



# OHIO DEPARTMENT OF HEALTH

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John R. Kasich/Governor

Richard Hodges/Director of Health

**SEP 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, O.A.C. 3701-83-14, and O.A.C. 3701-83-19, 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, 2014 and 2015 license periods.

By letter dated June 24, 2015, I indicated that WMC's July 2014 variance proposal and its provision of just two named backup physicians did not meet the department's expectation for 24/7 back-up coverage and uninterrupted continuity of care, as a written transfer agreement (WTA) with a hospital would provide. I also shared that I was concerned by the September 5, 2014 letter of objection from Mark S. Shaker, President and CEO of Premier Health Miami Valley Hospital. In my letter, I provided WMC with the opportunity to submit a new variance request within thirty days.

By letters dated July 24, 2015 and July 27, 2015, WMC responded by submitting a renewed variance request for 2014 and a new variance request for 2015. WMC's variance application provides for three named backup physicians (Dr. Janice Duke, Dr. Sheela Barhan, and Dr. Jerome Yaklic) and indicates that their group practice, which has also separately contracted with WMC, will be their backup if they are unavailable. Further, you enclosed backup agreements identifying the named back-up physicians as having admitting privileges at Miami Valley Hospital.

The department also received additional documents that I considered in reaching this decision. First, the department received a letter dated July 31, 2015 from Mark S. Shaker, President and CEO of Premier Health Miami Valley Hospital, in which he reiterates his objections to the use of the hospital's name in backup agreements between WMC and the named backup physicians. The letter also states that the hospital does not have a transfer agreement with WMC. The letter further states that while Miami Valley Hospital will continue to treat patients that present at the emergency department, but has not agreed to serve in any capacity as a supporting agency or

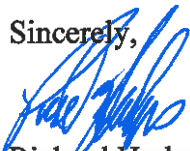
affiliate of WMC. Second, the department received multiple handwritten letters from patients of WMC (under cover letters dated August 19, 20, 21, and 28) generally voicing support for WMC's continued operation.

As you know, the written transfer agreement requirements in R.C. 3702.303 and O.A.C. 3701-83-19 are designed to protect patient health and safety. Variances from these requirements 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 statute and rule. R.C. 3702.304. WMC's provision of three named backup physicians does not meet my expectation that a variance provide the same level of patient health and safety that a written transfer agreement with a local hospital assures for 24/7 back-up coverage. Further, as previously set forth in my June 24, 2015 letter, additional backup from un-named physicians in the group practice does not comply with R.C. 3702.304, which requires specific information to be provided as to each named physician, *e.g.*, licensure status, travel time to hospital, and contact information. Additionally, I remain concerned that Miami Valley Hospital, which is the hospital where the three named backup physicians have admitting privileges, has again shared its objection to any involvement with WMC. The hospital's objections raise questions whether this will remain a stable arrangement or even lead to a change in admitting privileges. Any future change in the doctors' admitting privileges could jeopardize patient health and safety and continuity of care.

Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14, the denial of WMC's applications for a variance shall be final and shall not be construed as creating any rights to a hearing under Chapter 119 of the Revised Code.

If you have any questions regarding this decision, please contact Heather Coglianese, Senior Legal Counsel, at 614-466-4882.

Sincerely,



Richard Hodges, MPA  
Director of Health