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Governor

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JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
MODIFIED ORDER CLOSING ATILIS GYM LOCATED AT
363 W BROWNING RD, BELLMAWR

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak; and

WHEREAS, COVID-19 is a communicable disease as defined by N.J.A.C. 8:57-1.3; and

WHEREAS, the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-3, authorizes the Governor of the State of New Jersey, in consultation with the Commissioner of the Department of Health (Department) and the Director of the State Office of Emergency Management, to declare a Public Health Emergency; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order No. 103 declaring a Public Health Emergency pursuant to the EHPA and a State of Emergency pursuant to the New Jersey Civilian Defense and the Disaster Control Act ("DCA"), N.J.S.A. App. A. 9-33, et seq. The Public Health Emergency pursuant to the EHPA has been extended by Executive Order No. 119, 138 and 151; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, Governor Murphy issued a series of Executive Orders to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-146 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among these actions, and in recognition that the Centers for Disease Control and Prevention ("CDC") has advised that social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another,

Governor Murphy issued Executive Order No. 107 (2020) on March 21, 2020 to mitigate community spread of COVID-19, which expressly ordered the closure of all gyms, fitness centers and classes; and

WHEREAS, because the rate of reported new cases of COVID-19 in New Jersey has decreased, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State has begun to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that a considerable number of the State's current measures must remain in place, both to reduce additional new infections and to save lives, until additional metrics - such as expanded testing and use of contact tracing - have been satisfied; and

WHEREAS, after consultation with officials from the Department of Health, Governor Murphy announced a multi-stage plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, as of May 20, 2020, the State began the reopening process and began to relax restrictions on low-risk activities where appropriately safeguarded; and

WHEREAS, consistent with this plan, Governor Murphy issued a number of Executive Orders, including Executive Orders 133, 142, 143, 146 and 147, which lifted closures and/or prohibitions of parks, beaches, lakefronts, and several outdoor recreational facilities and activities, given repeated observations from public health experts, including but not limited to the CDC, that outdoor environments present reduced risks of COVID-19 transmission as compared to indoor environments; and

WHEREAS, indoor gyms and fitness centers present particularly high-risk settings for the spread of COVID-19 as they foster prolonged and close person-to-person contact, including but not limited to through the use of personal trainers and spotters, and because they necessitate the communal-use of equipment and other items, such as barbells, dumbbells, and treadmill and cross trainer grips, that may harbor the virus as, according to the National Institutes of Health, the virus may live on plastic and steel surfaces for up to 72 hours; and

WHEREAS, one study shared by the CDC observed that "because of the increased possibility of infection through droplets, vigorous exercise in closely confined spaces should be avoided"; and

WHEREAS, the CDC has determined that COVID-19 can be spread by asymptomatic individuals; and

WHEREAS, the CDC has also determined that individuals should wear cloth face coverings when in proximity to other individuals, even if they are not presenting any symptoms of COVID-19, to further reduce the spread of COVID-19; and

WHEREAS, as of May 20, 2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 continued to operate in non-compliance with Executive Order No. 107, thus posing a threat to the public health by failing to adhere to the measures taken to mitigate the spread of COVID-19; and

WHEREAS, although Atilis Gym was purporting to take its own measures to address COVID-19 transmission, Atilis Gym was not approved to reopen under the terms of Executive Order No. 107, which reflects a judgment that it would not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health measures, done without approval of the State and its health officials; and

WHEREAS, although Atilis Gym was purporting to take its own measures to address COVID-19 transmission, these particular measures did not sufficiently address the risks of COVID-19 in an indoor gym because the community presence of the virus was still too great to allow for the relaxation of the mitigation measures that were in place and necessary to reduce the transmission of COVID-19 in such congregate indoor settings; and

WHEREAS, pursuant to the EHPA, N.J.S.A. 26:13-8, the Department has the power "[to] close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health"; and

WHEREAS, pursuant to the EPHA, the Department issued an Order to Atilis Gym on May 20, 2020, requiring it to close and prohibited members of the public, including members of the gym, from entering the facility; and

WHEREAS, the State has continued to see a decrease in the rate of reported new cases of COVID-19, including a reduction in the total

number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections; and

WHEREAS, on June 26, 2020, the Governor issued Executive Order No. 157, which continues to recognize that gym settings pose a high risk for the spread of COVID-19 and, as a result, continued to prohibit health clubs, which include gyms and fitness centers, from opening their indoor spaces to the public; however, with the continued reduction of the spread of COVID-19 in the State, the Executive Order eased this restriction by allowing health clubs to “[o]pen [their] indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual’s immediate family members, household members, caretakers, or romantic partners. If a health club is offering multiple simultaneous instructions at the same facility, these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements”; and

WHEREAS, in recognition of Executive Order 157, it is appropriate to modify the Closure Order issued to Atilis Gym to permit it to offer individualized indoor instruction by appointment only, consistent with the requirements set forth in the Executive Order.

THEREFORE, IT IS HEREBY ORDERED THIS 1st DAY OF JULY 2020,

1. Effective at the same time as Executive Order 157 takes effect: at 6:00 a.m. on Thursday, July 2, 2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 is permitted to open its indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual’s immediate family members, household members, caretakers, or romantic partners.
2. If Atilis Gym is offering multiple simultaneous instructions at its facility pursuant to paragraph 1 above, these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements.
3. Pursuant to the EHPA, Atilis Gym shall remain closed to the public, including members of the gym, for all gym-

related purposes and activities, excluding those activities permitted under paragraphs 1 and 2 above.

4. This Order shall remain in effect until lifted by the Department.
5. Failure to comply with the conditions of this order may result in criminal sanctions and/or civil penalties, in addition to any criminal sanctions and/or civil penalties warranted for violations of Executive Order No. 107 (2020) and Executive Order No. 157 (202).

Judith M. Persichilli

Dated: 7/1/20

Judith M. Persichilli, R.N., B.S.N., M.A.
Commissioner
New Jersey Department of Health

RIGHT TO APPEAL:

This Emergency Closure Order constitutes a Final Agency Decision of the New Jersey Department of Health which may be appealed to the Superior Court, Appellate Division, pursuant to the procedures and timeframes set forth in New Jersey Court Rule 2:2-3.