU licenses on August 15, 2019 in order to protect the public's health, safety and welfare.

On September 9, 2019, the Superior Court, Appellate Division granted the Department leave to appeal the trial court's July 16, 2019 order and reinstated the Department's first summary suspension it issued to Americare. On May 27, 2020, the Appellate Division issued its decision on the appeal finding that Americare could not avoid the administrative process to challenge its summary suspension through a civil rights action in the trial court because its civil rights claims were actually a collateral attack of OEMS's administrative action.

Based upon the foregoing, the Department finds that Americare's actions warrant revocation of its license to operate as a BLS, MAV and SCTU provider. Specifically, the above recitation of events establish the following regulatory and statutory violations committed by Americare:

1. Failure to maintain patient care reports, in violation of N.J.A.C. 8:40-3.6, N.J.A.C. 8:40-3.9, N.J.A.C. 8:41-3.8 and N.J.A.C. 8:41-3.11.
2. Failure to submit electronic patient care reports, in violation of N.J.S.A. 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 and N.J.A.C. 8:41-2.6;
4. Hindering an OEMS investigation, in violation of N.J.A.C. 8:40-2.6 and N.J.A.C. 8:41-2.6;
5. Failure to maintain vehicles in a safe, clean and properly functioning manner, as required by N.J.A.C. 8:40-4.4, N.J.A.C. 8:40-4.5, N.J.A.C. 8:41-4.1 and N.J.A.C. 8:41-4.2;
6. Failure to comply with vehicle inspections and provider audits, as required by N.J.S.A. 26:2H-5, N.J.A.C. 8:40-2.6 and N.J.A.C. 8:41-2.6;
7. Failure to protect patient confidentiality and privacy, as required by N.J.A.C. 8:40-3.5 and N.J.A.C. 8:41-3.12; and
8. Failure to provide the specific location of the principal place of business, in violation of N.J.A.C. 8:40-3.2 and N.J.A.C. 8:41-3.23.

Pursuant to N.J.A.C. 8:40-7.2(c) and N.J.A.C. 8:41-12.3(c), “[v]iolation of any portion of this chapter by a provider may be cause for action against the provider, including but not limited to . . . revocation of a provider's license.” The above cited violations are not only egregious but also demonstrate a gross and serious disregard for the Department’s rules. Most concerning is Americare’s repeated impeding of OEMS’s investigation into the serious complaints lodged against it and evasion of OEMS’s multiple attempts to perform an audit of Americare. Indeed, Americare is attempting to operate in the shadows and avoid any and all oversight by the Department. Such behavior and outright defiance of OEMS’s lawful regulatory actions cannot be tolerated as it places the public’s health and welfare in jeopardy. Accordingly, **the Department proposes to revoke the Mobility Assistance Vehicle Service, Basic Life Support and Specialty Care Transport provider licenses held by Americare.**

Pursuant to N.J.S.A. 26:2H-13, N.J.A.C. 8:40-7.3(b), N.J.A.C. 8:40-7.2, N.J.A.C. 8:41-12.3, you may request a hearing before the Office of Administrative Law to contest the proposed revocation. Your request for a hearing on this matter must be submitted in writing and must be accompanied by a response to the deficiencies noted above. **Americare is reminded that it remains under a summary suspension and is prohibited from operating as a Mobility Assistance Vehicle, Basic Life Support and Specialty Care Transport provider.** Your request for a hearing must be submitted within 30 days from the date of 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 render this Notice final, and the license revocations shall become effective. If you have any questions concerning this matter, please contact me at 609-633-7777 or via email at Terry.Clancy@doh.nj.gov.

Sincerely,



Terry Clancy, PhD, RN, NRP
Director
Office of Emergency Medical Services

c. David Adinaro, Deputy Commissioner