

**STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
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, 151, 162, 171, and 180; 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. 140-162 (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, 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, and 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 August 28, 2020, the State is in the second stage of the reopening process and has begun to relax restrictions on moderate-risk activities where appropriately safeguarded, including certain outdoor and indoor activities that can meet safeguarding and modification guidelines; and

WHEREAS, consistent with this plan, Governor Murphy has issued a number of Executive Orders, including Executive Orders 133, 142, 143, 146, 147, 152, 153, 154, 156, 157 and 168 which lifted closures of most outdoor recreational facilities and activities, allowed additional numbers of people to gather outdoors, lifted closures of personal care services, and permitted some recreational and entertainment businesses to open indoor and outdoor portions of their premises to the public; and

WHEREAS, as public health experts have observed, even as the State allows some indoor and outdoor recreation with reasonable restrictions, due to the ongoing risk of community spread of COVID-19, the extensive interactions that occur at certain indoor recreational and entertainment operations continue to present a significant risk, and so the restrictions on the indoor operations of certain recreational and entertainment businesses have not been lifted at this time; and

WHEREAS, indoor gyms and fitness centers present particularly high-risk settings for the spread of COVID-19, in part because customers of these facilities engage in physical activities that increase the customers' respiratory activity, which in turn can increase the amount of respiratory droplets or aerosols in a confined setting; and in part because these facilities foster prolonged and close person-to-person contact, including but not limited to 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, Atilis Gym continued to allow members of the public to exercise indoors 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, 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."

WHEREAS, pursuant to the EHPA, 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, Atilis Gym willfully and repeatedly violated the May 20, 2020 closure order, necessitating multiple enforcement actions by the Department; and

WHEREAS, on July 1, 2020, in recognition of Executive Order No. 157, the Department modified the Closure Order issued to Atilis to permit it to offer individualized indoor instruction by appointment, consistent with the requirement set forth in Executive Order 157; and

WHEREAS, Atilis Gym continued to act in noncompliance with Executive Order No. 157 and the Department's July 1, 2020 closure order, thus posing a threat to the public health by failing to adhere to the measures taken to mitigate the spread of COVID-19 and necessitating a further enforcement action by the Department, which was granted by the Mercer County Superior Court, Chancery Division, on July 20, 2020; and

WHEREAS, on July 24, 2020, due to Atilis Gym's continued non-compliance with Executive Order No. 157 and the Department's July 1, 2020 closure order, the Chancery Division Court entered an order finding Atilis Gym in contempt of the July 20, 2020 order and authorizing the Department to lock the doors or "otherwise construct or place barriers on or around the premises to ensure compliance with the court's July 20, 2020 order and the Department's July 1, 2020 Modified Order"; and

WHEREAS, on August 18, 2020, the Chancery Division Court granted the Department's application for monetary sanctions due to Atilis Gym's "persistent and willful refusal to comply with numerous executive orders of the Governor, administrative orders of Plaintiff, and the July 24, 2020 order of this Court"; and

WHEREAS, the State has continued to see a decrease in the rate of reported 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 August 27, 2020, the Governor issued Executive Order No. 181 which permitted gyms and fitness centers to resume indoor operations provided they adopt, at a minimum, the specific safety precautions set forth in the Executive Order, including *inter alia*: limiting occupancy to 25 percent of the stated maximum capacity at one time, installing physical barriers between customers and employees wherever feasible, demarcating and posting signs that denote six feet of spacing in all common areas to facilitate social distancing, requiring and enforcing infection control practices, requiring frequent sanitization of high-touch areas, limiting occupancy in restrooms and locker facilities, requiring workers and customers to wear cloth face coverings while in the indoor portion of the premises except where doing so would inhibit that individual's health or where the individual is under two years of age, and requiring ongoing compliance with all guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration; and

WHEREAS, on August 27, 2020, the Department issued Executive Directive No. 20-028, "Guidelines for Health Clubs, Gyms and Fitness Centers," which requires all health clubs to comply with the Department's standards entitled "Guidance for Health Clubs/Gyms/Fitness," as amended and supplemented.

THEREFORE, IT IS HEREBY ORDERED THIS 28th DAY OF August 2020,

1. Effective at the same time that Executive Order 181 takes effect: at 6:00 a.m. on Tuesday, September 1,

2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 is permitted to open its indoor premises to the public provided that it adopts a policy that includes, at minimum, the following requirements:

- a. Limit occupancy of any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding staff;
- b. Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider populations that do not have access to internet service or credit cards;
- c. Install a physical barrier, such as a shield guard, between customers and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- d. Limit the use of equipment rented or otherwise provided to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- e. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- f. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- g. Provide employees break time for repeated handwashing throughout the workday;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Limit occupancy in restrooms and locker facilities that remain open to avoid overcrowding and maintain social distancing through

signage and, where practicable, the utilization of attendants to monitor capacity;

- j. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:
 - i. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
 - ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
 - iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- k. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- l. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- m. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;

- n. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
 - o. Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment;
 - p. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age. Atilis must provide, at its expense, such face coverings for its employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by Atilis at the point of entry, then Atilis must decline the individual entry into the indoor premises. This requirement shall not apply when wearing a face covering would inhibit that individual's health, including when in the water and in other situations where the presence of a mask would pose a risk to the individual's safety, or where the individual is under two years of age. Workers or customers may wear a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if Atilis is otherwise required to provide its workers with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither Atilis nor its staff shall require the individual to produce medical documentation verifying the stated condition.
2. Notwithstanding the above requirements, Atilis will be permitted to open its indoor premises to the public only as long as it remains in compliance with the health and safety guidelines and standards issued by the Commissioner of the DOH, including but not limited to Executive Directive No. 20-028, "Guidelines for Health

Clubs, Gyms and Fitness Centers," and the accompanying "Guidance for Health Clubs/Gyms/Fitness."

3. With the execution of this Modified Closure Order, the Department's July 1, 2020 Modified Closure Order is hereby lifted.
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), Executive Order No. 157 (2020), and Executive Order No. 181 (2020).
6. This Order does not purport to impact Atilis's mercantile licensure with the Borough of Bellmawr.

Dated: August 28, 2020



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.