

* * * COMMUNICATION RESULT REPORT (AUG. 29. 2012 9:56AM) * * *

FAX HEADER: OHIO DEPT OF HEALTH

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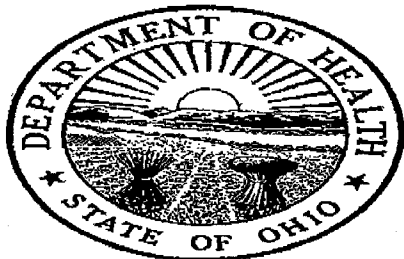
Letter faked

Aug 29. 2012

at 10:15 AM

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E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

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nce

OFFICE OF DIVISION CHIEF
246 North High Street, 3rd Floor
Columbus, Ohio 43215
Phone: (614) 466-7857
Fax: (614) 644-0208

To: Gerhardstein & Branch	From: Rebecca Maust
Attn: Jennifer Branch, Esq.	Date: August 29, 2012
Fax: 513-345-5543	Phone: 513-621-9100
Re: Women's Center of Dayton	Pages: 3 (including cover sheet)

Urgent Per Request Please Comment Please Reply Please Recycle

Comments:

Please see attached letter concerning Women's Med Center of Dayton Facility ID0600AS.

Have a great day!

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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

August 29, 2012

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

Fax: (513) 345-5543

Re: Facility ID #0600AS, Women's Med Center of Dayton

Dear Ms. Branch:

Thank you for your letter dated August 27, 2012 regarding Women's Med Center of Dayton's request for a variance to § 3701-83-19 (E) of the Ohio Administrative Code (OAC). The department is in the process of reviewing the information you provided and will notify you as soon as possible of its decision.

In your separate letter, also dated August 27, 2012, you requested the department's assurance that the ambulatory surgical facility license for Women's Med Center of Dayton will be extended beyond its August 31, 2012 expiration date until the department rules on the facility's pending variance request and license renewal.

The department would like to remind you that for several reasons, under Ohio law, Women's Med Center is not threatened with immediate loss of its ability to operate, based on the stated date of expiration of its license, during the time that the department is reviewing the facility's application for license renewal and request for a variance.

First, because Women's Med Center has applied to renew its license, pursuant to OAC § 3701-83-05(B)(2), Women's Med Center's current license will remain valid unless revoked or suspended pursuant to Chapter 119 of the Revised Code, or unless it is voided at the request of the owner. In addition, R.C. 119.06 provides, in part, "When periodic registration of licenses or renewal of license is required by law, a licensee who has filed an application for registration or renewal within the time and in the manner provided by statute or rule of the agency shall not be required to discontinue a licensed business or profession merely because of the failure of the agency to act on the licensee's application." Given the Ohio statute and rule cited above, while Women's Med Center's application for renewal of its license is pending, the license is not subject to immediate action based on the passing of the license's stated expiration date.

Second, in the event that the department's ongoing review of the license application identifies any issue that could implicate the facility's license and continued operation, any resulting action on the license would be subject to Chapter 119 of the Revised Code and the facility would be

Jennifer Branch, Esq.
August 29, 2012

afforded notice and opportunity to request a hearing under that chapter before any revocation or non-renewal of a license were to take effect.

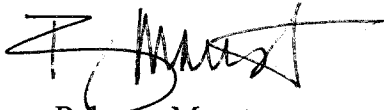
Your letter also indicated that the process for requesting a variance was unclear. The November 17, 2011 operational procedure stated the following in paragraph 7:

A variance shall not exceed the life of the requesting facility's license and shall be requested each applicable license period.

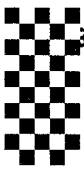
It is the Director of Health's expectation that such variances, which directly affect patient safety and health, be requested and reviewed by the department each applicable license period. Your separate letter of August 27, 2012 initiated a request for a variance for this facility.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Maust", with a stylized flourish extending to the right.

Rebecca Maust
Chief, Division of Quality Assurance



55610

GERHARDSTEIN & BRANCH

A LEGAL PROFESSIONAL ASSOCIATION

432 WALNUT STREET, SUITE 400
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*ALPHONSE A. GERHARDSTEIN
JENNIFER L. BRANCH

Of Counsel
ROBERT E. LAUFMAN

**Also admitted in
Minnesota*

FACSIMILE TRANSMITTAL COVERSHEET

TO: Rebecca Mant 614-644-0208

From: Jennifer Branch

Date: 8-27-12

Re: Family ID 0600AS

Number of pages to follow: 13

Additional Comments: _____

2012 AUG 28 1P 3 55
OHIO DEPT OF HEALTH
90A-0FC OF THE DIV CHIEF

NOTICE

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August 27, 2012

*Also admitted in
Minnesota

Of Counsel
ROBERT F. LAUFMAN

Rebecca Maust, Chief
Division of Quality Assurance
Ohio Department of Health
246 North High Street
Columbus, OH 43215

Re: Facility ID # 0600AS
Women's Med Center of Dayton
Variance to the Hospital Transfer Agreement Requirement

Dear Ms. Maust:

This letter is in response to Bridgette Smith's letter to Dr. Haskell dated August 24, 2012. Ms. Smith informed Dr. Haskell he needed to request a variance of the written transfer agreement requirement. Consider this letter his request. This letter addresses the factors in the protocol that the Director "may" consider in exercising his discretion to grant a variance. If there are additional factors that need to be addressed, please let me know.

As is explained in more detail below, the facility's alternative to a written transfer agreement provides patients with the same level of safety and protection as a written transfer agreement would. The facility has contracted with the following three back up physicians who have each have admitting privileges in Gynecology without restrictions at Miami Valley Hospital in Dayton and who agree to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of the facility's emergency patients:

- Dr. Lawrence Amesse, M.D.
- Dr. Sheela Barhan, M.D.
- Dr. Janice Duke, M.D.

The facility's alternative to a written transfer agreement satisfies ODH's protocol as follows:

- a. The contracts with the backup physicians comply with the requirements in ODH's November 17, 2011 protocol. (Draft Contract attached¹). The facility has a written protocol ensuring 24-hour per day, seven days per week coverage by the backup

¹ Signed contract(s) will be submitted as soon as they are received.

Rebecca Maust
August 27, 2012
Page 2 of 3

physicians who can admit patients to local hospitals (Miami Valley) in the event that a patient experiences a complication or an emergency. (Current Protocol attached). The protocol contains a plan for coverage in the event that all named physicians are temporarily unavailable. In addition, the three physicians are in the same practice and it is highly unlikely that they would simultaneously be unavailable.

b. All backup physicians currently have active status with the Ohio Medical Board according to the Ohio Medical Board website and their contract with the facility.

c. No backup physician has an action pending or has had an action taken against him/her by the Ohio Medical Board according to the Ohio Medical Board website and their contract with the facility.

d. All backup physicians are credentialed with admitting privileges in Gynecology without restrictions at Miami Valley Hospital in Dayton. This has been verified by the physicians.

e. The backup physicians agreed in their contract to immediately inform LRSC of any circumstances that may impact his or her ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the LRSC's emergency patients.

f. The backup physicians agreed in their contract that they are familiar with the Women's Med Center and its operations and its Emergency Medical Protocol.

g. Each back up physician has verified that there is no travel time from the backup physician's office to the local hospital. The travel time from one physician's residence to the hospital is under 30 minutes and the travel time from the other two physician's residences to the hospital is under 15 minutes.

h. The facility's written protocol explains how the attending physician will use the backup physician to admit patients to a local hospital in an emergency or complication. The protocol includes a plan which ensures that a substitute doctor is available to admit patients to local hospitals in the event the named backup physicians are temporarily unavailable and unable to admit patients to local hospitals.

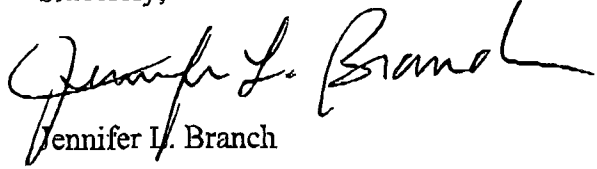
i. The backup physicians have represented in their contracts that they utilize the on-call faculty consultant for each department for consulting/referral physicians outside their specialty/expertise at Miami Valley Hospital. The facility does not access to the on-call list of consulting physicians who can provide specialty coverage to the back up physicians at Miami Valley Hospital because it changes frequently.

j. See i above.

Rebecca Maust
August 27, 2012
Page 3 of 3

If you have questions, please contact me at the address and phone number above, or by email to jbranch@gbfirm.com.

Sincerely,



Jennifer L. Branch

Encls. Draft Contract with back up doctors
Women's Med Emergency Protocol

August __, 2012

Martin Haskell, MD
Women's Med Center of Dayton
PO Box 43100
Cincinnati, OH 45243

Re: Backup Services for Women's Med Center of Dayton (WMCD)

This letter confirms our agreement that we have admitting privileges at Miami Valley Hospital and agree to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of the WMCD emergency patients. Specifically, we agree:

- a. We will provide 24/7 emergency backup hospital admission for WMCD patients in the event of surgical complication, emergency situations, or other medical needs that require a level of service beyond the capability of the WMCD;
- b. We are licensed to practice medicine in Ohio and we will alert you within 24 hours if any of our active status to practice medicine in Ohio changes;
- c. No actions have been taken against us or are in progress by the Ohio State Medical Board and we will alert you within 24 hours if an action is taken against either of us by the Ohio State Medical Board;
- d. We are credentialed with admitting privileges in Gynecology without restrictions at Miami Valley Hospital in Dayton and will arrange patient admission and care for each patient needing medical services according to each patient's need.
- e. We agree to immediately inform the WMCD of any circumstances that may impact our ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMCD emergency patients;
- f. We are familiar with the WMCD and its operations and its Emergency Medical Protocol;
- g. Our offices are on the Miami Valley Hospital campus, so there is no travel time from our office to the hospital. The travel time from our respective residences is under 15 minutes for two of us and under 30 minutes for the third.
- h. We are on the teaching faculty of Miami Valley Hospital and as such have available to us a wide range of consultants. We use the on-call faculty consultant for each department for consulting/referral physicians outside our area of specialty/expertise.

- i. In the event we all will be simultaneously absent from the locale, we will provide WMCD notice within one business day before such date or as soon as practicable of an unplanned absence or three business days before such date or as soon as practicable for an absence planned in advance.

In the event our services are needed under this agreement, contact us by calling our respective cell phones for which we have previously provided the numbers. Please provide the patient's name, reason for referral, current medical condition and means of transport. Also send a copy of all patient records with the patient.

We agree to provide thirty (30) days notice if we need to modify or cancel this agreement.

Sincerely,

Lawrence Amesse, M.D.

Sheela Barhan, M.D.

Janice Duke, M.D.

E. Emergency Medical Protocol

1. Initial Response

Upon recognition of a suspected emergency, Nursing Staff summons the Head Nurse, the attending physician and immediately surrounding personnel using any means available (paging system, intercom, telling a nearby employee).

Nursing staffs' priorities are to

- a) protect the patient from further injury (make sure the patient will not fall),
- b) summon assistance
- c) assist the patient according to each staff member's capability
- d) assist licensed staff as they arrive

Physicians respond to requests for assistance immediately upon being notified that there is a possible emergency.

However, if a physician has started a surgery, he or she completes the surgery at hand before responding. The physician defers charting the completed surgery until the emergency is under control or has been triaged successfully.

2. Attending Physician

The attending physician is responsible for the patient outcome and has the authority and prerogative to direct the care of the patient including choice of physician and/or hospital to which the patient will be transferred. The attending physician has the prerogative to:

- a. choose to continue his or her care at another facility or hospital;
- b. refer the patient to a consultant of his or her choosing;
- c. refer the patient to one of the Center's backup physicians (list and contact information available on the company intranet).

In the event the attending physician wishes to use the Center's backup physicians and in the unlikely event that all the backup physicians are unavailable, the attending physician contacts the Medical Director for assistance in obtaining a receiving physician from the Medical Director's network of physician contacts.

The attending physician performs, directs and/or coordinates the following responses to a medical emergency in order of priority:

- a. Declares that a medical emergency or need for transfer exists and has the in charge nurse summoned to the patient care area.
- b. Provides immediate support to the emergency until adequate personnel are present and can step back.
- c. Directs the medical response and assures that the patient is receiving the appropriate medical care.
- d. Directs the in charge nurse to summon appropriate personnel and transport for the patient and assist in the medical response.
- e. Unless the attending physician will be continuing the care himself or herself, contacts the physician who will be assuming care of the patient by phone or other verbal means of communication and provides the necessary medical information and history for the receiving physician to appropriately assume care of the patient.
- f. Contacts the receiving Emergency Room physician and provides all necessary medical information and history for the physician to appropriately care for the patient until the treating physician arrives.
- g. Prepares a detailed note for the patient chart of the nature of the emergency, physical findings, the care given, order for transfer and the patient's condition at the time of transport.
- h. Directs that a complete copy of the patient's chart be made and given to the ambulance crew to transport to the emergency room

with the patient. The chart copy should be placed in an envelope labeled with the patient's name, the receiving hospital's name and receiving physician's name and the reason for the transfer.

- i. Provides instructions to the ambulance crew to appropriately care for the patient while in transit, or alternatively accompanies or directs a nurse to accompany the patient in the ambulance if the patient's condition is grave or requires ongoing medical care beyond the scope of the transport crew.
- j. Communicates the nature of the emergency and care plan with the family as soon as practical without endangering the patient's safety.

3. Charge Nurse

The in-charge nurse on duty manages and coordinates the center's response to the emergency, subject to the direction of the attending physician.

In conducting the center's response, the in charge nurse conducts herself in a calm and reassuring manner towards other staff, patients and visitors. When delegating tasks, she instructs each person to whom a task is assigned to act in a calm and professional manner.

The in charge nurse performs the following tasks in this order of priority:

- a. Provides immediate support to the emergency until adequate personnel are present that the nurse can step back.
- b. Directs personnel to assist in managing the patient's medical care and obtain appropriate equipment as conditions warrant.
- c. Upon direction of the attending physician, calls or directs someone to call 911 requesting an ambulance and describing the nature of the emergency.
- d. Calls or directs someone to call the in-charge person for the front desk/reception/waiting areas, notifying them of the existence of a medical emergency and that an ambulance has been called.
- e. Directs someone to greet the ambulance crew at the surgical area entrance and lead them to the site of the emergency.
- f. Directs someone to move patients and visitors in the surgical area into areas where they will not observe the ambulance crew entering or leaving (patient privacy), and to advise them in a calm, reassuring manner that we have an emergency and are expecting an ambulance.
- g. Directs such other response of personnel, equipment or resources that will serve the patient's best interest.
- h. Calls or directs someone to call the Medical Director if not present.
- i. Talks with the patient's family/visitors and explains the circumstances and plan to them; takes them to wait with the patient if circumstances warrant.
- j. Directs the ambulance crew to take the patient to the hospital designated by the attending physician. Insures that the crew has a copy of the patient's medical record with the receiving hospital's

name, receiving physician's name and reason for transfer prominently written on the outside of the envelope containing the medical record.

- k. If requested by the attending physician, accompanies or directs a nurse to accompany the patient to the hospital with the patient's belongings and a copy of the chart, and to relate to the hospital emergency room personnel the nature of the patient's emergency, circumstances surrounding the emergency and the care given.

4. Front Desk Charge Person

The person in charge of the front desk/waiting/reception areas, upon learning of a medical emergency, directs and coordinates the following responses in order of priority:

- a. Directs someone to wait at the building entrance for the ambulance crew and leads them to the surgical area.
- b. Directs someone to move visitors in the waiting reception areas so as to provide an unobstructed path for the ambulance crew; insofar as possible, visitors should be moved to a location out of the view of the entering and exiting ambulance crew; these activities should be conducted in a calm reassuring manner.
- c. Directs a Patient Educator or other individual to locate any visitors that accompanied the patient experiencing the emergency and take them to a private room; the Patient Educator explains to them that the patient is involved in an emergency and that a member of the medical/nursing staff will come down and explain the situation after the patient is cared for; the Patient Educator stays with the visitors providing support.
- d. Assists in accomplishing the above and directs any other response necessary as circumstances warrant.
- e. Assures that one of the patient's visitors accompanies the patient to the hospital.

5. Nursing Staff

After ensuring that any patient under their direct care has been appropriately transferred to the care of another staff member, nursing staff (other RNs, LPNs, Medical Assistants) respond to the site of the emergency and provide assistance as directed by the in charge nurse or physician.

6. Code Blue

Code Blue is the universal call for help for cardiac or respiratory arrest and is a call for all available medical personnel to respond to the site of the emergency.

After ensuring that any patient under their direct care has been appropriately transferred to the care of another staff member or discharged, nursing staff (other RNs, LPNs, Medical Assistants) respond to the site of the emergency and provide assistance as directed by the in charge nurse or physician and according to each member's capability.

The order of priority of roles and minimal qualification are as follows:

1. Call for help
2. Chest compressions—BLS Certified
3. Airway and breathing (may take 2 individuals)— BLS Certified
4. Obtain emergency cart and AED— BLS Certified
5. Operate AED—BLS Certified
6. Start IV—LPN with IV certification
7. Scribe—MA
8. Administer IV medications—RN or physician

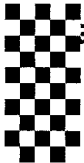
Upon entering the site of the emergency, each staff member assesses the scene, the roles being fulfilled, whether the most appropriate level staff member is fulfilling each role and decide where he or she can best help. For example:

- If someone is performing chest compressions but no one is breathing for the patient, the person entering should begin airway management/breathing.
- If chest compressions and breathing are managed but the emergency cart is not present, the entering staff member should obtain the emergency cart, notifying those present.
- If a nurse or physician is performing CPR and an MA enters the room, the MA should ask if she can relieve the nurse or physician from the CPR.
- If a nurse enters the room, and chest compressions and airway/breathing are under way but the AED is not engaged, the nurse should set up and start the AED.

Of course, if there is only respiratory arrest but not cardiac arrest, chest compressions and the AED are not warranted. The AED should remain available and staff should be vigilant for the onset of cardiac arrest following respiratory arrest.

Some roles may require two people, depending upon the skill level of the individuals. For instance, it may take one person holding the mask securely over the patient's nose and mouth with both hands while another squeezes the ambu bag. One person can easily tire doing chest compressions for more than 2 minutes. This person and the scribe may want to alternate roles every 2 minutes.

From the above examples, it is evident that the first goal is to be sure that the roles are being fulfilled in order of priority and second that the most appropriate person is fulfilling that role. Staff communicates with each other to coordinate their actions so that all know who is doing what. Ultimately, the nurse in charge or the physician will direct personnel into specific roles.



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JENNIFER L. BRANCH

Of Counsel
ROBERT F. LAUFMAN

*Also admitted in
Missouri

FACSIMILE TRANSMITTAL COVERSHEET

TO: Rebecca Mant 614-644-0208

From: Jennifer Branch

Date: 8-21-12

Re: Facility ID 0600AS

Number of pages to follow: 2

Additional Comments: _____

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August 27, 2012

**Also admitted in
Minnesota**Of Counsel*
ROBERT F. LAUFMANRebecca Maust, Chief
Division of Quality Assurance
Ohio Department of Health
246 North High Street
Columbus, OH 43215Re: Facility ID # 0600AS
Women's Med Center of Dayton
Variance to the Hospital Transfer Agreement Requirement

Dear Ms. Maust:

I represent Women's Med Group Professional Corporation, the owner and operator of Women's Med Center of Dayton. I am writing to ask for your written assurance that the ASF license for Women's Med Center of Dayton will be extended beyond its August 31, 2012 expiration date until ODH rules on the facility's pending variance request and license renewal.

In 2008 ODH granted Women's Med Center of Dayton a variance of the written transfer agreement requirement. The variance did not have an expiration date. In December 2012 the facility received a letter from ODH providing ODH's new variance procedure and stating that ODH would use the procedure for "certain variances requested in the future." The letter did not state that Women's Med Center of Dayton's 2008 variance would expire or be revoked. The letter did not explain that the facility would need to request a new variance when its license expired at the end of August. Nor did the letter explain when the variance request should be made with respect to the ASF's license expiration date.

The facility applied for a renewal of its license on August 1, 2012. In the previous three years, the facility applied for a renewal, relying on the variance ODH granted in 2008. In all prior years, ODH granted the license renewal without requiring a new variance request. However, this year, ODH apparently has made the decision that the 2008 variance has expired or been revoked and is requiring the facility to request a variance in accordance with ODH's new variance procedures. On Friday, August 24, 2012 at 5:30 p.m., ODH sent Dr. Haskell an email informing him that WMCD needed to request a variance of the written transfer agreement. WMCD applied for the variance today and that request is pending.

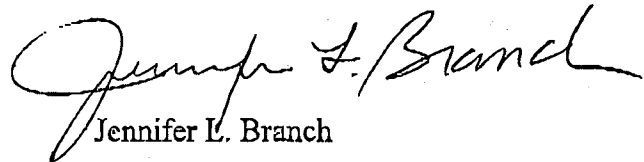
Rebecca Maust
August 27, 2012
Page 2 of 2

As you know, the variance request for Lebanon Road Surgery Center, WMG's Cincinnati facility, has been pending since May 4, 2012. It is unclear how long ODH will need in order to review the Dayton request and rule on the variance. While ODH considers the request for Dayton I want to confirm that the ASF license for Women's Med Center of Dayton will remain in effect until after ODH rules on the variance requests and makes a decision on the license renewal.

Dr. Haskell is making every effort to comply with all of ODH's requests as promptly as possible. I hope we can agree that Women's Med Center of Dayton's license will continue until after we address any questions ODH may have, ODH rules on the variance, and ODH rules on the license renewal. Please respond by noon on Wednesday, August 27, 2012 confirming that Women's Med Center of Dayton's license will remain in effect and not expire during this process. If I do not hear from you, I will have to proceed in another forum, a course of action I would like to avoid taking.

If you have any questions, please contact me at the address and phone number above, or by email to jbranch@gbfirm.com.

Sincerely,



Jennifer L. Branch