

GERHARDSTEIN & BRANCH

A LEGAL PROFESSIONAL ASSOCIATION

432 WALNUT STREET, SUITE 400

CINCINNATI, OHIO 45202

TELEPHONE: (513) 621-9100

FACSIMILE: (513) 345-5543

*ALPHONSE A. GERHARDSTEIN
JENNIFER L. BRANCH
KANE P. KAYSER

October 8, 2012

*Also admitted in
Minnesota

Of Counsel
ROBERT F. LAUFMAN

Ohio Department of Health
246 North High Street
Columbus, OH 43215

Re: Facility ID # 0908AS
Lebanon Road Surgery Center
Request for Variance to the Hospital Transfer Agreement Requirement

To Whom It May Concern:

I represent Lebanon Medical Building, LLC and Women's Med Group Professional Corporation, the owner and operator, respectively, of Lebanon Road Surgery Center. On behalf of LRSC I am requesting a variance to the written transfer agreement requirement. 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.

LRSC is requesting the variance because in the past it has been unable to obtain a written transfer agreement with a local hospital. LRSC has recently renewed its request for a written transfer agreement with The Christ Hospital, Bethesda North, and University Hospital. The Christ Hospital rejected LRSC's request (see Attachment 1). The other hospitals have not responded to LRSC's request as of the date of this request.

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 their respective hospitals 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. David B. Schwartz, M.D. has unrestricted admitting privileges in Obstetrics and Gynecology at The Christ Hospital.
- Dr. Chandra Gravely, M.D. has unrestricted admitting privileges in Gynecology at Bethesda North Hospital.
- Dr. Cynthia Hansel, M.D. has unrestricted admitting privileges in Gynecology at Bethesda North Hospital.

000001

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. (See Attachments 2 and 3). The facility has a written protocol ensuring 24-hour per day, seven days per week coverage by the backup physicians who can admit patients to local hospitals (The Christ Hospital or Bethesda North Hospital) in the event that a patient experiences a complication or an emergency. (See Current Protocol at Attachment 4). The protocol contains a plan for coverage in the event that all named physicians are temporarily unavailable. In addition, two of the three physicians are in the same practice and it is highly unlikely that they would both 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 their respective admitting hospitals. This has been verified by the physicians in their contracts.
- e. The backup physicians agreed in their contracts 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 contracts that they are familiar with LRSC and its operations and its Emergency Medical Protocol.
- g. Each back up physician has verified that there is minimal or no travel time from the backup physician's office to the local hospital. The travel time from their residences to their respective hospitals is as follows:
 - Dr. Schwartz's travel time from his residence to The Christ Hospital is five minutes.
 - Dr. Graveley's travel time from her residence to Bethesda North Hospital is 7 minutes.
 - Dr. Hansel's travel time from her residence to Bethesda North Hospital is 3 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.

000002

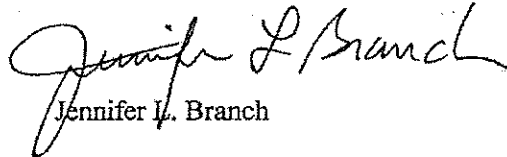
i. The backup physicians have represented in their contracts that they utilize the on-call physician list for each department for consulting/referral physicians outside their specialty/expertise at their respective admitting hospitals. LRSC does not have access to the on-call list of consulting physicians who can provide specialty coverage to the back up physicians at The Christ Hospital or Bethesda North Hospital because it changes frequently.

j. See i above.

I would like to note that in May 2012 ODH inquired of LRSC about how it meets the patient safety and continuity of care concerns addressed in ODH's new protocol dated November 17, 2011. LRSC responded to ODH's inquiry on May 24, 2012 and supplemented its response on August 9, 2012 with the same information contained in this variance request. To date, LRSC had received no indication from ODH that it does not meet ODH's new protocol.

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

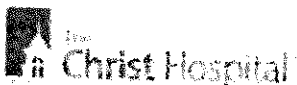
Sincerely,



Jennifer L. Branch

Encls. Attachment 1 The Christ Hospital denial of written transfer agreement
Attachment 2 Gravely and Hansel agreement
Attachment 3 Schwartz agreement
Attachment 4 Women's Med Group Emergency Protocol

000003



The Christ Hospital Health System

2139 Auburn Ave.
Cincinnati, OH 45219

513.585.2000

August 28, 2012

Martin Haskell, MD
P.O. Box 43100
Cincinnati, Ohio 45243

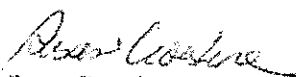
Dear Dr. Haskell,

I received your letter requesting a transfer agreement for the Lebanon Road Surgery Center located in Sharonville. Please be assured that The Christ Hospital accepts all emergency patients that need transfers, regardless of ability to pay. However, we are not able to execute a formal transfer agreement with the Lebanon Road Surgery Center given the significant negative messages we have received from the community and the public's access to these agreements under the Ohio Open Records Act. It is unfortunate that Ohio is now requiring a separate transfer agreement.

It is my understanding that Planned Parenthood on Auburn Avenue has a transfer agreement with UC Health so perhaps this can be an option for your center.

In closing, please be assured that any patient requiring any emergency services at the Lebanon Road Center will be attended to at The Christ Hospital.

Sincerely,


Susan Croushore
President and CEO

c: Berc Gawne, MD
Matt Shuler

TheChristHospital.com

Attachment 1

000004

May 21, 2012

Valerie Haskell
Lebanon Road Medical Building, LLC
PO Box 43100
Cincinnati, OH 45243

Re: Backup Services for Lebanon Road Surgery Center (LRSC)

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

- a. We will provide 24/7 emergency backup hospital admission for LRSC patients in the event of surgical complication, emergency situations, or other medical needs that request a level of service beyond the capability of the LRSC;
- b. We are licensed to practice medicine in Ohio and we will alert you within 24 hours if either 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 Bethesda North Hospital in Cincinnati 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 LRSC of any circumstances that may impact our ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the LRSC's emergency patients;
- f. We are familiar with the LRSC and its operations and its Emergency Medical Protocol;
- g. We estimate the travel time from our office to Bethesda North Hospital is 5 minutes by car.
- h. We use the Bethesda North Hospital on-call list for consulting/referral physicians outside our area of specialty/expertise;
- i. In the event we will both be simultaneously absent from the locale, we will provide LRSC notice within one business day before such date or as soon as practicable of an

Attachment 2

000005

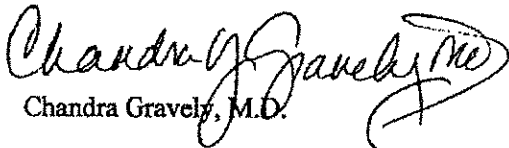
unplanned absence or three business days before such date or as soon as practicable for an absence planned in advance.

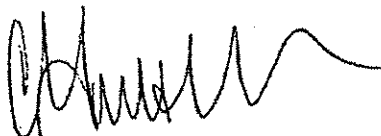
Compensation for our services will be billed to LRSC.

In the event our services are needed under this agreement, contact us by calling our office (513) 891-0211 during office hours and via voice mail after hours and weekends. 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,


Chandra Gravely, M.D.


Cynthia Hansel, M.D.

David B Schwartz MD
Obstetrics & Gynecology

The Christ Hospital
Medical Office Building
2123 Auburn Avenue
Suite 520
Cincinnati, Ohio
45219

May 21, 2012

513-241-4223
fax 513-241-4228

Valerie Haskell, Managing Member
Lebanon Road Medical Building, LLC
PO Box 43100
Cincinnati, OH 45243

dbdoc8@aol.com
www.cincinnatiobgyn.com

Re: Backup Services for Lebanon Road Surgery Center (LRSC)

Dear Mrs. Haskell:

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

- a. I will provide 24/7 emergency backup hospital admission for LRSC patients in the event of surgical complication, emergency situations, or other medical needs that request a level of service beyond the capability of the LRSC;
- b. I am licensed to practice medicine in Ohio and I will alert you within 24 hours if my active status to practice medicine in Ohio changes;
- c. No actions have been taken against me or are in progress by the Ohio State Medical Board and I will alert you within 24 hours if an action is taken against me by the Ohio State Medical Board;
- d. I am credentialed with admitting privileges in Obstetrics and Gynecology without restrictions at The Christ Hospital in Cincinnati and will arrange patient admission and care for each patient needing medical services according to each patient's need.
- e. I agree to immediately inform the LRSC of any circumstances that may impact my ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the LRSC's emergency patients;
- f. I am familiar with the LRSC and its operations and its Emergency Medical Protocol;

Diplomate
of the American
Board of Obstetrics
& Gynecology

Fellow of the American
College of Obstetricians
& Gynecologists

Attachment 3

000007

David B. Schwartz MD
Obstetrics & Gynecology

The Christ Hospital
Medical Office Building
2123 Auburn Avenue
Suite 320
Cincinnati, Ohio
45219

513-241-4223
fax 513-241-4228

dbdoc8@aol.com
www.cincinnatiobgyn.com

g. I estimate the travel time from my office to Christ Hospital is 2 minutes by foot, my office is in the adjoining Christ Hospital Medical Office Building;

h. I use The Christ Hospital on-call list for consulting/referral physicians outside my area of specialty/expertise;

i. I will provide LRSC notice of any planned or unplanned absence from the locale within one business day before such date or as soon as practicable (if the absence is unplanned) or three business days before such date or as soon as practicable (if the absence is planned in advance).

In the event my services are needed under this agreement, contact me by calling my office (513) 241-4223. In addition, my cell phone is [REDACTED]. 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.

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

Sincerely,



David B. Schwartz, M.D.

Diplomate
of the American
Board of Obstetrics
& Gynecology

Fellow of the American
College of Obstetricians
& Gynecologists

000008

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.