

**REGIONAL EMERGENCY MEDICAL  
SERVICES COUNCIL OF NEW YORK CITY, INC.**

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In the Matter of the Application to Expand  
Primary Operating Territory by the

**REPORT &  
RECOMMENDATION**

BAY COMMUNITY VOLUNTEER  
AMBULANCE CORPS., INC.,

To Include the Community of Bayside.

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**PRELIMINARY STATEMENT**

In accordance with New York State Public Health Law Article 30 and New York State Department of Health (hereinafter “NYSDOH”) Policy Statement 06-06, a public hearing was held on May 26, 2021 via Zoom Videoconference regarding the application of Bay Community Volunteer Ambulance Corps., Inc. (hereinafter “the applicant”) to expand its primary operating territory to include the community of Bayside, bounded by the Long Island Expressway to the South, 23rd Avenue, 24th Avenue, and 26th Avenue to the North, the Cross Island Parkway to the East, and Francis Lewis Boulevard to the West. The applicant identified this geographical area as the entirety of the area formerly served by the Bayside Community Volunteer Ambulance Corps, as stated in the applicant’s Narrative and on its DOH Form 3777. As stated on the applicant’s operating certificate, the applicant currently holds operating authority for North Bayside [Exhibit 1: 74].

I, Timothy C. Hannigan Esq., served as Hearing Officer for the Regional Emergency Medical Services Council of New York City, Inc. (hereinafter “REMSCO”).

## **SUMMARY OF HEARING**

The applicant was represented by Mr. Michael Lyons. The applicant was afforded the opportunity to amend the application prior to the commencement of the public hearing. No amendment was made. Thereafter, the hearing was called to order at 6:04 P.M. [4].<sup>1</sup> Numerous members of the REMSCO and its Ambulance Committee were present via Zoom Video. The hearing was also simulcast via YouTube.

At the outset of the hearing, the applicant was instructed that it bore the burden of demonstrating public need as that term is defined in DOH Policy Statement 06-06. The applicant was afforded the opportunity to make a verbal presentation to the Ambulance Committee. Thereafter, the hearing was open for public comment. Approximately 40 people attended the hearing by Zoom videoconference. At the conclusion of the hearing, the Applicant and all hearing attendees were provided with notice of the Council's future public meetings relating to deliberation of and a determination on the present application, as well as a web address to locate relevant meeting time and attendance information [131].

### **A. Exhibits**

The redacted application for a permanent operating certificate was marked as **Exhibit 1**.

A copy of the Legal Notice of Public Hearing published prior to the hearing date, together with a supporting affidavit and notice of the application made by registered or certified mail by the REMSCO to the chief executive officers of all general hospitals,

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<sup>1</sup> All references contained in brackets are to the transcript of the public hearing.

ambulance services, and municipalities operating within the same county where the applicant seeks to operate, was marked as **Exhibit 2**.

The letter of fitness and competency from the Department of Health attesting to the fitness and competency of the officers and directors to operate the proposed service was marked as **Exhibit 3**.

The timeline entitled Account of Events prepared by REMSCO Executive Director, Marie Diglio, was marked as **Exhibit 4**.

The PowerPoint presentation transmitted by the applicant to the REMSCO before the public hearing was marked as **Exhibit 5**.

An email transmitted by the applicant containing approximately 55 letters in support from residents of the affected area was marked as **Exhibit 6**.

An email to the REMSCO from Charles J. Silverstein, President Whitestone Community Ambulance Service, was marked as **Exhibit 7**.

A letter from Dr. Louis Rotkowitz, M.D. to the applicant and REMSCO identifying himself as the Applicant's Medical Director as of May 4, 2021 and expressing support of the present application was marked as **Exhibit 8**.

A written submission with supporting documentation from Glen Oaks Volunteer Ambulance Corps made in opposition to the pending application and received prior to the commencement of the public hearing was marked as **Exhibit 9**.

**B. Public Comment Upon the Application**

In addition to Mr. Lyons and Jordan Hoffman Esq. who spoke on behalf of the applicant, other speakers at the public hearing offered remarks in support of the application, including:

- Ashley Kim, Little Neck Douglaston Community Ambulance Corps.
- Chris Capo, President, Bayside Community Ambulance Corps.
- Dr. Louis Rotkowitz, M.D., attending emergency department physician at Queens Hospital Center in Jamaica and Medical Director of the Applicant

In addition to those letters contained within Exhibit 6, multiple letters in support from persons not in attendance at the public hearing were also received and incorporated into Exhibit 1. These written letters of support are contained within Exhibit 1 and include the following:

- Jena Lanzetta, Northwest Bayside Civic Association
- Ed Gorman, President, Bellerose Rescue Company
- Dr. Christopher Calandrella, D.O., Physician and Resident of Affected Area
- Rev. Msgr. Thomas Machalski, Sacred Heart Roman Catholic Church
- Dr. Robert Crupi, Past Medical Director of Applicant, New York Presbyterian Hospital - Queens
- Ashley Kim, Little Neck Douglaston Community Ambulance Corps.
- FDNY, by Deputy Chief Martin J. Braun
- Dr. Manish Sharma, D.O., Chairman, Department of Emergency Medicine at New York Presbyterian Hospital - Queens
- Joseph Marziliano, District Manager, Queens Community Board 11
- Eugene Kelty, Chairperson, Queens Community Board 7
- Hon. Donovan Richards Jr., President, Borough of Queens
- Hon. Paul Vallone, Council of the City of New York, 19<sup>th</sup> District
- Hon. Corey Johnson, Speaker, Council of the City of New York
- Hon. John C. Liu, State Senator, District 11
- Hon. Toby Ann Stavisky, State Senator, District 16

- Hon. Grace Meng, United States Congress, Sixth District, New York
- Hon. Thomas Suozzi, United States Congress, Third District, New York

Opposition to the application was made by persons who spoke on behalf of Glen Oaks Volunteer Ambulance Corps. Those persons were Jerrold Gelbard, Dave Meketansky, Louis Greco, and Michael Berlin, Esq. No other person or entity opposed the application.

### **FINDINGS OF FACT AND DISCUSSION**

The present application – and the delivery of emergency medical services in New York State more broadly – is governed by Article 30 of the Public Health Law [6]. The purpose of Article 30 is “to promote the public health, safety and welfare” (Public Health Law § 3000). Public Health Law Section 3000 explains:

“the furnishing of medical assistance in an emergency is a matter of vital concern affecting the public health, safety and welfare. Prehospital emergency medical care, the provision of prompt and effective communication among ambulances and hospitals and safe and effective care and transportation of the sick and injured are essential public health services” (emphasis added).

Upon its review of Article 30 of the Public Health Law, the Appellate Division, Third Department held “it is clear that the legislative intent was to protect the public and not to shield ambulance services from competition” (Matter of Lasalle Ambulance v New York State Dept. of Health, 245 AD2d 724, 725 [3d Dept 1997]). Despite the unambiguous language used by the legislature and the Courts, the record of this proceeding is replete with statements of the applicant and on behalf of Glen Oaks VAC in opposition to the present application indicative of a motive to claim territory and

exclude the other from operating therein [27-31, 35-36, 70-71, 83, 88, 91-96, 98, 100-101, 107, 112, 117-121, Exhibit 9 (Correspondence of Michael Lyons re: Appeal of Bay Community Vol. Ambulance Corps.)]. Such territorial disputes – and the numerous statements of preference for one agency instead of another – are not proper considerations in the context of this proceeding, and should be rejected by the REMSCO for purposes of its evaluation of the application in accordance with Policy Statement 06-06.

The question before the REMSCO is whether the record evidence demonstrates that public need exists in the geographical area at the subject of the application (See Policy Statement 06-06). For the reasons set forth below, it is submitted that the record demonstrates that public need exists in the affected area, and that the application should be granted.

**1. The evidence presented demonstrates the existence of public need as defined by Policy Statement 06-06.**

To support the pending application, the burden of proof for the demonstration of public need rested with the applicant. Public need is defined as “the demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through the reallocation or improvement of existing resources” (See Policy Statement 06-06, at 4). Accordingly, this Report and Recommendation focuses solely on the evidence presented relative to the issue of public need in the affected area. As indicated above, to the extent statements of want, desire, feeling, or other general statements of support for one entity as opposed to another entity were presented, such statements are not

probative of whether public need exists, and have not been considered here. This includes statements of want that are contained within the applicant's narrative written submission and were voiced by speakers at the public hearing [Exhibit 1].

As an initial matter, one local factor necessitating discussion and consideration by the REMSCO is its determination that public need existed in the subject area as of November 17, 2020, approximately 6 months before the subject public hearing [90; Exhibit 9, Correspondence of Michael Lyons re: Appeal of Bay Community Vol. Ambulance Corps.]. This determination was made with respect to an application for Expansion of Operating Territory submitted by Glen Oaks Volunteer Ambulance Corps. However, consistent with the rule set forth in Policy Statement 06-06 regarding NYSDOH's policy to refrain from issuing a Certificate of Operating Authority in the event of an appeal of the determination of a REMSCO (p.14), the applicant's letter of appeal of that determination – and the failure of the New York State Department of Health to resolve that appeal or establish any timetable for the resolution of that appeal – has prevented Glen Oaks VAC from operating in the affected area pursuant to the finding of public need made by the REMSCO.

Although a public need was found to exist, the resource – Glen Oaks VAC – never became operational in the affected area pursuant to that determination because of the current applicant's letter appealing that determination [Exhibit 9]. Accordingly, Glen Oaks VAC cannot be considered as an "existing resource" within the system such that it could be reallocated or correct service delivery problems "within a specific time frame" as contemplated by Policy Statement 06-06 (p.4). Analyzing the present

application through the framework required by NYSDOH through Policy Statement 06-06 results as follows:

- a. there is an existing, recent (November 2020) determination by the REMSCO that public need exists in the affected area [90; Exhibit 9]; and
- b. a solution to that public need – the infusion of an additional resource, Glen Oaks VAC – has not been realized.

While Counsel for Glen Oaks VAC (Mr. Berlin, Esq.) characterized the timing of the applicant's appeal and present application as gamesmanship that should not be rewarded [98-99], it is noted that NYSDOH Policy Statement 06-06 renders the REMSCO powerless with respect to the effect of an appeal taken from a determination of public need, as well as the timeframe for resolution of that appeal (Policy Statement 06-06, at 13-14). While Mr. Berlin's argument may ring true, it is of no moment with respect to the REMSCO's determination on the present application of whether public need exists in the affected area. Any inequities in this regard must be directed to NYSDOH, which is responsible for assignment of an Administrative Law Judge ("ALJ") and ensuring that the ALJ issues a report and recommendation to the State EMS Council in a timely manner (See Policy Statement 06-06, at 14).

In addition to the above, the applicant relied upon the recent elimination of an ambulance service resource from the system – Bayside Volunteer Ambulance Corps – to form the basis of its application [Exhibit 1]. It is the finding of the hearing officer that the REMSCO's recent determination of public need on the Glen Oaks VAC application in the affected area coupled with NYSDOH's apparent revocation of the Operating



Certificate held by Bayside VAC is evidence of a “demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area” (Policy Statement 06-06) [Exhibit 1: p.3].

All speakers – including those in opposition to the application – agreed that public need exists in the affected area [40, 44-45, 55-56, 88-91, 93, 95-96, 99, 120]. To wit, Dr. Louis Rotkowitz, M.D., attending emergency department physician at Queens Hospital Center in Jamaica and the applicant’s Medical Director, stated that there is “unlimited need” in the affected area [40, 44], and that “there is absolutely no question that public need exists” [45]. Mr. Capo, President of the former volunteer ambulance service provider to this area, Bayside Volunteer Ambulance Corps., stated that he continues to receive phone calls seeking an ambulance service in the affected area, despite the fact that Bayside Volunteer Ambulance Corps is no longer operational as an ambulance service [49-51]. He estimated that he receives between 3 and 10 such calls per week [50-51]. Capo stated that when he receives calls for service to Bayside VAC, he refers the caller to the 9-1-1 system or to a neighboring volunteer ambulance service [50]. Dave Meketansky of Glen Oaks VAC remarked “in all honesty, Bayside absolutely has a need” [88].

The lone statement regarding an ability to reallocate existing resources was made by Mr. Jerrold Gelbard of Glen Oaks VAC [70], and pertained to FDNY [74; Exhibit 9]. Specifically, Mr. Gelbard alleged that since the November 2020 approval of the application of Glen Oaks VAC by this REMSCO, FDNY “reallocated existing BLS resources toward the core of the Bayside area, which was not present during the Glen

Oaks' process and subsequent approval" [74]. However, contrary to this claim, FDNY endorsed the present application, and submitted a letter in support [Exhibit 1, at 50-51]. FDNY's letter of support states that the services previously provided by Bayside VAC and those provided by the applicant "do not impact the FDNY Ambulance Deployment Matrix" [Exhibit 1: 51]. Accordingly, absent some independent evidence of any reallocation of resources by FDNY or other provider to the affected area, this claim – advanced by a representative of Glen Oaks VAC [70] – cannot be relied upon as credible proof. There is no evidence in the record that the existing void in service is readily correctible by existing resources "within a specific timeframe" (Policy Statement 06-06, at 4).

**2. Competitive injury is not within the zone of interests protected by Article 30 of the Public Health Law.**

The only opposition to the present application was from Glen Oaks VAC. The record demonstrates that the applicant and Glen Oaks VAC consider one another to be in competition relative to the affected area [27-31, 35-36, 70-71, 83, 88, 91-96, 98, 100-101, 107, 112, 117-121, Exhibit 9 (Correspondence of Michael Lyons re: Appeal of Bay Community Vol. Ambulance Corps.)]. In that regard, "competitive injury is not within the zone of interest protected by Public Health Law Article 30 (see Matter of Lasalle Ambulance v New York State Dept. of Health, 245 AD2d at 725). With respect to Public Health Law Article 30, the Third Department explained:

In enacting this article, the Legislature declared that the furnishing of medical assistance in an emergency is a matter of vital concern affecting the public health, safety and welfare, and that the purpose of the legislation is to promote the public health, safety and welfare by, inter alia, providing for certification of all advanced life support first response services and ambulance services (Public

Health Law § 3000). From this it is clear that the legislative intent was to protect the public and not to shield ambulance services from competition. Accordingly, we find that petitioner's claimed competitive injury is not within the 'zone of interest' protected by Public Health Law article 30" (Id.).

For the reasons set forth in Matter of LaSalle Ambulance and in the more recent case of Matter of N. Shore Ambulance & Oxygen Servs. Inc. v NY State Emergency Med. Servs. Council (2020 NY Slip Op 051471, at \*5 [Sup Ct Albany Co. 2020]), to the extent Glen Oaks VAC advanced opposition sounding in competitive injury through testimony at the hearing or written submissions [94-95; Exhibit 9], those claims are not properly before the REMSCO. Accordingly, claims sounding in competitive injury have been rejected by the hearing officer to the extent that they are rooted in an interest that is not protected by Public Health Law Article 30.

**3. The Applicant had a Medical Director at all times relevant to this application, and the opposition voiced in this regard is of no moment.**

In his written submission and verbal remarks at the public hearing, Mr. Gelbard challenged the completeness of the application on the grounds of a change in the applicant's Medical Director, and argued that the previous medical director did not support the present application [72-73; Exhibit 9].

As an initial matter, it is noted that a determination of completeness is purely an administrative staff function of the REMSCO that does not require a vote of the Council. Policy Statement 06-06 states "[u]pon receipt, the application shall be reviewed for completeness by the designated REMSCO sub-committee or program staff" (Policy Statement 06-06, at 9).

In this case, the record demonstrates that the application was deemed complete on April 23, 2021, 10 days after Dr. Robert Crupi, M.D. indicated that he did not support the present application but would continue to serve as the applicant's medical director until a new medical director could be found [Exhibit 4]. As the question of medical direction and control bears directly upon NYSDOH Policy Statement 11-03, entitled "Providing Medical Direction", REMSCO staff properly referred this question to NYSDOH for review and comment [129]. Interpreting its own policy statement and legislative mandate, NYSDOH advised REMSCO staff to proceed with the application so long as the REMSCO determined that the application was otherwise complete [129]. Thereafter, the record demonstrates that Dr. Rotkowitz, M.D. became the applicant's medical director as of May 4, 2021, and expressed support for the application [Exhibit 8].

The record demonstrates that the applicant had a physician medical director at all times relevant hereto [Exhibit 1; Exhibit 4; Exhibit 8]. Further, it is well settled that "judicial deference to an agency's interpretation of its own regulations is a basic tenet of administrative law" (Andryeyeva v New York Health Care, Inc., 33 NY3d 152, 175 [2019]), and the REMSCO properly referred this matter to NYSDOH and adhered to NYSDOH's guidance in declaring the application complete. Accordingly, the narrow argument raised in opposition regarding medical direction and the completeness of the application is of no moment.

- 4. The allegations of plagiarism are serious and credible, but are not relevant to the question of whether public need exists in the affected area.**

It must be noted that Glen Oaks VAC raised considerable objections to the application regarding apparent plagiarism of their prior application for expansion by the applicant here [73-74, 84-87, 97-100, 102-103]. According to Glen Oaks VAC, it recognized the language of the present application “immediately after it was published” [84], ostensibly by the REMSCO on its website for public notice purposes. Representatives of Glen Oaks VAC used a third-party document analyzer known as “Copyleaks” to compare its prior application with that submitted by the applicant [86], which revealed that the present application is a 74.9% copy of the prior Glen Oaks VAC application, and repeated typos contained within the Glen Oaks VAC application [74, 97-98].

I find that the claims of the representatives of Glen Oaks VAC as to the applicant’s plagiarism are credible. The record demonstrates that Mr. Berlin and other representatives of Glen Oaks VAC appreciated the seriousness of their claims of plagiarism [86, 103], as did members of the REMSCO [104-105]. The record further demonstrates that Glen Oaks VAC thoroughly compared the two applications and verified their suspicions with an independent computer program used by institutions of higher education [86, 105]. Further, my impression of the manner and tenor of their comments in this regard was that each person was incredulous as to what they discovered, and generally embarrassed at the applicant’s apparent behavior in this forum and their need to address it.

Unfortunately, the applicant lacked a compelling response to these serious allegations [113, 115]. While the applicant clarified that it, too, has a youth squad [113],

no explanation was offered with respect to identical typographical errors or other language identical to that used by Glen Oaks VAC. No explanation was offered despite the applicant's unlimited opportunity to respond to such claims during its rebuttal statement and the specific requests of Dr. Yedidiah Langsam, REMSCO Chair and the Hearing Officer to respond to such claims [105, 107].

Despite the credible – and, to my knowledge, unprecedented – claim of plagiarism as to the prior application, such a claim does not fall within the scope of valid considerations with respect to a determination of public need pursuant to Article 30 or Policy Statement 06-06. Accordingly, while the REMSCO may discuss the claim of plagiarism made with respect to the present application, such a claim, even if true, does not override record evidence demonstrating the existence of public need.

### **RECOMMENDATION**

Pursuant to DOH Policy Statement 06-06, the question to be voted on by the REMSCO is whether to approve the application. Based on the entire record, the applicant has shown that a public need exists for additional services in the affected area, and that those needs are not readily correctable through the reallocation or improvement of existing resources. It is the recommendation of the hearing officer that the application should be approved.

Dated: June 23, 2021

Respectfully submitted,

*Timothy C. Hannigan, Esq.*  
Hearing Officer