

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

LEBANON ROAD SURGERY CENTER

Appellant,

v.

STATE OF OHIO
DEPARTMENT OF HEALTH

Appellee.

CASE NO. A1400502

MAGISTRATE JUDGE BACHMAN

JUDGE JEROME J. METZ

MAGISTRATE'S DECISION

D106962972

RENDERED THIS 10TH DAY OF JULY, 2014.

I. INTRODUCTION

For the reasons explained below, and as expressed on the record on June 30, 2014, this Court affirms the January 17, 2014 Order (made effective eighteen days later on February 4, 2014) of the Director of the Ohio Department of Health to revoke and not to renew the health care facility license (ambulatory surgical facility) of the Lebanon Road Medical Building LLC, dba Lebanon Road Surgery Center (LRSC).

II. FINDINGS OF FACT

1. LRSC is located in Sharonville, Ohio, a suburb of Cincinnati, Ohio.
2. Lebanon Road Medical Building, LLC owns LRSC, located at 11250 Lebanon Road, Cincinnati, Ohio. W. Martin Haskell, M.D. ("Dr. Haskell") is the Medical Director of LRSC.

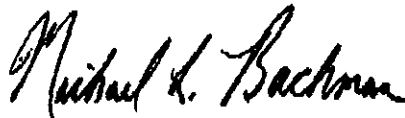
3. LRSC is an Ambulatory Surgical Facility ("ASF") as defined under Ohio Revised Code §3702.30(A)(1).
4. An ASF must renew its license on an annual basis by submitting a written application to ODH. Ohio Administrative Code rule §3701-83-04(B).
5. Ohio Administrative Code Chapter 3701-83 sets forth numerous requirements governing the operation of health care facilities, which include ASFs. Specifically, Ohio Administrative Code §3701-83-19(E) states: "The ASF shall have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise."
6. Pursuant to Ohio Administrative Code §3701-83-14, the Director has the authority and discretion to grant variances from any requirement set forth in OAC Chapter 3701-83, unless the requirement is mandated by statute.
7. LRSC applied for, and received, a conditional variance to the written transfer agreement requirement in September, 2010. (State's Exhibit 5).
8. LRSC received its initial ASF license from ODH on October 21, 2010. (State's Exhibit 6).
9. An ASF must renew its license on an annual basis by submitting a written application to ODH. Ohio Admin. Code § 3701-83-04(B).
10. LRSC submitted a license renewal application and a request for a variance on October 8, 2012.
11. At no time did LRSC have a written transfer agreement as required by OAC 3701-83-19(E).
12. On January 17, 2014 the Director denied LRSC a variance from the requirement of a written transfer agreement.

13. On January 17, 2014, the Director issued an Order revoking and refusing to renew the health care facility license (ambulatory surgical facility) of the Lebanon Road Medical Building LLC., dba Lebanon Road Surgery Center (LRSC).

III. CONCLUSIONS OF LAW

1. A Common Pleas Court's review of an order from an administrative agency is limited to whether the order is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12.
2. Where an administrative order is supported by reliable, probative and substantial evidence and is in accordance with law, a court may not substitute its judgment for that of the agency, but must affirm the order. *Henry v. Lewis*, 69 Ohio St.2d 577 (1982); *Arlen v. State*, 61 Ohio St.2d 168 (1980); *Henry's Cafe, Inc. v. Board of Liquor Control*, 170 Ohio St.233 (1959);
3. LRSC does not have a written transfer agreement as required by Ohio Admin. Code § 3701-83-19(F), and therefore does not comply with Ohio law regarding ASF licensure. This fact is reliable, probative and substantial evidence that supports the Adjudication Order to revoke, and to refuse to renew LRSC's license to operate an ASF.
4. It is solely within the Director's discretion whether to grant or deny a variance from the written transfer agreement, and the Director's refusal to do so does not create any rights to a due process hearing under Ohio or federal law. Ohio Admin. Code 3701-83-14(D); *Women's Med. Prof. Corp. v. Balrd*, 438 F. 3d 595 (6th Cir. 2006); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).
5. The challenged Adjudication Order complies with the law, and the appeal of that Order is overruled.

6. The Stay granted in this matter on January 31, 2014 shall end at the close of business (4 p.m.) on the day this Magistrate's Decision is docketed.



MICHAEL L. BACHMAN,
MAGISTRATE
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

MICHAEL DEWINE (0009181)
Ohio Attorney General

MELISSA L. WILBURN (0041942)
Senior Assistant Attorney General
Health and Human Services Section
30 E. Broad Street, 26th Floor
Columbus, Ohio 43215-3400
614-466-8600
1-866-500-6845 (Facsimile)
Attorney for Appellee,
Ohio Department of Health

DOROTHEA K. LANGSAM (0082973)
KATHERINE G. BARNES (0085257)
Vorys, Sater, Seymour and Pease LLP
301 E. Fourth Street, Suite 3500
Cincinnati, Ohio 45202
Telephone 513-723-4094
dklangsam@vorys.com
kgbarnes@vorys.com
Attorneys for Appellant,
Lebanon Road Surgery Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 7-10Deputy Clerk: 