

FILED
LUCAS COUNTY

2014 AUG -4 P 3:57

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

ORIGINAL

**IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO**

G-4801-CI-0201403405-000

IN THE MATTER OF:

Case No.

Judge

RUTH ANN FRANKS

**CAPITAL CARE NETWORK OF TOLEDO
1160 WEST SYLVANIA AVE.
TOLEDO, OH 43612,**

NOTICE OF APPEAL

Appellant,

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

vs.

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

Appellee.

NOTICE OF APPEAL

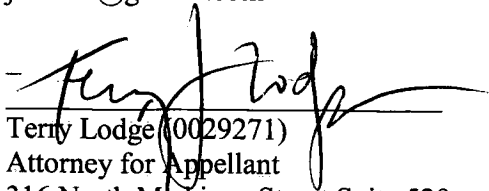
Appellant Capital Care Network of Toledo, hereby gives notice that it appeals to the Court of Common Pleas, Lucas County, Ohio, from the Ohio Department of Health Adjudication Order dated July 29, 2014 proposing to revoke and not renew Appellant's ambulatory surgical facility license for failing to have a written transfer agreement with a local hospital. A copy of the Adjudication Order is attached hereto as Exhibit A.

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 by having a written transfer agreement with a hospital.
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)
Attorneys for Appellant
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Terry Lodge (0029271)
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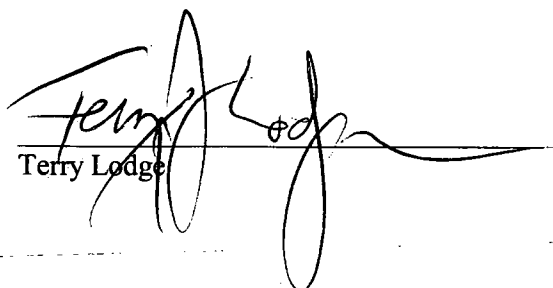
CERTIFICATE OF SERVICE

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

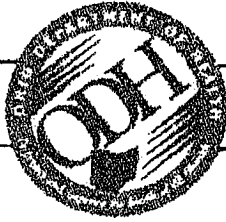
U.S. Mail first class on August 4, 2014 to:

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

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



Terry Lodge



OHIO DEPARTMENT OF HEALTH

246 North High Street
Columbus, Ohio 43215

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

John R. Kasich / Governor

July 30, 2014

Via facsimile (513.345.5543) and regular U.S. Mail

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

Re: In the Matter of Capital Care Network
License No.: 0763 AS

Dear Ms. Branch:

Enclosed please find the Adjudication Order issued by the Interim Director of the Ohio Department of Health in the above referenced matter. Please contact me if you have any questions.

Sincerely-

A handwritten signature in cursive script that reads "Heather Coglianese".

Heather Coglianese
Senior Legal Counsel

Cc: Tamara Malkoff, Chief, Bureau of Informational & Operational Support
Lyndsay Nash, Assistant Attorney General



OHIO DEPARTMENT OF HEALTH

246 North High Street
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John R. Kasich / Governor

Adjudication Order

By letter dated August 2, 2013, Capital Care Network was notified that the Director of Health ("Director") proposed to issue an order revoking and refusing to renew Capital Care Network's ("CCN") 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 February 18, 2014, CCN was notified that the Director proposed to issue an order revoking and refusing to renew CCN's health care facility license (ambulatory surgical facility) in accordance with Chapter 119 of the Revised Code, R.C. 3702.32(D)(2), R.C. 3702.303 and OAC rule 3701-83-05.1(C)(2) for not having a transfer agreement with a local hospital. Specifically the director found that the transfer agreement submitted by CCN with the University of Michigan Health System in Ann Arbor, Michigan, violated the requirements of R.C. 3702.303(A).

Both letters notified CCN 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. CCN requested a hearing by letters dated August 29, 2013 and March 14, 2014.

The administrative hearing was originally scheduled for February 18, 19 and 20, 2014. It was continued upon motion of CCN until March 26, 27, and 28, 2014. The hearing was held by Hearing Examiner, William J. Kepko, on March 26, 2014. Appearing on behalf of CCN was Terrie Hubbard, RN. CCN was represented by attorney Jennifer L. Branch of Gerhardstein & Branch. Appearing on behalf of the department was Rachel Belenker. The department was represented by Lyndsay Nash, Office of the Ohio Attorney General.

The department, through its attorney, filed its Post Hearing Brief on April 30, 2014. CCN, through its attorney, filed its Post Hearing Brief and Proposed Findings of Fact and Conclusions or Law on May 22, 2014. The department, through its attorney, filed its Reply Brief on May 28, 2014.

The Hearing Examiner's June 10, 2014 Report and Recommendation was received by the Department on June 12, 2014. By letter sent via email and certified U.S. mail dated June 13, 2014, the department transmitted the Report and Recommendation to attorney Jennifer L. Branch and informed CCN 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. CCN, through its attorney, submitted objections to the Report and Recommendation via email on June 20, 2014.

Upon consideration of the file, exhibits admitted in the administrative hearing, post-hearing briefs, hearing examiner's Report and Recommendation, and CCN's Objections to the Report and Recommendation, 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. 1-13.

The hearing examiner's Report and Recommendation found that, as of the date of the hearing, CCN did not have a written transfer agreement as required by 3701-83-19(E) prior to January 20, 2014 when CCN submitted a transfer agreement with the University of Michigan Health System in Ann Arbor, Michigan. The hearing examiner's Report and Recommendation found that the transfer agreement submitted by CCN on January 20, 2014 did not comply with the requirements of R.C. 3702.303(A). The hearing examiner concluded that because CCN does not have an acceptable written transfer agreement with a local hospital or a variance, it does not meet the licensing requirements. The hearing examiner further concluded that because CCN 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 CCN, is valid. Based upon these findings, and in accordance with R.C. 3702.32, R.C. 3702.303(A), R.C. Chapter 119, and OAC 3701-83-19(E), I hereby issue this Adjudication Order refusing to renew and revoking CCN's health care facility license.

Any party desiring to appeal this final adjudication order shall 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. The notice of appeal shall also be filed by the appellant with 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. Such notices of appeal shall 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.

To ensure that this order does not affect patient health and safety, this order shall become effective on August 12, 2014. Please note, the August 12, 2014, effective date of this order does not extend the fifteen (15) day deadline noted above for filing a notice of appeal. Finally, CCN may, in conjunction with filing an appeal, request that the court of common pleas stay this order pending appeal.

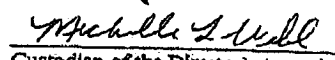


Lance D. Himes
Interim Director of Health

7-29-14
Date

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

7/30/14
Date


Custodian of the Director's Journals
Ohio Department of Health