



# OHIO DEPARTMENT OF HEALTH

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John R. Kasich/Governor

Richard Hodges/Director of Health

**OCT 21 2016**

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

Re: Women's Med Center of Dayton: Denial of Variance Request

Dear Ms. Branch:

Pursuant to R.C. 3702.304, O.A.C. 3701-83-14, O.A.C. 3701-83-19, and after careful review and consultation with the department's medical director, I am denying the variance requests of Women's Med Center of Dayton (WMC) for the 2016 license period.

WMC submitted a variance request for 2016 on August 26, 2016. WMC's variance application provides for three named backup physicians (Dr. Janice Duke, Dr. Sheela Barhan, and Dr. Jerome Yaklic) and indicates that their group practice, which has also separately contracted with WMC, will be the backup for the physicians if they are unavailable. The enclosed backup agreements identified these physicians as having admitting privileges at Miami Valley Hospital.

As you know, the written transfer agreement requirements in R.C. 3702.303 and O.A.C. 3701-83-19 are designed to protect patient health and safety. Variances from these requirements are for limited circumstances in which the facility can still achieve the purposes of a WTA, where compliance with the WTA requirement would impose an undue hardship, and where the proposed alternative method of compliance meets or exceeds the protections afforded by the statute and rule. R.C. 3702.304. WMC's provision of only three named backup physicians does not meet my expectation that a variance provide the same level of patient health and safety that a written transfer agreement with a local hospital assures for 24/7 back-up coverage. Further, additional backup from un-named physicians in the group practice does not comply with R.C. 3702.304 which requires specific information to be provided as to each named physician *e.g.*, licensure status, travel time to hospital, and contact information.

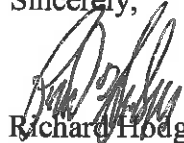
Pursuant to R.C. 3702.304 and O.A.C. 3701-83-14, the denial of WMC's applications for a variance shall be final and shall not be construed as creating any rights to a hearing under Chapter 119. of the Revised Code.

Jennifer L. Branch

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If you have any questions regarding this decision, please contact Heather Coglianesse, Senior Legal Counsel, at 614-466-4882.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Hodges", is written over the printed name.

Richard Hodges, MPA  
Director of Health

Cc: Shannon Richey, Assistant Bureau Chief, Bureau of Community Health Care