



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

IN THE MATTER OF: : Case No. A 1 4 0 0 5 0 2

LEBANON ROAD SURGERY
CENTER
PO BOX 43100
CINCINNATI, OH 45243,

Appellant,

vs.

STATE OF OHIO
DEPARTMENT OF HEALTH
246 North High Street
Columbus, OH 43215,

Appellee.

NOTICE OF APPEAL

Appeal from State of Ohio,
Department of Health
Adjudication Order Proposing to
Revoke And Not Renew
Appellant's Ambulatory Surgical
Facility License

NOTICE OF APPEAL

Appellant Lebanon Road Surgery Center, hereby gives notice that it appeals to the Court of Common Pleas, Hamilton County, Ohio, from the Ohio Department of Health Adjudication Order dated January 17, 2014 proposing to revoke and not renew Appellant's ambulatory surgical facility license for failing to have a written transfer agreement with a local hospital. A copy of the Adjudication Order is attached hereto as Exhibit A.

FILED
2014 JAN 28 P 2:07
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

The grounds for this appeal include, but are not limited to:

1. Improper revocation and non-renewal of an ambulatory surgical facility license pursuant to law.
2. Appellant's license should not be revoked and not-renewed because Appellant has complied with the laws of Ohio including R. C. § 3702.30 and the Ohio Administrative Code, including O.A.C. § 3701-83.

3. Appellant is adversely affected by the Ohio Department of Health's decisions and order, that the decisions and order are contrary to law and that the decisions and order are not supported by reliable, probative, and substantial evidence.

Respectfully submitted,



Jennifer L. Branch (0038893)
Alphonse A. Gerhardstein (0032053)
Attorney for Appellant
GERHARDSTEIN & BRANCH CO. LPA
432 Walnut St. #400
Cincinnati, Ohio 45202
(513) 621-9100
(513) 345-5543 Fax
agerhardstein@gbfirm.com
jbranch@gbfirm.com

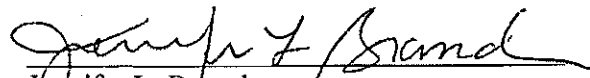
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was faxed and mailed by

U.S. Mail first class on January 28, 2014 to:

Heather Coglianese
Senior Counsel
Ohio Department of Health
246 North High Street
Columbus, OH 43215
Fax: 614-564-2509

Melinda Ryans Snyder
Assistant Attorney General
Health and Human Services Section
30 E. Broad Street, 26th Floor
Columbus, OH 43215-3400
Fax: 614-466-6090



Jennifer L. Branch



OHIO DEPARTMENT OF HEALTH

246 North High Street
Columbus, Ohio 43215

614/466-3543
www.odh.ohio.gov

John R. Kasich / Governor

Theodore E. Wymyslo, M.D. / Director of Health

IN THE MATTER OF:

Lebanon Road Medical Building, LLC
dba Lebanon Road Surgery Center
c/o Martin Haskell, M.D.
P.O. Box 43100
Cincinnati, Ohio 43243

License No. 0980AS

ADJUDICATION ORDER

By letter dated October 19, 2012, Lebanon Road Medical Building, LLC was notified that the Director of Health ("Director") proposed to issue an order refusing to renew Lebanon Road Surgery Center's ("LRSC") health care facility license (ambulatory surgical facility) in accordance with Chapter 119 of the Revised Code, section 3702.32(D)(2) of the Revised Code ("R.C."), and Ohio Administrative Code ("OAC") rule 3701-83-05.1(C)(2) due to a violation of paragraph (E) of OAC rule 3701-83-19, which requires ambulatory surgical facilities to obtain a written transfer agreement with a hospital for the transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise.

By letter dated November, 23, 2012, Lebanon Road Medical Building, LLC was notified that the Director proposed to issue an order revoking LRSC's health care facility license (ambulatory surgical facility) in accordance with Chapter 119 of the Revised Code, section 3702.32(D)(2) of the Revised Code ("R.C."), and Ohio Administrative Code ("OAC") rule 3701-83-05.1(C)(2) due to a violation of paragraph (E) of OAC rule 3701-83-19. I now order that license revoked and not renewed, as detailed below.

Procedure, hearing, and decision

Both letters notified LRSC that it was entitled to a hearing regarding the proposals to refuse to renew and/or revoke the health care facility license if a hearing was requested within thirty (30) days of receipt of the notice. LRSC requested a hearing by letters dated October 31, November 1, and November 29, 2013.

The administrative hearing was held on September 6, 2013. (It had been scheduled twice before, for June 10-12, 2013 and July 22-23, 2013, and was continued upon LRSC's request.) Hearing Examiner William J. Kepko presided over the hearing. Appearing on behalf of LRSC were W. Martin Haskell, M.D. and Valerie Haskell. LRSC was

represented by attorney Jennifer L. Branch of Gerhardstein & Branch. Appearing on behalf of the department was Tamara Malkoff. The department was represented by Melinda Ryans Snyder and Tara L. Paciorek, Office of the Ohio Attorney General.

The parties filed joint stipulation of facts on September 16, 2013. The department, through its attorney, filed its Post Hearing Brief on September 23, 2013. LRSC, through its attorney, filed its Post-Trial Brief and Proposed Findings of Fact and Conclusions of Law on September 23, 2013. The department, through its attorney, filed its Rebuttal Brief on September 30, 2013. LRSC, through its attorney, filed its Reply Brief on September 30, 2013.

The Hearing Examiner's October 8, 2013 Report and Recommendation was received by the Department on October 10, 2013. By letter sent via email dated October 11, 2013, the department transmitted the Report and Recommendation to attorney Jennifer L. Branch and informed LRSC that it may file written objections to the Report and Recommendation within ten days of date of receipt of the letter. In addition, the letter provided that the Objections shall be considered by the Director before approving, modifying, or disapproving the Report and Recommendation. LRSC, through its attorney, submitted objections to the Report and Recommendation via email on October 21, 2013.

By letter dated January 17, 2014, I refused to grant LRSC's October 8, 2012 request for a variance to OAC rule 3701-83-19, which requires all ambulatory surgical facilities to have a written transfer agreement with a hospital for the transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise. Pursuant to OAC 3701-83-14, the refusal to grant a variance, in whole or in part, shall be final and shall not be construed as creating any rights to a hearing under Chapter 119. of the Revised Code.

Upon consideration of the file, exhibits admitted in the administrative hearing, joint stipulations, post-hearing briefs, hearing examiner's Report and Recommendation, LRSC's Objections to Report and Recommendation, LRSC's Request for Additional Evidence and the department's response, I hereby approve the hearing examiner's Report and Recommendation. Specifically, I approve and adopt Findings of Fact Nos. 1-33 and Conclusions of Law Nos. 1-8. Conclusions of Law Nos. 9 and 10 contain typographical errors in the Revised Code citations. I hereby modify and adopt Conclusions of Law Nos. 9 and 10 to correctly reference R.C. Section 3702.30.

The hearing examiner's Report and Recommendation found that, as of the date of the hearing, LRSC did not have a written transfer agreement as required by 3701-83-19(E). The hearing examiner concluded that because LRSC does not have a written transfer agreement or a variance, it does not meet the licensing requirements. The hearing

examiner further concluded that because LRSC does not meet the licensing requirements of R.C. Section 3702.30, the Director's decision not to renew, or to revoke the license of LRSC, is valid. Based upon these findings, and in accordance with R.C. 3702.32, R.C. Chapter 119, and OAC 3701-83-19(E), I hereby issue this Adjudication Order refusing to renew and revoking LRSC's 2012-2013 health care facility license No. 0980AS.

Your right to appeal and to seek a stay pending appeal

If you wish to appeal this final adjudication order, you must file a notice of appeal with the Ohio Department of Health, Office of General Counsel, 246 North High Street, Seventh Floor, Columbus, Ohio 43215, setting forth the order appealed from and stating that the Department's order is not supported by reliable, probative, and substantial evidence and not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the Department's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. You must also file the notice of appeal in the court of common pleas of the county in which the place of business of the licensee is located or the county court of common pleas where the licensee resides. In filing a notice of appeal with the Department or court, the notice that is filed may be either the original notice or a copy of the original notice.

A notice of appeal must be filed within fifteen (15) days after the mailing of the notice of the Department's order as provided in R.C. section 119.12. You may, of course, file any appeal immediately; and need not wait until the end of the fifteen-day period.

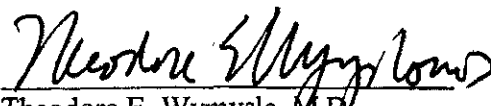
Further, as noted in the Department's October 23, 2012 letter to your attorney Jennifer L. Branch, R.C. section 119.12 authorizes the court of common pleas to stay any adjudication order while the case is pending.

Effective date to allow for orderly closure or other process

To ensure that this order does not affect patient health and safety and to allow for orderly closure, this order shall become effective for enforcement purposes on February 4, 2014. Please note that the February 4th date does not affect the deadline for appeal, which remains fifteen (15) days from the date of mailing of this order, pursuant to R.C. section 119.12.

Date

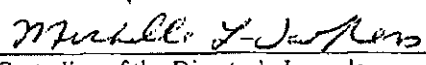
1/17/2014


Theodore E. Wymyslo, M.D.
Director of Health

I hereby certify this to be a true and correct copy of the Journal Entry of the Director of the Ohio Department of Health.

Date

1/17/2014


Michelle J. Jackson
Custodian of the Director's Journals
Ohio Department of Health