



**Department
of Health**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

August 26, 2019

Via e-mail (jbranch@gbfirm.com) and Regular
U.S. Mail

Jennifer Branch
Gerhardstein & Branch
Carew Tower
441 Vine Street, Suite 3400
Cincinnati, Ohio 45202

Re: Women's Med Center of Dayton
2018 Supplemental Variance Request

Dear Ms. Branch:

I have reviewed Women's Med Center Dayton's (WMCD) supplemental variance submission of June 25, 2019. That request seeks a variance from the written-transfer agreement in support of WMCD's license renewal application for 2018-19.

I do not find it proper to issue a decision on the pending variance request, as the timing of this request and other events makes it no longer relevant. First, a variance from the transfer agreement requirement is only good for the licensure period. Specifically, R.C. 3702.306 provides that a variance "shall not be effective beyond the date the ambulatory surgical facility's license expires." WMCD's license, if valid, would expire on August 31, 2019 so any variance issued today would soon expire. Second, now that the Ohio Supreme Court has declined jurisdiction in the litigation regarding the 2016 revocation, that revocation is final, and WMCD's license is revoked. That means that WMCD can no longer "renew" its license, but must apply for a new one. Thus, any variance request would have to be in support of a new license application.

Please note that, although the current variance application names four back-up physicians, the Emergency Medical Protocol does not fully satisfy R.C. 3702.304(B)(4)(a). It does not sufficiently address how coverage by the back-up physicians is to occur and in what order the back-up physicians should be contacted.

In addition, while the Ohio Supreme Court has denied jurisdiction in WMCD's revocation case, the department understands that WMCD may seek reconsideration of that denial. Therefore, the stay

246 North High Street
Columbus, Ohio 43215 U.S.A.

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

granted to WMCD will remain in effect during any reconsideration period, pursuant to R.C. 119.12(E), which provides that a "suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated."

Again, under Ohio law, WMCD may apply for a new ambulatory surgical facility license by submitting a complete application. The department will promptly review such application in accordance with applicable law and rules.

If you have any questions regarding this variance, please contact Lisa Eschbacher, Deputy General Counsel, at 614-466-4882.

Sincerely,



Amy Acton, MD, MPH
Director of Health

cc: James Hodge, Bureau Chief, Bureau of Regulatory Operations
Lisa Eschbacher, Deputy General Counsel, ODH