



OHIO DEPARTMENT OF HEALTH

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John R. Kasich/Governor

Richard Hodges/Director of Health

JUN 25 2015

Jennifer L. Branch
Gerhardstein & Branch
432 Walnut Street, Suite 400
Cincinnati, Ohio 45202

Re: Women's Med Center of Dayton: Denial of Variance Request

Dear Ms. Branch:

Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14 and after careful review and consultation with the department's medical director, I am denying the variance requests of Women's Med Center of Dayton (WMC) for the 2012, 2013, and 2014 license periods.

As you know, the written-transfer-agreement (WTA) requirement in R.C. 3702.303 and O.A.C. 3701-83-19 is designed to protect patient health and safety. Variances from that requirement are for limited circumstances in which the facility can still achieve the purposes of a WTA, where compliance with the WTA requirement would impose an undue hardship, and where the proposed alternative method of compliance meets or exceeds the protections afforded by the rule. R.C. 3702.304. I have concluded that the information submitted with WMC's the July 25, 2014 request for variance does not meet the standard of the same protection that a WTA would provide, as it does not meet the department's expectation for 24/7 back-up coverage and uninterrupted continuity of care, as a WTA with a hospital would provide.

In particular, I am concerned that patient safety is not covered to the same degree as a WTA would provide in light of WMC's provision of just two named back-up physicians. The previous 2012 variance request had listed three back-up physicians: Janice Duke, M.D., Sheela Barhan, M.D. and Lawrence Amesse, M.D. On April 26, 2013, Dr. Haskell notified the Ohio Department of Health that Dr. Amesse would no longer serve as a back-up physician for Women's Med Center. But WMC did not provide any substitute third doctor. Thus, the 2013 and 2014 variance requests named just two back-up physicians, Drs. Duke and Barhan. In my view, two back-up physicians cannot meet the department's expectation for 24/7 back-up coverage and uninterrupted continuity of care, as a WTA with a hospital would provide. All it would take is for one doctor to be out of town, and another to be busy, for WMC's back-up options to be unavailable when needed.

WMC's request also suggests that Wright State Physicians Women's Health Care will also provide back-up coverage, but that suggestion identifies no specific, individual physicians. As

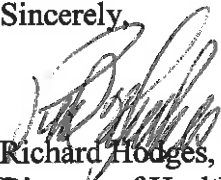
you know, R.C. 3702.304(B)(3) requires specific information to be provided as to each named physician, so of course, such required information cannot be supplied when no individual doctor is listed. Listing this entity falls between the WTA requirement, which requires a true agreement with a hospital, and the variance option, which requires individual physicians with the requisite information required. This approach meets neither option.

Additionally, I am very concerned by the September 5, 2014 letter of objection from Mark S. Shaker, President and CEO of Premier Health Miami Valley Hospital. In his letter, Mr. Shaker objects to Miami Valley Hospital being named in a Back-up Physician Services Agreement with Women's Med Center of Dayton and indicates that the hospital has not agreed to serve in any capacity as a supporting agency or affiliate of Women's Med Center.

In sum, the listing of two doctors does not meet the standard of ensuring patient safety to the same degree as a WTA, and the naming of the Wright State group does not make up for that inadequacy. If Women's Med Center of Dayton wishes to submit a new variance request for the department's consideration, it must do so within thirty (30) days of the date of this letter. If Women's Med Center of Dayton does not submit a new proposal for consideration or otherwise obtain a written transfer agreement within thirty (30) days of the date of this letter, the department may propose revocation of the facility's ambulatory surgical facility license.

If you have any questions regarding this decision, please contact Lance Himes, General Counsel, at 614-466-4882.

Sincerely,



Richard Hodges, MPA
Director of Health