

In the  
**Supreme Court of Ohio**

MEDCORP, INC.,	:	Case No. 2008-0584
	:	2008-0630
Appellee,	:	
	:	On Appeal from the
v.	:	Franklin County
	:	Court of Appeals,
OHIO DEPARTMENT OF JOB AND	:	Tenth Appellate District
FAMILY SERVICES,	:	
	:	Court of Appeals Case
Appellant.	:	No. 07-APE 04-312
	:	

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**REPLY BRIEF OF APPELLANT  
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

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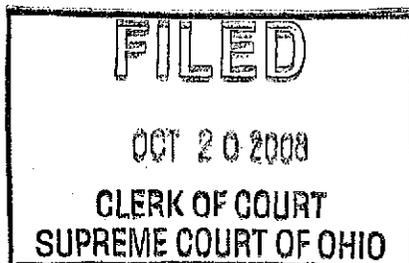
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## INTRODUCTION

As an administrative appellant, Medcorp failed to state the grounds for its appeal in its notice of appeal, opting instead to recite the standard of review that applies to every administrative appeal under R.C. 119.12. Now, as Appellee here, Medcorp fails to state any persuasive grounds for why such an empty notice should be allowed to satisfy the express statutory requirement to state “the grounds of the party’s appeal.” R.C. 119.12. More important, Medcorp fails to explain why the General Assembly would enact a provision that ends up meaningless.

In its opening brief, Appellant Ohio Department of Job and Family Services (“ODJFS”) explained that the provision requiring a statement of grounds is separate from, and therefore must have meaning independent of, the provision requiring appellants to meet a certain standard of review to prevail. That is true both (1) as a cardinal canon of construction, because the General Assembly presumably does not enact legislation that accomplishes nothing, and (2) as a practical matter, because a boilerplate statement cloned in every appeal serves no purpose, and might as well be omitted entirely. ODJFS also explained that the statute makes briefs optional, and that parties often fail to file briefs even when ordered to do so. The grounds requirement is critical in no-brief situations, as it is the only guidance a reviewing court has.

Medcorp’s responses on all points are inadequate. First, Medcorp openly admits that its view would allow the same statement of grounds to be used in every R.C. 119.12 appeal. Indeed, Medcorp embraces this fact as a virtue, not a vice, extolling the benefits of having appellants file what it calls “uniform” and “boilerplate” notices. Medcorp’s Appellee Brief (“Br.”) at 7. Medcorp’s argument is essentially a policy-based plea for leniency—that procedural requirements should be reduced to zero to allow such cases to be heard “on the merits” rather than being dismissed for procedural flaws—but Medcorp never directly responds

to the point that the General Assembly chose otherwise when it enacted this provision. Nor does Medcorp explain how the provision has *any* meaning under its reading. In other words, Medcorp seems fine with simply redlining a few sentences out of the statute, since it disagrees with the Assembly's approach. The Court, of course, should not be so cavalier about gutting statutes.

Second, Medcorp attacks ODJFS's argument about the non-briefing scenario as "illusory and lacking a fundamental understanding or recognition of modern civil practice," but it is Medcorp that forgets the fundamentals and invokes illusions. ODJFS's no-briefing argument focused first on the fact that the statute was *designed* to make briefs optional, and that fact alone is important as a matter of legislative intent, even if modern practice evolved toward routine briefing. Medcorp never responds to that point. Equally important, case law shows that failure to file briefs is common, and Medcorp never grapples with the problem that arises when a non-briefing party has *also* filed a boilerplate notice of appeal with no real grounds statement, leaving the court to review an entire case with no guidance.

Finally, Medcorp folds in a grab bag of irrelevant arguments, none of which affects the outcome of this case. These arguments—comparisons to notice pleading and the civil rules, invocation of the preference for deciding cases on merits, and so on—are to no avail because this Court has repeatedly held that litigants must strictly comply with R.C. 119.12's procedural requirements and that a failure to do so is fatal to jurisdiction. Rather than ask the Court openly to overrule that longstanding principle—which the Court should not do even if asked—Medcorp seeks to dilute it by creative workarounds, but none can be squared with the Court's precedent.

For all these reasons and others below, the Court should reject Medcorp's attempt to read the grounds requirement out of the statute, and it should reverse the appeals court's decision.

## ARGUMENT

- A. Medcorp admits that it wishes to reduce the grounds requirement to nothing, but that result cannot be squared with R.C. 119.12's plain language and the canon against reading provisions to have no meaning.**

ODJFS's opening brief explained that Medcorp's notice of appeal did not confer jurisdiction on the courts because it failed to meet the requirement that the notice of appeal must state the grounds for the appeal. The grounds requirement must have content, and reciting the standard of review does not satisfy that requirement, because (1) the General Assembly established the grounds requirement independent of the standard of review, so they must be two different things, and (2) allowing the standard of review to *also* serve as a grounds statement would eliminate the stating-grounds requirement entirely, thereby rendering meaningless statutory language in R.C. 119.12. Medcorp's responses do not change those fundamental principles, and indeed, its primary response—insisting that it is a good thing to reduce this requirement to nothing—confirms why its view cannot be right.

- 1. Medcorp plainly admits that its view merges the grounds requirement and the standard of review, and it admits that its view allows every appellant to use the same language to state grounds with no case-specific language at all.**

Notably, Medcorp does not deny that it seeks to merge the grounds requirement and the standard of review into one item. It says “Medcorp’s approach is one which equates the ‘grounds requirement’ with what the Department characterized as the ‘standard of review.’” Medcorp Br. at 1.

Similarly, Medcorp does not deny that its approach would allow every appellant under R.C. 119.12 to use the identical boilerplate language without saying anything specific about the particular case. That is, it does not say that somehow its case differs from others, and that some cases call for more of a grounds statement than others, or any such theory. Rather, it embraces the result and calls it a good thing, praising the “uniformity” that arises when everyone uses

“boilerplate” language. Medcorp Br. at 7 (“Boilerplate’ appeal notices are not unfair. Rather, uniform notice procedure is desirable where it preserves and fosters the ability of appeals to be determined on their merits.”)

Both of these concessions are fatal to Medcorp’s cause, because, as explained below, neither can be squared with the statute.

**2. The grounds requirement and the standard of review are different concepts that the General Assembly established in distinct provisions.**

Medcorp’s attempt to merge two provisions into one is at odds with the statute’s plain language.

First, Medcorp does not explain why the General Assembly would have established these as two separate provisions if it did not consider them different things. R.C. 119.12, enacted before lettered and numbered subsections were standard practice, runs fifteen paragraphs. The grounds requirement is in the fourth paragraph, and is stated as a procedural duty that the appellant must meet: “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 (emphasis added). The standard of review comes much later, in the thirteenth paragraph; it instructs courts, not parties; and it is stated as substance, not a procedural step: “The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law.” That these provisions are separate shows that the General Assembly viewed them differently.

Second, the Assembly’s view squares with general usage, as a standard of review is commonly understood to be something different from a procedural requirement. Here, although the statute does not define the standard of review using the term “standard of review,” that is

plainly what it is, and indeed, the Court has repeatedly described it as such. See *Bd. of Educ. of Rossford v. State Bd. of Educ.* (1992), 63 Ohio St. 3d 705, 707; *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St. 3d 79, 81. This standard of review, like all standards of review, sets a substantive hurdle that an appellant must clear to win its case. It combines with the substantive law of whatever is at issue, so that the standard instructs a reviewing court as to how it must evaluate the relevant substantive law and the facts before it. Separately, the grounds requirement does not instruct courts how to review a case, but instead instructs an appellant to describe the basis for its appeal. See *Green v. State Bd. of Registration* (2nd Dist.), 2006 Ohio App. Lexis 1485, 2006-Ohio-1581 at ¶ 13 (citing *Black's Law Dictionary*, 710 (7th Ed. 1999)). To be sure, the standard of review, although phrased as an instruction to the reviewing court, in effect instructs an appellant that it must clear this hurdle to succeed in its appeal. But even if the standard is considered a requirement aimed at appellants, it still involves a different thing from the grounds requirement, and it matters at a different stage, too.

In sum, these two provisions are different, and Medcorp does not explain, as a matter of statutory construction, how they can be merged into one. It urges its policy preference for merger, and purports to explain why this is a good result, but nowhere does it explain how the rules of statutory construction or the common understanding of these terms can be squared with the result it seeks.

- 3. While Medcorp admits that its “uniform” and “boilerplate” approach means that the grounds requirement has no content, it does not attempt to reconcile that result with the principle that statutes are presumed to have meaning.**

As noted above, Medcorp does not deny that under its proffered interpretation of the statute, every appellant in the State would have the same “grounds” for appeal. An appellant challenging a liquor permit denial or a finding that he violated election laws would have the same grounds for his appeal as a real-estate broker challenging a license suspension or even a jail

administrator denied a variance for minimum jail standards. See *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 (appealing liquor permit denial pursuant to R.C. 119.12); *Flannery v. Ohio Elections Comm.* (10th Dist. 2004), 156 Ohio App. 3d 134, 2004-Ohio-582 (appealing Election Commission finding that candidate made false statement); *Board of Real Estate Examiners v. Peth* (2nd Dist. 1964) (appealing suspension of real estate brokerage license), 4 Ohio App. 2d 413; R.C. 5120.10(C) (allowing appeals pursuant to R.C. 119.12 if the Department of Rehabilitation and Corrections denies a request for variances for minimum jail standards). This would be true regardless of the claims raised by the appellants. An appeal based on a facial constitutional challenge to a statute in one of the scenarios listed above would have the same “grounds” as an appeal based on a hearing examiner’s allegedly erroneous admission of evidence in another case. In fact, in its Tenth District brief, Medcorp argued that a boilerplate notice of appeal like the one in this case would be the *only* acceptable notice of appeal. See Medcorp’s 10th District Response Br. at 8 (“In this case, 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 law.”).

Medcorp urges that having “uniform” notices of appeal is better because it would allow cases to be decided on their merits, Medcorp Br. at 8, but that argument suffers two fatal flaws.

First, as the Court has repeatedly held, R.C. 119.12’s procedural requirements are *jurisdictional*; that is, the failure to strictly comply with the appeal requirements in R.C. 119.12 deprives a reviewing court of jurisdiction. See, e.g., *Nibert v. Ohio Dep’t of Rehab. & Corr.* (1998), 84 Ohio St. 3d 100, 102; *Hughes v. Ohio Dep’t of Commerce*, 114 Ohio St. 3d 47, 52, 2007-Ohio-2877 (“[A] party adversely affected by an agency decision must likewise strictly comply with R.C. 119.12 in order to perfect an appeal.”). Courts should decide cases on their

merits *only* when they have jurisdiction. The “merits, not procedure” mantra might excuse non-judicial procedural flaws, but it cannot overcome a lack of jurisdiction. See, e.g., *Snow v. Brown* (10th Dist.), 2000 Ohio App. Lexis 4398, \*10. Therefore, appeal notices that fail to state grounds cannot be overlooked under the guise of “getting to the merits” of a case, as the Court has already rejected that approach in *Nibert* and *Hughes*.

Second, Medcorp’s argument never responds to ODJFS’s key point: that allowing identical notices of appeal improperly renders the statutory language meaningless. See ODJFS Br. at 10-12. The requirement that a party state “the grounds of the party’s appeal” must require an appellant to do *something*. That “something” must require an appellant to do more than notify the agency that an appeal has been filed. If appeal notices were intended only to notify agencies that an appeal had been filed, then the General Assembly would not have required appellants to state the grounds for their appeals. See, e.g., R.C. 3745.06 (requiring parties appealing decisions of environmental review appeals commission to designate order being appealed, but not requiring the notice to state grounds).

And the requirement to say *something*, combined with the point above that the standard of review is a distinct concept, means that reciting the standard of review cannot be the “something” that satisfies the grounds requirement. Because the standard of review is the same in all R.C. 119.12 appeals, every appellant must strive to meet it, so the mere act of filing a notice of appeal—even if the grounds requirement were repealed, and even if the appellant did nothing more than identify the order being appealed—is an assertion that the appeal meets the standard of review for reversal.

Finally, Medcorp says that ODJFS does not adequately define the precise scope of the grounds requirement, Medcorp Br. at 3, but that criticism is (1) incorrect and (2) no good reason

to eliminate the requirement. The criticism is incorrect because ODJFS explained fully that the Court need not resolve the scope question here, because Medcorp's notice fails to meet any standard above zero. And as an alternative, ODJFS outlined a workable standard to use, if the Court wishes to provide further guidance. ODJFS Br. At 15-17. To be sure, ODFJS did refer to the standard broadly as requiring "something" more than zero, but the broad reference to *something* was used to contrast Medcorp's demand to have *nothing* as the standard. And indeed, that is the strongest response to any of Medcorp's complaints about calibrating the standard: Even when linedrawing is hard, courts find a way to set standards. They do not refuse to enforce a statutory mandate merely because enforcement will sometimes require careful judgment.

**B. The grounds statement provides agencies and courts with valuable information, and the no-brief scenario confirms that as a matter of legislative intent and as a matter of practical application.**

Medcorp disputes ODJFS's showing that the grounds statement provides useful information as a practical matter, and it dismisses the importance of the no-briefing scenario in several ways. None of these arguments withstands scrutiny.

First, in downplaying the usefulness of a grounds statement, Medcorp argues that the court or agencies can essentially figure it out for themselves by reviewing other materials, but this view is wrong. Specifically, Medcorp says that agencies should be able to anticipate the factual or legal issues that will be raised on appeal by looking at the agency's report and recommendation, adjudication order, and objections (when they exist). Medcorp Br. at 9-10. But those materials cover the entire landscape of issues before the agency. Those documents do not tell anyone what the party wishes to appeal, unless one assumes that the agency order concerns only one issue or one assumes that a party appeals *every* issue in a multi-issue case. Further, a party might base an appeal not on anything reflected in the administrative record, but on something else entirely. For example, an appellant may raise constitutional challenges to

applicable statutes or the agency's rules or even challenge the hearing examiner's objectivity. See, e.g., *City of Reading v. Pub. Util. Comm. of Ohio* (2006), 109 Ohio St. 3d 193, 196, 2006-Ohio-2181, ¶ 16 (permitting facial constitutional challenges to be raised for the first time on appeal); *Derakhshan v. State Med. Bd.* (10th Dist.), 2007-Ohio-5802, ¶ 27 (same); *Meadowbrook Care Ctr. v. ODJFS* (10th Dist.), 2007-Ohio-6543 at ¶ 23 (rejecting appellant's claim of hearing-examiner bias). In short, agencies cannot determine the issues an appellant is likely to appeal by reviewing the administrative record.

Indeed, this case is a textbook example of an appeal in which the grounds are not obvious from reviewing the agency record. The massive agency record here included several days of hearing testimony and over a thousand pages of exhibits. The Hearing Examiner wrote a 55-page Report and Recommendation, Medcorp filed several pages of objections, and the agency issued a 49-page Adjudication Order, adopting some parts of the Report and Recommendation and rejecting others. Even if ODJFS might have had its own ideas about what legal and factual issues could be challenged in an appeal of such a case, an appellant could choose to appeal entirely different issues. An appellant might choose different issues based on its available resources, its independent evaluation of facts and law, and its desire for closure. Under such circumstances, ODJFS respectfully disagrees that it "fantastic" or "laughable" that ODJFS could be caught off-guard by novel arguments raised in an administrative appeal generally or this case in particular. See Medcorp Br. at 12.

Second, as an alternative to arguing that grounds can be discovered by looking backwards to the agency record, Medcorp argues that an agency can simply look forward to reading the brief when it arrives. That is, Medcorp says that a lack of meaningful grounds in a notice does not matter, because the brief will eventually arrive. As for those cases in which no brief is filed,

and the statute's express provision for cases to proceed without briefs, Medcorp essentially argues that all modern cases involve briefing and that that failure-to-file is not a problem. Medcorp says the "'non-briefing' scenario is illusory as lacking a fundamental understanding or recognition of modern civil practice." Medcorp Br. at 15. Medcorp is wrong on all counts.

Medcorp says that modern practice always calls for briefs, but that *practice*, even if true, ignores the point that the statute was *designed* to allow for cases to be resolved without briefing. See ODJFS Br. at 12-13. And a system designed to work without briefs is a system that assumes courts could review cases based on the grounds statement in the notice of appeal—that is, courts could review the record in light of that guidance. If that principle establishes that the grounds requirement once had meaning, then that meaning cannot evaporate later in time merely because modern practice typically involves briefs.

Further, the no-briefing scenario is relevant because parties often fail to file briefs in R.C. 119.12 appeals, even when required to do so. See, e.g., *Red Hotz, Inc. v. Liquor Control Comm.* (10th Dist.), 1993 Ohio App. Lexis 4032, \*2; *Adams v. Canton Civil Service Comm.* (5th Dist.), 1984 Ohio App. Lexis 11841, \*2; *Goehring v. Cuyahoga Cty. Welfare Dept.* (8th Dist.), 1983 Ohio App. Lexis 14463, \*2; *Gina Minello v. Orange City School Dist.* (8th Dist.), 1982 Ohio App. Lexis 11662, \*2-3; *In re: Appeal of Henderson* (10th Dist.), 1974 Ohio App. Lexis 2986, \*1; *Grecian Gardens, Inc. v. Board of Liquor Control* (10th Dist. 1964), 2 Ohio App. 2d 112, 113.

And when appellants fail to file briefs, lower courts do not dismiss cases for failure to prosecute; instead, courts routinely review the record to decide for themselves whether the challenged order satisfies the standard of review. See *Grecian Gardens*, 2 Ohio App. 2d at 113 (“[R.C. 119.12] does not permit the dismissal of such an appeal without examination of the

record to find out whether the order is supported by ‘reliable, probative, and substantial evidence.’”); *Adams*, 1984 Ohio App. Lexis 11841 at \*3 (same); *Feiertag v. Department of Liquor Control* (12th Dist.), 1982 Ohio App. Lexis 14341 at \*3 (same); *Red Hotz*, 1993 Ohio App. Lexis 4032 at \*3 (same); *Minello*, 1982 Ohio App. Lexis 11662 at \*6-7 (same). Local rules allowing courts to dismiss cases for failure to prosecute do not apply to R.C. 119.12 appeals. See *State ex rel. MADD v. Gosser* (1985), 20 Ohio St. 3d 30, 33 (“A local rule of court cannot prevail when, as in this case, it is inconsistent with the express requirements of a statute”); *Grecian Gardens*, 2 Ohio App. 2d at syllabus, ¶ 1 (“A rule of the common pleas court, authorizing dismissal of an appeal for want of prosecution upon failure of the appellant to file his brief . . . is invalid insofar as it applies to an appeal from an order of an agency under the provisions of [R.C. 119.12].”); *Feiertag*, 1982 Ohio App. Lexis 14341 at \*3-4 (“To the extent that the local rules conflict with the statutes involved herein [e.g., R.C. 119.12], they may not be imposed.”); *Minello*, 1982 Ohio App. Lexis 11662 at \*7 (same). Therefore, Medcorp’s attack on ODJFS’s “illusory” “non-briefing scenario” is meritless.

Medcorp tries to blur the difference between dismissal for failure to prosecute and a party’s loss on the merits, saying that “matters not prosecuted are routinely adversely decided as a matter of course if they are not dismissed outright for failure to prosecute neither of which disadvantages the non-appealing agency.” Medcorp Br. at 16. To the extent that Medcorp is suggesting that some of these no-briefing cases are procedurally dismissed for failure to prosecute, it is wrong. Medcorp cites no cases in which that happened; to the contrary, its “But see” cite acknowledges the cases in which courts have held that they may *not* dismiss appeals under R.C. 119.12 for failure to prosecute, but must instead review the record and resolve the

case on the merits. *Id.* (citing *Red Hotz*, 1993 Ohio App. Lexis 4032 at \*3, and *Minello*, 1982 Ohio App. Lexis 11662 at \*6-\*7).

To the extent that Medcorp equates cases “adversely decided” on the merits to those dismissed procedurally, it misses the point. The point is not whether the agency is disadvantaged by losing the case ultimately; the point is that both the agency and the court are severely burdened by having to address a case without either a brief or a meaningful grounds statement to go on. And Medcorp never grapples with that. Indeed, Medcorp gets it precisely backwards when it accuses ODJFS of basing arguments on the premise that courts have plenty of free time to comb through large agency records in no-brief cases. Medcorp Br. at 17. To the contrary, courts have crowded dockets, and it is precisely because of that strain that a court, if it must review a record without a brief, needs at least a grounds statement with real content to conduct a meaningful review.

**C. Medcorp’s case is not helped by any of its other arguments, as it misconstrues laws applicable to administrative appeals and final judgments.**

Medcorp can win only if it persuades the Court to eliminate the grounds requirement, and if it cannot do so—and that should be the case here—nothing else matters. Nevertheless, Medcorp adds several tangential arguments, and although they are irrelevant, these arguments are also wrong. Several of Medcorp’s points are based on inaccurate assumptions about laws applicable to administrative appeals and final judgments generally. Medcorp first claims that requiring appellants to do more than recite the standard of review will the Court down a slippery-slope that will end with the abandonment of a notice-pleading system that Medcorp claims has been in place for over 30 years. See Medcorp Br. at 3, 7. Medcorp then claims that this case can be resolved by this Court’s decision in *Henry’s Café, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233 and *Appeal of Stocker* (3rd Dist. 1968), 16 Ohio App. 2d 66, 71. *Id.* at 3-4.

Medcorp also claims that if this Court finds Medcorp's notice of appeal to be defective, then other administrative appeals with defective notices of appeal will be vacated, even if those cases have been closed for years. *Id.* at 4. As discussed below, these claims are mistaken.

Medcorp's notice-pleading argument fails because it confuses the notice-pleading standard applicable to *complaints* with jurisdictional requirements applicable to administrative *appeals*. Notice-pleading standards apply to initial pleadings (such as complaints and petitions, among others) filed in common pleas or other courts. See, e.g., Civ. R. 8, 10. But they do not apply to deciding whether a reviewing court has jurisdiction over an R.C. 119.12 appeal. This Court has long recognized that appellants must strictly comply with administrative appeal requirements to vest jurisdiction in a reviewing court. See, e.g., *Holmes v. Union Gospel Press* (1980), 64 Ohio St. 2d 187, 188. Failure strictly to follow statutory appeal procedures deprives an appellate tribunal of jurisdiction. See, e.g., *Hughes*, 114 Ohio St. 3d at 52; *Nibert*, 84 Ohio St. 3d at 102; *Board of Educ. of Mentor v. Bd. of Revision* (1980), 61 Ohio St. 2d 332, 334; *McCruiter v. Bd. of Review* (1980), 64 Ohio St. 2d 277, 260. This is because a litigant has no inherent right to appeal and thus may appeal only in the precise manner set forth by the law allowing the appeal. See, e.g., *Cooke v. Kinney* (1981), 65 Ohio St. 2d 7, 8. In short, no slippery-slope exists to slide down in this case. Strict compliance has been the standard to vest jurisdiction regarding R.C. 119.12 appeals in reviewing courts for nearly 30 years.

Medcorp misconstrues the case law when it states that this case can be resolved by applying the syllabus holding of *Henry's Café* in a manner consistent with the reasoning of *Appeal of Stocker*. See Medcorp Br. at 3-4. *Henry's Café* does not apply here. The issue in *Henry's Café* was whether a common pleas court could do anything other than affirm an administrative order if it found the order supported by reliable, probative, and substantial

evidence and in accordance with law. See *Henry's Café*, 170 Ohio St. at 237. Also, that case dealt with a part of R.C. 119.12 different from the part at issue here. *Henry's Café* dealt with the provision regarding the power of common pleas courts to reverse, vacate, or modify agency orders. *Id.* at 234. But this case deals with the portion of R.C. 119.12 requiring a party to set forth the “order appealed from and the grounds of the party’s appeal.” As discussed above, these two separate statutory provisions are not interchangeable. Therefore, *Henry's Café* does not apply. Neither does *Appeal of Stocker*, because that case held that the failure to state grounds for an appeal does not deprive the common pleas court of jurisdiction. *Appeal of Stocker* (3rd Dist. 1968), 16 Ohio App. 2d 66, 71. As discussed above and in ODJFS’s opening brief, the Court has rejected that approach in favor of requiring strict compliance with R.C. 119.12’s requirements. Similarly, cases in which appeals courts allowed “substantial compliance” rather than strict compliance do not help Medcorp. See Medcorp Br. at 21, citing *Pham v. Ohio State Board of Cosmetology* (5th Dist.), 1998 Ohio App. Lexis 2506; *id.* at 11-12, citing *Weissberg v. State* (8th Dist.), 1977 Ohio App. Lexis 8761.

Medcorp is also wrong in warning that if the Court determines that the lower courts lacked jurisdiction over Medcorp’s appeal, then other R.C. 119.12 appeals “will be retroactively vacated for want of jurisdiction.” Medcorp Br. at 4. Closed cases will not be reopened and reversed. A court’s judgment entry precludes the parties from litigating the question of the court’s subject-matter jurisdiction. See Restatement 2d of Judgments, §12; *Vitale v. Connor* (5th Dist.), 1985 Ohio App. Lexis 8004, \*7; *Kansas City Southern Railway Co. v. Great Lakes Carbon Corp.* (8th Cir. 1980), 624 F.2d 822, 825 (denying collateral attack on final judgment for lack of subject-matter jurisdiction). None of the three exceptions to this general rule apply here. Restatement 2d of Judgments, §12. More important, even if an exception could be found, the State has no

interest in reopening and relitigating closed cases. It did not do so after the Court decided the original-vs.-copy issue in *Hughes*, and it will not do so on the grounds issue.

Nor does case law from other jurisdictions support Medcorp's case. Medcorp claims that Ohio should adopt the holding of a single Georgia case stating that appeal notices are sufficient if the appeal can "reasonably be construed as assigning an error on one of the grounds provided for" by statute. See Medcorp Br. at 11 (citing *Truckstops of America, Inc. v. Engram* (Ga. App. Ct. 1996), 220 Ga. App. 289). Medcorp further argues that this holding is reflected in the Ohio case of *Weissberg*, 1977 Ohio App. Lexis 8761 at \*5-6. But *Truckstops* is distinguishable because the Georgia statute at issue in *Truckstops* statutorily defined "grounds" for the appeal at issue there. Here, the whole issue is whether Medcorp has stated grounds for appeal. And *Weissberg* does not apply, as noted above, because it held R.C. 119.12 should be liberally construed, contrary to this Court's instructions in *Hughes* and other cases.

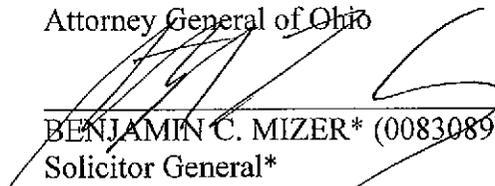
In sum, none of the other principles or cases that Medcorp cites help it to overcome Medcorp's fundamental problem: the grounds requirement must mean something, and because Medcorp said nothing, its notice was defective and it failed to invoke the courts' jurisdiction over its administrative appeal.

## CONCLUSION

For the reasons above and in ODJFS's Merit Brief, the Court should reverse the judgment below and answer "yes" to the certified question.

Respectfully submitted,

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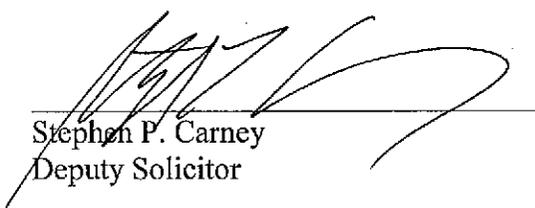
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Appellant Ohio Department of Job and Family Services was served by U.S. mail this 20th day of October 2008 upon the following counsel:

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