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September 13, 2021

Mr. James Hodge
Chief, Bureau of Regulatory Operations
Ohio Department of Health
246 North High Street
Columbus, OH 43215

Re: Women's Med Dayton
Request for Variance to the Hospital Transfer Agreement Requirement

Dear Mr. Hodge:

I represent Women's Med Group Professional Corporation (WMGPC) and Women's Med Dayton (WMD).

Jennifer Branch, who previously represented WMGPC and WMD, wrote on September 14, 2020 to request a variance to O.R.C. § 3702.303, which requires ASFs have a written transfer agreement (WTA) with a local hospital. A variance is necessary because WMD, a facility that provides surgical abortions, has requested a written transfer agreement with all of the local hospitals, but none has agreed to provide a WTA. By letter dated August 30, 2021, Director Bruce Vanderhoff denied this variance request.¹

It is my understanding that WMD does not have a right to request a hearing from ODH regarding the variance denial. O.R.C. § 3702.304(C); O.A.C. 3701-83-14; *Women's Med Ctr. of Dayton v. Dep't of Health*, 133 N.E.3d 1047, 1049 (Ohio Ct. App.), *appeal not allowed*, 156 Ohio St. 3d 1492 (2019). However, because the August 30 variance denial was based on incorrect understandings of the factual premises underlying WMD's request, and because ODH's consideration of this variance request may benefit from addition information provided herein, I

¹ It is my understanding that Ohio HB 197 (133rd Gen. Assem.) and Ohio HB 404 (133rd Gen. Assem.) had extended ODH's time for responding to this request to August 30, 2021 (sixty days after July 1, 2021).

am now writing to re-apply for a variance on behalf of WMD, or in the alternative, to request reconsideration of the August 30 variance denial.

For the following reasons, WMD meets the requirements for a variance from the WTA requirement set forth in O.R.C. § 3702.304(B):

1. Application of the WTA requirement to WMD would cause it undue hardship, because as noted above, WMD has been unable to obtain a WTA from any local hospital. If the WTA requirement were applied to WMD, it would therefore be unable to continue operating, resulting in closure of the business and loss of its and its owner's constitutionally protected property rights. As explained in more detail below, WMD's alternative to a written transfer agreement provides patients with the same or higher level of safety and protection as a written transfer agreement would provide.

WMD has contracted with Drs. Barhan, Duke, Dunn, and Dhanraj to provide backup physician services (Attachment 1). WMD also has a contract with Wright State Physicians Women's Health Care (WSPWHC) to provide backup coverage. (Attachment 2). The four backup physicians have full, unrestricted, and active admitting privileges at Miami Valley Hospital (MVH) and have agreed to exercise those privileges to provide for the continuity of care and the timely, unimpeded acceptance and admission of WMD's emergency patients.

Drs. Barhan, Duke, and Dhanraj are credentialed with admitting privileges in Obstetrics and Gynecology without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3). Dr. Dunn is credentialed with admitting privileges in General Surgery without restrictions at Miami Valley Hospital and will arrange patient admission and care for each patient needing medical services according to each patient's need. (Attachment 3).

The Director's August 30 letter explains that a variance was denied in part because Dr. Dhanraj, one of WMD's four backup physicians, "currently has affiliate status privileges at Miami Valley Hospital and not active status privileges." WMD respectfully submits that this statement does not accurately reflect Dr. Dhanraj's ability to admit patients and is not a proper basis for denying the variance. At the time of application, Dr. Dhanraj possessed full, unrestricted privileges in obstetrics and gynecology at MVH.² Although Dr. Dhanraj was listed

² By email dated August 23, 2021, at 4:00 p.m., you requested the following information, to be provided by the close of business on August 25, 2021:

- Documentation that explains what each backup physician is permitted to do under their respective admitting privileges at Miami Valley Hospital, including any restrictions on procedures that can be performed or areas of the hospital that are restricted.
- The number of miles between each backup physician's clinical practice and Women's Med Dayton.

as “Affiliate (non-vote)” on the admitting privileges list submitted to Mr. Hodge on August 25, 2021, his inability to vote on matters affecting the medical staff was entirely due to the fact that he first joined the MVH staff in April 2020 and, according to the MVH Bylaws, physicians must be on staff for at least one year in order to acquire voting rights. (Attachment 4). Dr. Dhanraj’s non-voting status had no impact whatsoever on the scope of his clinical privileges at MVH or his ability to admit and care for patients. In fact, Dr. Dhanraj was hired to chair the Obstetrics and Gynecology Department at Wright State School of Medicine with responsibility for overseeing the training of resident physicians at Miami Valley Hospital. (Attachment 11). Therefore, Dr. Dhanraj’s non-voting status was not a proper basis for denial of the variance.

In addition, since Dr. Dhanraj was re-credentialed by MVH in August 2021, he has now acquired voting rights and his current status is therefore “Active (voting).” (Attachment 3).

The Director denied WMD’s variance for the additional reason that Dr. Dunn “is not credentialed as an obstetrician/gynecologist with full active privileges at Miami Valley Hospital.” As indicated by the attached Privileges List for Dr. Dunn (Attachment 3), and as confirmed in my email to you dated August 25, 2021, she has full, active privileges in general surgery at MVH. She is also board certified in general surgery. (Attachment 5). The fact that Dr. Dunn’s privileges and credentials are in general surgery rather than obstetrics/gynecology does not undermine patient health and safety. There would be no greater benefit to patient safety if WMD had a WTA. A WTA would entail that a patient facing a complication would be sent to the emergency room to be evaluated by an emergency room physician and the appropriate specialist consulted by the emergency room physician. Dr. Dunn, who is the former Dean of the Wright State Boonshoft School of Medicine, is able to admit patients to MVH and consult the relevant specialist in the case of a complication that would be beyond her expertise, just as an emergency room physician would do.³ (Attachment 12). Indeed, ODH accepted Dr. Dunn as a backup physician for WMD in support of its 2019 variance application, which was granted.

WMD also has a written policy ensuring coverage by the backup physicians who can admit patients to a hospital in the event that a patient experiences a surgical complication, an

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- The number of miles between Miami Valley Hospital and Women’s Med Dayton.
 - Board certification(s) held by each backup physician

On August 24, 2021, you also asked me “to confirm the privilege status for both Dr. Barhan and Dr. Duke[.] Are their statuses, ‘active,’ or ‘affiliated?’ It is not clear from the letter provided.” By email dated August 25, 2021, I responded to all of these requests and confirmed that “all 4 doctors have active privileges at MVH,” because I understood the question to refer to the physicians’ ability to admit patients and treat them at the hospital, not their medical staff voting status.

³ In fact, some complications that could arise—such as bowel perforation—would be managed by a general surgeon rather than an OB/GYN.

emergency, or other medical need and needs to be transferred from WMD to the hospital. (Attachment 6).

2. The contracts between WMD and its four backup physicians who have admitting privileges at MVH, memorializing their agreement to provide backup coverage when medical care beyond the level the facility can provide is necessary, are attached. (Attachment 1).

3a. Drs. Barhan, Dhanraj, Duke, and Dunn are familiar with WMD and its operations and its policy. Each backup physician contract verifies this. (Attachment 1).

3b. All four physicians' primary practice location is Five Rivers Center for Women's Health, which is on the Miami Valley Hospital campus. It is about a 5-minute walk to the hospital. They have a secondary practice location in the Sugar Camp Medical Building, 400 Sugar Camp Circle, which is 1.6 miles or about a 5-minute drive to MVH. The distance from WMD to MVH is 5.8 miles, or approximately a 14-minute drive. (Attachment 7).

3c. WMD has a record of the name, telephone numbers, and practice specialties of each backup physician. (Attachment 6).

3d. Drs. Barhan, Dhanraj, Duke, and Dunn currently have active status with the Ohio State Medical Board and possess current medical licenses. None of the four backup physicians has had any action taken against them by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. Nor does any physician have a pending action or a complaint under review by the Ohio State Medical Board for violations of R.C. § 4731.22, according to their agreement with the facility. (Attachment 8).

3e. All backup physicians are credentialed with admitting privileges in Gynecology or General Surgery without restrictions at Miami Valley Hospital. All backup physicians have notified MVH that they are consulting for WMD and that they have agreed to provide backup services. (Attachment 9).

4a. WMD's patient hospital transfer protocol (Attachment 6) and backup physician credentialing protocol (Attachment 10), which ensure continuity of care for any patient who may need to be transferred to a hospital, are attached. The facility's written policy explains how the attending physician will use the backup physicians to admit patients to a local hospital in an emergency, complication, or other medical need. The policy includes a plan which ensures that a substitute doctor is available to admit patients to

local hospitals in the event the four named backup physicians are temporarily unavailable and unable to admit patients to local hospitals. Drs. Barhan, Dhanraj, Duke, and Dunn affirm that they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4b. Drs. Barhan, Dhanraj, Duke, and Dunn agreed in their contracts to immediately inform WMD of any circumstances that may impact their ability to provide for continuity of care and the timely, unimpeded acceptance and admission of the WMD's emergency patients. (Attachment 1). Drs. Barhan, Duke, Dhanraj, and Dunn agree they have access to and will use MVH's on-call consulting/referral physicians outside WSPWHC's area of specialty/expertise, if necessary. (Attachment 1).

4c. WMD's written protocol ensures that a copy of the patient's medical record is transmitted contemporaneously with the patient to hospital. (Attachment 6)

This variance request is a good faith attempt to comply with Ohio law. WMD has not been informed by ODH of any additional rules or regulations that apply to a variance request. If ODH implements any additional rules, WMD requests ODH to notify WMD.

If you need any additional information or have any questions, please contact me at the address and phone number above, or by email to bjh11@case.edu

Sincerely,



B. Jessie Hill

C: Heather Coglianese

Encls. Attachment 1 Backup physician agreements
Attachment 2 WSPWHC agreement
Attachment 3 Privilege lists
Attachment 4 MVH Medical Staff Bylaws
Attachment 5 Board certifications
Attachment 6 WMD Backup Physician and Hospital Transfer protocol dated 4/2020
Attachment 7 Maps
Attachment 8 Verifications of license status with the Ohio Medical Board

Attachment 9 Notifications

Attachment 10 WMD Backup Physician credentialing protocol dated 8/26/19

Attachment 11 Dhanraj CV

Attachment 12 Dunn CV