

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV

COMPLAINT
(PRELIMINARY AND PERMANENT
INJUNCTION REQUESTED)

2. Plaintiff STATE OF MAINE, a sovereign state, by and through the Attorney General, commences this action under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983), commonly known as the Unfair Trade Practices Act, to protect the public by preventing and restraining Defendant from engaging in unfair and deceptive practices.

3. Defendant, MEDEC AMBULANCE, INC., is a Maine corporation with offices in Ellsworth, Penobscot County, Maine. Defendant conducts two ambulance services in the state: one in the Bangor area and one in the Falmouth area.

4. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983) and 4 M.R.S.A. § 105 (Supp. 1983).

STATUTORY BACKGROUND

5. Pursuant to 5 M.R.S.A. § 207 (1979), it is a violation of the Maine Unfair Trade Practices Act to engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in the State of Maine.

6. Pursuant to the Maine Emergency Medical Services Act, 32 M.R.S.A. §§ 81-90 (Supp. 1983), the Department of Human Services is authorized to license and regulate ambulance services, vehicles, and personnel in the State of Maine.

7. Pursuant to 32 M.R.S.A. §§ 81-90 (Supp. 1983), the Office of Emergency Medical Services (EMS) of the Department of Human Services has the responsibility for licensing and regulating ambulance services, vehicles, and personnel in the State of Maine.

8. Pursuant to 32 M.R.S.A. § 82(1) (Supp. 1983) the Department has promulgated comprehensive "Regulations Relative to Licensing of Ambulance Services, Vehicle, and Personnel"

(hereinafter referred to as the "Regulations"), revised effective January 1, 1984, which provide for different levels of licensing for ambulance services and their personnel (a copy of these "Regulations" are attached hereto as Exhibit A).

9. Pursuant to § 6 of the "Regulations", ambulance service personnel must be licensed at one of six ascending levels: (1) Licensed Ambulance Attendant, (2) Emergency Medical Technician (hereinafter referred to as EMT-Basic), (3) EMT-EOA (Esophageal Obturator Airway), (4) EMT-Intermediate, (5) EMT-Critical Care, and (6) EMT-Paramedic.

10. To obtain a license at a higher level, the applicant must be certified at each of the lower levels, have received significant additional training and experience, have passed the State's written and practical tests, and be sponsored by an ambulance service that is licensed at that higher level.

11. Each higher level of licensure authorizes the licensee to perform more complex procedures; procedures which offer the patient a higher degree of care but also exposes the patient to increased risk, from the procedures themselves.

12. Pursuant to § 2.8 of the "Regulations", ambulance services must be licensed at one of the four advanced life support levels: (1) EOA (Esophageal Obturator Airway), (2) Intermediate, (3) Critical Care, and (4) Paramedic. To obtain and maintain a license at a particular level, a service must, in addition to other requirements, employ personnel licensed to perform at that level.

FACTS

13. The ambulance service operated by Defendant in Bangor is licensed pursuant to § 2.8 of the "Regulations", to perform at the Advanced EMT-Intermediate level.

14. Defendant currently employs, at their Bangor site, approximately 21 ambulance attendants who are licensed to perform at, or below, the EMT-Intermediate level.

15. Neither Defendant's ambulance service nor its attendants/drivers are currently, or have ever been, licensed to perform at the paramedic level.

16. Defendant has previously and continues to represent that it provides ambulance service at the paramedic level. In particular, Defendant's advertisement in the 1983 and the 1984 Bangor Yellow Pages states, "All attendants/drivers are EMTs or paramedics."

17. The level of treatment available to a patient by an attendant trained to the intermediate level is primarily one that will maintain the patient's condition until the patient reaches the hospital.

18. The level of treatment available to a patient by an attendant trained to the paramedic level is greater in scope and quality over that of an attendant trained to the intermediate level. A paramedic, from the first point of contact with the patient, can aggressively treat the patient to improve his or her condition with techniques that are not available to the intermediate attendant, i.e., the

administering of drugs and/or the performing of minor surgical techniques and/or the use of a defibrillator/monitor to correct cardiac malfunctions before the heart has stopped beating.

19. Following is a chart which describes a number of potentially critical medical situations and the difference in advanced treatment available between a paramedic and an intermediate level attendant:

| <u>MEDICAL PROBLEM</u> | <u>PARAMEDIC</u> | <u>INTERM. LEVEL ATTENDANT</u> |
|---|--|--|
| A. Severe cardiac distress (but not in cardiac arrest) | Diagnosis and administration of cardiac drugs, monitor and use of a defibrillator to correct heart malfunction. | Observation of patient without intervening. |
| B. Drug overdose | Administer drugs to counteract effect of overdose. | Observation of patient without intervening. |
| C. Inhalation of toxic substances. | Administer drugs. | Administer oxygen. |
| D. Obstruction of air passage | Use of forceps to remove object; incision into the neck to allow air to enter; placement of a tube down the trachea to secure an air passage to the lungs. | Placement of short tube down the esophagus to stop the patient from vomiting into the air passage. |
| E. Severe asthmatic attack | Administer drugs. | Observation of patient without intervening. |
| F. Severe allergic reactions; such as reactions to insect bites | Administer drugs. | Observation of patient without intervening. |

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|---|--|---|
| G. Severe insulin shock | Administer counter-acting dextrose solution intravenously. | Observation of patient without intervening. |
| H. Tension pneumothorax, i.e., development of air pressure in the chest cavity which in turn causes the lung to collapse. | Punction of the chest wall using a McSwain Dart to relieve air pressure buildup. | Observation of patient without intervening. |
| I. Severe pain | Administer inhalable gases for pain relief. | Observation of patient without intervening. |

20. Members of the medical profession as well as lay persons could reasonably be expected to use Defendant's advertisement in the Yellow Pages to choose an ambulance service.

21. Defendant's advertisement is likely to mislead members of the medical profession and lay persons with regard to the level of care Defendant's ambulance service can provide.

22. A person who utilizes Defendant's ambulance service expecting to receive service at the paramedic level, in fact, will not receive such care and, consequently, may receive inadequate care and treatment.

23. Defendant's sales practices, as set forth in this Complaint, including the use of deceptive Yellow Pages listings, will continue unless enjoined by the Court.

CAUSE OF ACTION

(False and Deceptive Advertising)

24. Plaintiff realleges and incorporates by reference herein Paragraphs 1 through 23.

25. Defendant, by advertising that it has paramedics as attendants/drivers has falsely and deceptively created the impression that its ambulance service can provide patients with treatment at the paramedic level.

26. Defendant's conduct as described in this Complaint constitutes an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 207 (1979 & Supp. 1983).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare the Defendant has violated 5 M.R.S.A. § 207 (1979) by falsely creating the impression through its advertisements that it can provide service at the paramedic level when, in fact, it can only provide service at the intermediate level.

2. Issue a Preliminary and Permanent Injunction pursuant to 5 M.R.S.A. § 209 (Supp. 1983) enjoining the Defendant, its agents, employees, assigns, or other persons acting for the Defendant or under its control from representing through advertising or any other means that Defendant's ambulance service or any of its staff are capable of providing care at

any level above what MEDEC Ambulance, Inc., is licensed by the State.

3. Order the Defendants to use corrective advertisements to remedy the false and deceptive impression that it can provide service at the paramedic level.


4. Order the Defendant to pay the costs of this suit and of the investigation by the Defendant by the Attorney General.

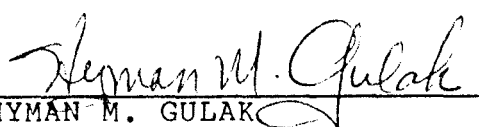
5. Grant such other relief as the Court deems just and equitable.

Respectfully submitted,

DATED: June 13, 1984

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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. cv-84-252

STATE OF MAINE

v.

MEDEC AMBULANCE

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ORDER

After hearing on the Plaintiff State of Maine's consolidated request for Preliminary and Permanent Injunction, the Court made certain factual and legal findings on the record and pursuant to those findings,

IT IS ORDERED:

1. Plaintiff's request that Defendant be declared in violation of 5 M.R.S.A. § 207 (1979) is hereby denied pursuant to the Court's finding that Defendant was not in violation of 5 M.R.S.A. § 207 at the time the advertisement in the Bangor Yellow Pages was placed.

2. That Defendant, its agents, employees, assigns or other persons acting for the Defendant or under its control are permanently enjoined, pursuant to 5 M.R.S.A. § 209 (Supp. 1983), from:

(a) representing through advertising or any other means, that Defendant's ambulance service or any of its staff are capable of providing care at any level above what Medec Ambulance, Inc., is licensed by the State of Maine to provide;

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(b) representing in the Bangor Yellow Pages or through any other means that it can provide paramedic service or that its ambulance attendants or drivers are paramedics until such time as Defendant's ambulance service is licensed by the State of Maine at the Advance Life Support-Paramedic Service Level.


3. Plaintiff's request that Defendant use corrective advertisements is hereby denied.

4. Plaintiff's request for payment of attorney's fees and costs is hereby denied.

5. Defendant's request for payment of attorney's fees and costs is hereby denied.

6. The Court's findings of fact and conclusions of law which were made on the record is attached hereto and made a part hereof.

Dated: December 12, 1984


MORTON A. BRODY
Justice, Superior Court