



State of New Jersey

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*Commissioners*

November 7, 1994

Sara B. Bost, President  
Essex County Board of Freeholders  
Hall of Records, Room 558  
465 Dr. Martin Luther King Jr. Blvd.  
Newark, New Jersey 07102

Re: Contracts with American Home Medical Services Inc.  
and American Preferred Prescription Services Inc.

Dear Ms. Bost:

During an inquiry concerning the backgrounds and activities of the above corporations in Passaic County, the Commission noted that they had been awarded no-bid contracts to provide pharmaceutical services and unit-dose medications to patients at the Essex County Hospital Center, Jail, Jail Annex and Geriatric Center. Originally submitted by the County Executive and approved by the Board of Freeholders on May 26, 1993, and scheduled to start on June 1, 1993, the contracts were amended on June 16, 1993 to be in effect from August 1, 1993 through July 1994. Later, they were extended to February 1995. This letter summarizes certain circumstances which have come to the Commission's attention and which may warrant a further review by Essex County and a reassessment of its willingness to continue to do business with the two corporations.

American Home Medical and American Preferred Prescription supplanted Automated Pharmaceutical Services, which had contracted to supply pharmaceuticals to patients of the four county facilities for the previous 12 years. In early 1993, the office of former County Executive Thomas J. D'Alessio had recommended American Home and American Preferred to Essex County purchasing officials. In a comparison of proposal costs, dated April 30, 1993, an administrative analyst reported to the director of Purchasing and General Services that Automated Pharmaceutical's proposal of \$402,600 was \$100,184 less than American Home's proposal of \$502,784. Attached was a recently-received proposal by Automated Pharmaceutical to reduce its price to \$395,483. By letter dated May 10, 1993, American Home and American Preferred reduced their price to \$396,440. Although

their price was still higher than the last price offered by Automated Pharmaceutical and they were new and largely unproven firms, American Home and American Preferred were awarded the contracts.

On January 29, 1992, American Home Medical had paid \$500 for an advertisement honoring D'Alessio in the 1992 Anniversary Ball program. On February 6, 1992, American Home had paid \$5,000 to the "Anniversary Ball Committee" to purchase a 10-ticket table for a reception honoring D'Alessio at the Parsippany Hilton on February 22, 1992. A Statement of Certain Political Contributions, signed by Louis A. Garruto, then-President of the two corporations, and appended to the contract proposal, listed the \$500 contribution but not the one for \$5,000.

The Commission has confirmed newspaper accounts that Garruto was convicted in federal court in 1985 for participating in a scheme to defraud drug companies in New York. The Commission did not encounter evidence of any similar scheme involving Garruto's companies and Essex County's facilities. However, the original Vice President of American Home Medical, James Yacenda, has been publicly identified by the Commission as being involved in enterprises that served as fronts for the Taccetta faction of the Lucchese organized crime group. A newspaper report in mid-June 1993 brought the Commission's statements about Yacenda to the attention of Essex County officials. Yacenda's attorney denied that Yacenda "has ties to organized criminal activity" but said that Yacenda declined to testify or submit a sworn statement to the Commission.

When an assistant county counsel and the purchasing director expressed concern about Yacenda's roles in American Home Medical and American Preferred Prescription on June 22, 1993, Garruto told them that Yacenda had no interest in either corporation. Garruto maintained that a trust for the benefit of Yacenda's children held substantial stock interests in each company. He added that the trust was controlled and the stock voted by a trustee. In a July 13, 1993 letter to the purchasing director, an individual identifying himself as vice president of American Home, forwarded copies of two letters from Yacenda to Garruto:

December 1, 1992 -- formal resignation from the office of executive vice president and director of American Home;  
and

June 16, 1993 -- formal resignation from the office of executive vice president and director of American Preferred.

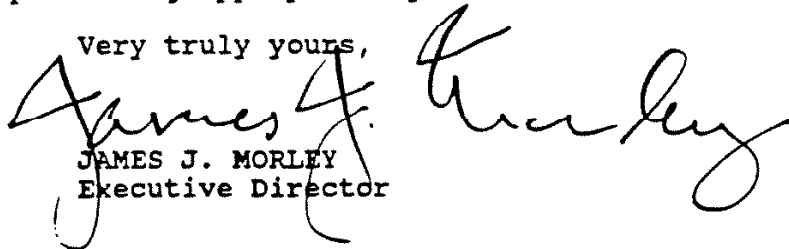
On July 14, 1993, an attorney for Automated Pharmaceutical telecopied a judgment of conviction and other documents reflecting Garruto's 1985 conviction and sentence to the assistant county counsel. This had no effect on the awarding of the contracts to American Home and American Preferred.

Attached is a summary of documents describing ownership and control of American Home Medical and American Preferred Prescription. These documents raise questions as to the identities of the educational trusts' trustees and their relationships to Garruto and Yacenda. Whether Garruto and Yacenda retain the authority to vote the stock interests of the trusts is particularly relevant.

The documents do not satisfactorily resolve what, if any, continuing de jure or de facto influence Garruto and Yacenda exert over the ownership or operation of American Home Medical or American Preferred Prescription. Essex County officials are in the best position to determine their influence, especially regarding the performance of the contracts with county facilities. Therefore, the above information is being brought to your attention for whatever review and action you may deem appropriate.

As pointed out in the enclosed letter to the Passaic County Freeholder Director regarding Garruto, Yacenda, Martin Taccetta and American Home Medical, competitive bidding of professional service contracts lessens the opportunities for abuses. The Commission has previously urged the Legislature to consider eliminating or modifying the professional services exemption from laws requiring bidding on public contracts. At present, however, nothing precludes local governments from conducting their own assessments of benefits derivable from competitive bidding for such contracts and implementing appropriate procedures.

Very truly yours,



JAMES J. MORLEY  
Executive Director

JJM:RJC:lmn

cc: Donald V. Biase, Acting County Executive

Encl.

DOCUMENTS DESCRIBING OWNERSHIP AND CONTROL

AMERICAN HOME MEDICAL

The Certificate of Incorporation for American Home Medical, filed on June 28, 1991, named Yacenda and Garruto as members of the first Board of Directors.

A May 18, 1992 application to the State Board of Pharmacy for a permit for American Home Medical listed four officers, including Garruto as President, Yacenda as Vice President and Maureen Yacenda (James' wife) as Treasurer. The application, sworn to be true by Garruto, stated that four educational trusts for the benefit of Garruto's and Yacenda's children owned 50.6 percent of the stock. In answer to the question whether any owner or officer had been convicted of any crime within the past ten years, the application stated, "No," despite Garruto's previous conviction.

A May 10, 1993 Proposer's Qualifications form filed with American Home Medical's Essex County proposal listed three officers, including Garruto as President. Stock ownership included: Garruto educational trusts, 20% and Yacenda educational trusts, 22%.

American Home Medical's July 23, 1993 biennial pharmacy permit renewal application listed three officers, including Garruto as President. The renewal application indicated that no officer owned any stock, and the form did not require disclosure of ownership interests for a corporation. The corporate treasurer swore to the truth of the statements in the application, and the answer to the conviction query was "Yes." The application specified, "... Louis Garruto, President of the Corporation, was convicted of a felony in 1985 for which he received a suspended sentence."

AMERICAN PREFERRED PRESCRIPTION

The Certificate of Incorporation for American Preferred Prescription, filed on December 5, 1991, listed Garruto as Incorporator and Garruto, Yacenda and two other individuals as members of the first Board of Directors.

An April 12, 1992 application to the State Board of Pharmacy for a permit for American Preferred Prescription listed three officers, including Garruto as President. Four educational trusts for two Garruto children and two Yacenda children were each listed as owning 25 percent of the stock. In answer to the question whether any owner or officer had been convicted of any crime within the past ten years, the application stated, "No," despite Garruto's previous conviction.

A February 22, 1993 Subscription and Stockholders Agreement listed as stockholders, among others, Yacenda Educational Trust, 120 shares and Garruto Educational Trust, 120 shares. At this time, the listed officers included Garutto as President and Yacenda as Executive Vice President. In the Agreement, the Yacenda Educational Trust and the Garruto Educational Trust appointed James Yacenda and Louis Garruto, respectively, "as their representatives to vote their stock interest in the corporation at any meeting of shareholders" and provided that "any vote by such party shall be binding on" the respective trust.

A May 10, 1993 Proposer's Qualifications form filed with American Preferred's Essex County proposal listed three officers, including Garruto as President. Stock ownership was noted as: Garruto educational trusts, 50%; and Yacenda educational trusts, 50%.

A September 16, 1993 shareholders resolution elected officers. Neither Garruto nor Yacenda was named as an officer or stockholder.

In two binding memoranda of understanding, dated September 16, 1993, American Preferred's new president agreed that after one year he would pay \$500 per share for 384 shares (then 19.2% of total shares) purchased from the Garruto educational trusts and the same amount for the same number of shares purchased from the Yacenda educational trusts. Until the new president actually paid for the stock, the educational trusts were to receive all dividends. The trusts had the option to repurchase all of the stock at the same price after two years. Garruto's son signed one memorandum as Trustee for the Garruto educational trusts. Yacenda's wife signed the other memorandum as Trustee for the Yacenda educational trusts. Meanwhile, American Preferred entered into a promissory note on September 1, 1993 to pay \$47,800 to the Yacenda educational trusts within one year at 16% APR. In a second promissory note of the same date, American Preferred agreed to pay \$190,000 to its new president at 16% APR. Both promissory notes were renewable for an additional year.



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