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**EXPLANATION OF WHY THIS CASE DOES NOT PRESENT A MATTER OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION**

Appellant Ohio Department of Job and Family Services (the "Department") seeks to invoke this Court's jurisdiction over a highly technical, procedural issue involving the content of a notice of appeal filed by Appellee Medcorp, Inc. ("Medcorp") with the common pleas court below in a Chapter 119 administrative appeal. The Department's claim of public interest ignores at least three salient points compelling rejection of this appeal.

First, the Department has attempted to invoke this Court's jurisdiction because the substantive merits of the underlying administrative appeal have been otherwise determined against it. Specifically, the common pleas court effectively reinstated a report and recommendation of the Department's own hearing examiner who found that the Department had used an invalid, faulty and inapplicable statistical sampling methodology in conducting an audit of Medicaid claims paid to Medcorp between March 1, 1996 and September 30, 1997. The Department ignored that report after receiving it and instead issued an adjudication order seeking reimbursement from Medcorp of \$534,719.27 for the invalid audit, instead of the \$1,850.02 sum determined by the hearing examiner to be owed. Upon appeal, the common pleas court agreed with the hearing examiner and reversed the Department's adjudication order, finding the Department's substituted findings were not based on reliable, probative and substantial evidence and were not in accordance with law. The Department appealed this decision to the Tenth Appellate District, but the court of appeals affirmed the lower court's decision. The Department has not appealed this or any other merit issue to this Court.

Next, a case cannot be of substantial importance when the Department did nothing other than demand the appeal court below ignore its own controlling authority in favor of a wrongly-

decided case from a sister appellate district. Simply, the issue the Department places before the court below was, as is noted below, controlled by the Tenth Appellate District's decision in *Derakhshan v. State Med. Bd. of Ohio*, Franklin App. No. 07AP-261, 2007-Ohio-5802, a decision the State never attempted to appeal to this Court.

Forty years of this Court's jurisprudence would be abandoned by the approach advocated by the Department. The fundamental tenet of judicial review in Ohio is that courts should decide cases on their merits, and to that end courts must follow the general policy of relaxing restrictive rules which prevent hearing of cases on their merit. *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189; *AMCA Intern. Corp. v. Carlton* (1984), 10 Ohio St.3d 88, 91. There is not (and could not possibly be) any prejudice caused by a notice of appeal that does not state specific facts to support the grounds as attested by the fact that the Department was able to prepare and file its substantial merit brief below long before it raised this issue with the court. In contrast, the Department essentially argues that when filing an administrative appeal an appellant must revert back to the fact-specific pleading of the common law. Yet the General Assembly abolished this concept when it adopted the Rules of Civil Procedure in 1970. When the General Assembly broadly abolished the concept of fact-specific pleading in the Civil Rules it did so as well when it amended R.C. 119.12. Section 119.12 contains no language to suggest that a notice of appeal contain fact or error-specific pleadings, or anything other than the notice pleading requirement adopted by the Civil Rules. The General Assembly also chose not to adopt more specific notice of appeal language in R.C. 5111.06, which modified the R.C. 119.12 requirements for administrative appeals by Medicaid providers. See R.C. 5111.06.

The Department has proposed a rule of law that is needlessly burdensome and incongruent with the plain language of a very clear statute. Under the Department's theory any

notice of appeal essentially must be a fact-based complaint or petition, not a notice. But if that is the case, then the question becomes, how many facts are sufficient, or how specific must the grounds be stated? Adopting the Department's position would start the courts down a very slippery slope, one that was abolished in 1970 to avoid uncertainty and prejudice. Moreover, such a pleading is redundant and entirely unnecessary since the parties to administrative appeals file briefs and objections at the agency level and the issues are clearly framed before ever filing an appeal. Since the common pleas court decides the appeal based on the record and the written briefs, the latter of which include assignments of error, there is no justifiable purpose to requiring that a notice of appeal contain anything more than what the plain grounds set forth in R.C. 119.12. The technical aspects of these appeals are no different from appeals filed from a common pleas court to an appellate court, and are handled no differently by the courts.

Finally, as demonstrated below, the Department has proposed a rule of law that fails to comport with any applicable precedent and instead ignores well-reasoned, controlling law.

For these reasons, this case presents no substantial issue of public, constitutional or great general interest.

### **STATEMENT OF THE CASE AND FACTS**

The Department contends that the trial court lacked subject matter jurisdiction because Medcorp's notice of appeal to the lower court did not state the grounds for appeal as required by R.C. 119.12. Medcorp's Notice of Appeal is similar to hundreds of other appeals from agency orders filed with common pleas courts across the state and it states as follows:

Pursuant to sections 119.12 and 5111.06 of the Ohio Revised Code, Medcorp, Inc., by and through counsel, hereby appeals from the Adjudication Order issued by the Ohio Department of Job and Family Services dated April 19, 2006, a copy of which is attached and incorporated herein by reference and styled: In the Matter of: Medcorp, Inc., Docket No. 01SUR25. The Adjudication Order is not

in accordance with law and is not supported by reliable, probative, and substantial evidence. [Emphasis added.]

The Tenth Appellate District overruled this argument holding that its decision in *Derakhshan v. State Med. Bd. of Ohio*, Franklin App. No. 07AP-261, 2007-Ohio-5802, controlled. In *Derakhshan* the court held that R.C. 119.12 only requires an appellant to “set[] forth . . . the grounds of the party’s appeal” and does not require an appellant to set forth specific facts to support the grounds. That case is on “all fours” with this case.

This Department now seeks jurisdiction in this Court solely on this procedural issue.

### ARGUMENT OF LAW

#### **APPELLEE’S RESPONSE TO APPELLANT’S PROPOSITION OF LAW:**

**R.C. 119.12 requires only an appellant to “set[] forth . . . the grounds of the party’s appeal” and does not require an appellant to set forth specific facts to support the grounds. *Derakhshan v. State Med. Bd. of Ohio*, Franklin App. No. 07AP-261, 2007-Ohio-5802, applied and followed.**

The Department argues that Medcorp’s Notice of Appeal does not assert grounds for appeal as required by R.C. 119.12 and that therefore the common pleas court lacks jurisdiction over the appeal. The Department does not suggest what *type* of grounds might be appropriate, only that the “grounds” stated in Medcorp’s notice are not sufficient, even though the grounds stated are those specifically provided by the General Assembly in R.C. 119.12. However, neither R.C. 119.12 nor R.C. 5111.06 requires that *particular* grounds be set forth in a notice of appeal, only that *grounds* be set forth. Section 119.12 simply reads: “Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party’s appeal.” R.C. 119.12. This Court clearly defined what the term “grounds” means in R.C. 119.12 nearly 50 years ago. In *Henry’s Cafe, Inc. v. Board of Liquor*

*Control* (1959) 170 Ohio St. 233, paragraph two of the syllabus, the Supreme Court held: “On appeal from an order of an agency . . . to the Court of Common Pleas, the power of the court to modify such order is limited to the grounds set forth in Section 119.12, Revised Code, i. e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence.” That syllabus law made it clear that the *grounds* for appeal, reversal, affirmance or modification pursuant to R.C. 119.12, is whether the order is supported by reliable, probative, and substantial evidence and in accordance with the law.

In essence, the Department asks this Court to read additional terms into R.C. 119.12. Instead of stating “the grounds of the party’s appeal” (which are found in the statute) the Department would like R.C. 119.12 to require appellants to allege “facts” or “errors” of the party’s appeal. But R.C. 119.12 does not contain such a requirement. If the General Assembly had intended that an appeal state facts or errors, it would have done so expressly as it did in R.C. 3319.16 (governing appeals of teacher contract terminations); or R.C. 5126.23 (governing appeals of employee terminations by county boards of mental retardation and developmental disabilities); or R.C. 5747.55 (governing appeals of county budget commission actions). Instead, R.C. 119.12 requires an appellant to state the “grounds” of an appeal and it provides those grounds in the statute. It is not the function of courts to add to clear legislative language, especially where the statute is to be strictly construed. *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361. See also, *State ex rel. Russo v. McDonnell* (2006), 110 Ohio St.3d 144.

Here, Medcorp set forth the *only* grounds for appeal pursuant to R.C. 119.12, i.e., whether the adjudication order is supported by reliable, probative and substantial evidence and is in accordance with the law. As Ohio courts have long held, “the grounds of an appeal from an administrative board may be simply stated in the operative words of Section 119.12, Revised

Code, that the order appealed from is not supported by reliable, probative, and substantial evidence, and/or is not in accordance with law.” [Emphasis added.] *Appeal of Stocker* (1968), 16 Ohio App. 2d 66, 71.

The Department contends that the language used by Medcorp constitutes the mere standard of review recited in R.C. 119.12 and does not qualify as *grounds* for appeal. The Department’s position is unsupported by the cases it cites, all of which are clearly distinguishable:

- 1) *Kelsey’s Learning Ctr. v. Ohio Dept. of Job and Family Serv.* (July 18, 2006), Franklin App. 05AP-1311 (unreported) (holding that the language “hereby appeal” does not set forth cognizable grounds for appeal);
- 2) *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Serv.* (May 16, 2006), Franklin App. 05AP-909 (unreported) (holding that stating a reason why an appeal cannot be taken is not a ground for appeal). In *CHS-Windsor v. ODJFS*, this Court observed that the appellant’s amended notice of appeal contained the correct grounds for appeal in stating the order was “not based on substantive, reliable or probative evidence,” -- again the exact language utilized by Medcorp. [Emphasis added.] *CHS-Windsor* at ¶ 11. The defect in *CHS-Windsor* involved the timeliness of the amended notice of appeal, not the “grounds” for appeal, as the Department would have this Court believe.
- 3) *Green v. State Bd. of Registration for Professional Engineers and Surveyors* (March 31, 2006), Greene App. 05CA121 (unreported) (holding that claiming the appellant is “adversely affected” does not constitute a ground for appeal); *Green* wholly contradicts the Department’s argument. In that case, the appellant’s notice stated only that he was “adversely affected,” and it was the agency itself which pointed out and argued to the court that “the necessary grounds for appeal are those set out in R.C. 119.12, which are that the Board’s order is not ‘supported by reliable, probative, and substantial evidence and is (not) in accordance with law.’” [Emphasis added.] *Green* at ¶ 12. This is the exact language utilized in the instant case by Medcorp.
- 4) *Stultz v. Ohio Dept. of Admin. Serv.* (Jan. 20, 2005), Franklin App. 04AP-602 (unreported) (holding that mere reference to the parties and a claim number does not constitute grounds for appeal); and
- 5) *Berus v. Ohio Dept. of Admin. Serv.* (June 30, 2005), Franklin App. 04AP-1196 (unreported) (discussing in *dicta* that a notice of appeal containing mere references to the parties and the agency decision does not state grounds for appeal).

None of the notices in those cases contained the language from R.C. 119.12, and none of these cases denied the appellant a forum as a result of the language utilized by Medcorp herein. Rather, just the opposite has occurred: numerous agencies and courts have acknowledged the specific language employed by Medcorp in the instant case as the appropriate language setting forth “grounds” for a R.C. 119.12 appeal.

Finally, the Department encourages this Court to adopt the reasoning of the Second Appellate District in the recent case of *David May Ministries v. State of Ohio ex rel. Jim Petro* (July 6, 2007) Green App. No. 2007CA1 (unreported). Fortunately, the Tenth Appellate District is not required to follow the decisions from other appellate districts. Moreover, an appeals court is not obligated to follow bad law. The Tenth Appellate District rejected *David May Ministries* in both *Derakhshan* (which was not appealed by the state) and this case for very good reason: *David May Ministries* relied on the inapplicable decision in *Green* (explained above), which in turn relied on *Zier v. Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123. *Zier* is no longer applicable for the purpose cited here, however. *Zier* was decided prior to the adoption of the Civil Rules, when fact-specific pleading was required. See, e.g., *Pham v. Ohio State Board of Cosmetology* (May 18, 1998), Stark App.1997 CA 00378 (unreported). Moreover, while the appeals court expressed agreement with that line of cases holding that a notice of appeal pursuant to R.C. 119.12 that contains no grounds for appeal deprived the trial court of jurisdiction, it distinguished those cases from *Derakhshan* and this case. In *Derakhshan*, the appellant specifically identified four separate grounds for appeal. *Derakhshan* at ¶ 22. The court in that case went on to hold that R.C. 119.12 only requires an appellant to “set[] forth . . . the grounds of the party’s appeal” and does not require an appellant to set forth specific facts to support the grounds. That same appeals court found in this case that there was

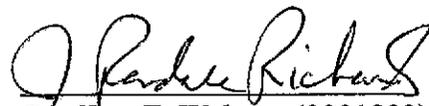
“no meaningful difference between the grounds for appeal set for in *Derakhshan’s* notice of appeal and the grounds for appeal set forth in [Medcorp’s] notice of appeal. *Medcorp* at ¶11. Thus, the court “declined to adopt a requirement that an appellant set forth specific facts to support the grounds for appeal required by R.C. 119.12. We find the notice of appeal at issue currently before us did, like in *Derakhshan*, set forth grounds for the appeal sufficient to invoke the jurisdiction of the court.”

In summary, Medcorp satisfied the requirement of stating grounds under R.C. 119.12 by declaring the adjudication order referenced therein was not in accordance with law and was not supported by reliable, probative, and substantial evidence. In its Notice of Appeal, Medcorp set forth the date of the order from which it appealed, the docket number listed on that order, and further set forth the grounds prescribed by R.C. 119.12 that formed the basis of the appeal. Medcorp, thus, satisfied the specific requirements under R.C. 119.12.

### CONCLUSION

Appellee Medcorp respectfully submits that there is no support for the proposition of law espoused by the Department and this Court should decline to review that issue.

Respectfully submitted,



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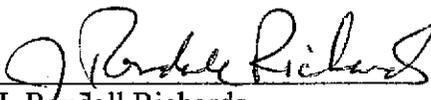
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**PROOF OF SERVICE**

I hereby certify that a copy of the original of the foregoing MEMORADUM was served via U.S. mail, postage pre-paid to the following counsel of record on April 23, 2008:

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