

ORIGINAL

IN THE SUPREME COURT OF OHIO

The State of Ohio ex rel.)
)
 Melissa N. Siler-Stoll)
 360 South Reynolds Road)
 Toledo, Ohio 43615-5999,)
)
 and)
)
 Open Arms, Inc.)
 360 South Reynolds Road)
 Toledo, Ohio 43615-5999,)
)
 Relators,)
)
 v.)
)
 Ohio Department of)
 Developmental Disabilities)
 30 East Broad Street, 13th Floor)
 Columbus, Ohio, 43215,)
)
 and)
)
 John L. Martin)
 Director of the Ohio Department of)
 Developmental Disabilities)
 30 East Broad Street, 13th Floor)
 Columbus, Ohio, 43215,)
)
 and)
)
 Robert C. Angell)
 Hearing Examiner of the)
 Ohio Department of)
 Developmental Disabilities)
 13587 Capetown Avenue)
 Pickerington, Ohio 43147-8855,)
)
 Respondents.)

Case number: 14-1617

FILED
 SEP 18 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

COMPLAINT FOR WRIT OF PROHIBITION

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Counsel for Relators
Melissa N. Siler-Stoll and
Open Arms, Inc.

Relators Melissa N. Siler-Stoll and Open Arms, Inc., for their complaint against respondents, the Ohio Department of Developmental Disabilities (“DODD”), John L. Martin, Director of DODD, and DODD Hearing Examiner Robert C. Angell, state as follows:

PARTIES

1. Relator Ms. Siler-Stoll is the president of Open Arms, Inc.
2. Relator Open Arms, Inc. is an Ohio corporation which provides social services pursuant to certifications, waivers, and licenses granted to it by DODD pursuant to R.C. Chapter 5123.
3. Respondent DODD is a state, administrative agency authorized, constituted, and operating pursuant to R.C. Chapter 5123.
4. Respondent Mr. Martin is the duly appointed director of DODD.
5. Respondent Mr. Angell is an attorney in private practice and has been appointed by DODD and Mr. Martin to serve as the hearing examiner in an administrative hearing concerning allegations that DODD has brought against Ms. Siler-Stoll and Open Arms.

JURISDICTION

6. Relators incorporate all preceding paragraphs of this complaint herein.
7. Ohio Constitution, Article IV, Section 2(B)(1)(d) and Rules 5.06 and 12.01-12.07 of The Supreme Court of Ohio Rules of Practice vest this court with original jurisdiction to grant a writ of prohibition.

FACTS

Case #1

8. Relators incorporate all preceding paragraphs of this complaint herein.
9. On or about June 28, 2013, DODD issued two notices of opportunity for hearing to Ms. Siler-Stoll and Open Arms (i) proposing to revoke Open Arms' certifications and (ii) suspending Open Arms' certifications for several alleged violations of the Ohio Revised Code and Ohio Administrative Code. *See* notice of opportunity for hearing #1 (Exhibit 1); notice of opportunity for hearing #2 (Exhibit 2). For purposes of this complaint, this case is referred to as "Case #1."
10. On or about July 5, 2013, Ms. Siler-Stoll retained Melissa J. Mitchell of Collis, Smiles & Collis, LLC, 1650 Lake Shore Drive, Suite 225, Columbus, Ohio, 43204, to defend and represent Open Arms and her in the matter with DODD. *See* Affidavit of Melissa N. Siler-Stoll ¶3 (Exhibit 3).
11. On or about October 25, 2013, it became necessary to replace Ms. Mitchell and find another attorney to defend and represent Ms. Siler-Stoll and Open Arms in Case #1. *See id.* ¶4.
12. On or about October 4, 2013, Ms. Siler-Stoll was referred to Mr. Angell as an attorney who could represent her in Case #1. *See id.* ¶5-8.
13. Ms. Siler-Stoll had several telephone conversations with Mr. Angell regarding his possible representation of Open Arms and her in Case #1. *See id.* ¶8.
14. During these telephone conversations between Ms. Siler-Stoll and Mr. Angell regarding Case #1, Ms. Siler-Stoll disclosed to Mr. Angell detailed,

substantive, and confidential information about the DODD allegations, Open Arms, and herself. *See id.* ¶8.

15. Ms. Siler-Stoll and Open Arms ultimately retained another attorney to represent them in Case #1. *See id.*

Case #2

16. Relators incorporate all preceding paragraphs of this complaint herein.
17. On or about March 6, 2014, DODD issued a new notice of opportunity for hearing to Ms. Siler-Stoll and Open Arms proposing to deny Open Arms' certification renewal application. *See* notice of opportunity for hearing #3 (Exhibit 4).
18. On or about April 28, 2014, DODD issued a revised notice of opportunity for hearing to Ms. Siler-Stoll and Open Arms proposing to deny Open Arms' certification renewal application. *See* notice of opportunity for hearing #4 (Exhibit 5). For purposes of this complaint, this case is referred to as "Case #2."
19. The administrative charges in Case #1 are substantially related to the administrative charges in Case #2 because both are matters in which DODD is seeking to take administrative action against Open Arms' certifications. *See* Exhibits 1, 2, 4, and 5.
20. DODD has appointed Mr. Angell to serve as hearing examiner in Case #2.

21. The nature of the confidential information Mr. Angell learned in the course of his consultation with Ms. Siler-Stoll and Open Arms necessarily would impact any decision he made as a hearing examiner in Case No. 2.
22. There are dozens (and perhaps hundreds) of attorneys who are (i) licensed to practice law in Ohio and (ii) qualified to serve as DODD's hearing examiner in Case #2. Mr. Angell is not uniquely qualified to serve as DODD's hearing examiner in Case #2.
23. Because of the detailed, substantive, and confidential information about Open Arms, Ms. Siler-Stoll, and Case #1 that she disclosed to Mr. Angell in the telephone conversations detailed in ¶14 above, Mr. Angell has personal knowledge of facts that are also in dispute in Case #2. *See* Affidavit of Melissa N. Siler-Stoll ¶11.
24. Mr. Angell has a conflict of interest within the meaning of Rule 1.9 of the Ohio Rules of Professional Conduct that prevents him from presiding over an administrative hearing involving his former clients (Ms. Siler-Stoll and Open Arms), especially on the same matter for which he was consulted; , *i.e.*, the adverse action DODD intends to take against Open Arms' certifications.

Mr. Angell may not lawfully serve as DODD's hearing examiner in Case #2

25. Relators incorporate all preceding paragraphs of this complaint herein.
26. Mr. Angell's serving as hearing examiner in Case #2 violates the Fourteenth Amendment to the U.S. Constitution. *See Althof v. Ohio State Board of Psychology*, 10th Dist. No. 05AP-1169, 2007-Ohio-1010, ¶12.

27. Mr. Angell's serving as hearing examiner in Case #2 violates Article I, Section 16 of the Ohio Constitution. *See id.*
28. Mr. Angell's serving as hearing examiner in Case #2 deprives Ms. Siler-Stoll and Open Arms of their due process right to have their case heard by a fair and impartial fact finder. *See State ex rel. Ormet Corp. v. Industrial Comm'n. of Ohio*, 54 Ohio St.3d 102, 103-104, 561 N.E.2d 920 (1990); *American Cyanimid Co. v. FTC*, 363 F.2d 757, 767 (6th Cir. 1966).
29. Because the conversations between Ms. Siler-Stoll and Mr. Angell described in ¶13-14 above were consultations between a client and an attorney for purposes of retaining the attorney, Ms. Siler-Stoll and Open Arms are Mr. Angell's former clients pursuant to R.C. §2317.021(A).
30. Mr. Angell's serving as hearing examiner in Case #2 violates his non-waivable duties to Ms. Siler-Stoll and Open Arms pursuant to Rule 1.6 of the Ohio Rules of Professional Conduct (confidentiality of information).
31. Mr. Angell's serving as hearing examiner in Case #2 violates his non-waivable duties to Ms. Siler-Stoll and Open Arms pursuant to Rule 1.9 of the Ohio Rules of Professional Conduct (duties to former clients) because he will necessarily use information gained in the course of his service to DODD adversely against his former clients Ms. Siler-Stoll and Open Arms.
32. Ms. Siler-Stoll and Open Arms have never provided consent, express, implied, or otherwise, to Mr. Angell for him to represent or serve another person, agency, or entity in the same or substantially related matter in which such other person, agency, or entity is materially adverse to Ms. Siler-Stoll's or

Open Arms' interests, such as in Case #1 and Case #2. *See* Affidavit of Melissa N. Siler-Stoll ¶14.

33. Although aware of the non-waivable conflict that prevents him from impartially serving as DODD's hearing examiner in Case #2, Mr. Angell has failed and refused to recuse himself as hearing examiner in Case #2. *See* Open Arms' Motion For Hearing Examiner Robert C. Angell To Recuse Himself From Serving As Hearing Examiner (Exhibit 6); Hearing Examiner's Entry and Order (Exhibit 7).

Mr. Angell's serving as DODD's hearing examiner in Case #2 presents both actual impropriety and the appearance of impropriety as his impartiality reasonably is questioned

34. Relators incorporate all preceding paragraphs of this complaint herein.
35. As a hearing examiner presiding over an administrative hearing pursuant to R.C. Chapter 119, Mr. Angell is acting in a quasi-judicial capacity.
36. The Ohio Code of Judicial Conduct is instructive and prohibits Mr. Angell from presiding over Case #2.
37. Rule 2.11(A)(7)(1) of the Ohio Code of Judicial Conduct prohibits Mr. Angell from acting in a judicial or quasi-judicial capacity over Case #2 because he previously served as a lawyer on the matter in controversy.
38. Rule 1.2 of the Ohio Code of Judicial Conduct requires a judge at all times to promote the public confidence in the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety. Mr. Angell presiding over Case #2 demonstrates impropriety as it compromises the independence, integrity and impartiality of the judge and,

thereby, undermines public confidence in the judiciary, in Case #2 an independent administrative hearing examiner. *See* Rule 1.2 of the Ohio Code of Judicial Conduct, Comment [3].

39. Mr. Angell presiding over Case #2 also presents the appearance of impropriety such that it creates, in reasonable minds, a perception that the judge engaged in conduct that is prejudicial to public confidence in the judiciary by presiding over a matter where his impartiality reasonably is questioned. *See* Rule 1.2 of the Ohio Code of Judicial Conduct, Comment [5].
40. In his consultations with Ms. Siler-Stoll and Open Arms, Mr. Angell suggested that he knew Assistant Attorney General Roger Carroll and was in a position to influence him to Ms. Siler-Stoll's and Open Arms' advantage. *See* Affidavit of Melissa N. Siler-Stoll ¶¶12-13. As a result, Mr. Angell is not qualified to serve as hearing examiner in Case #2 as he has conveyed that Assistant Attorney General Carroll is in a position to influence him in violation of Rule 2.4(C) of the Ohio Code of Judicial Conduct.
41. Mr. Angell's comments to Ms. Siler-Stoll described in ¶40 above constitute a private statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending before him in violation of Rule 2.10(A) of the Ohio Code of Judicial Conduct.

A Writ of Prohibition is warranted in this case

42. Relators incorporate all preceding paragraphs of this complaint herein.
43. There is a R.C. Chapter 119 administrative hearing scheduled in Case #2 for September 23, 2014.
44. DODD has appointed Mr. Angell to serve as hearing examiner at the hearing scheduled for September 23, 2014 in Case #2.
45. Mr. Angell, on DODD's behalf, is about to exercise quasi-judicial power over Ms. Siler-Stoll and Open Arms, at the hearing scheduled for September 23, 2014 in Case #2. *See State ex rel. La Boiteaux Co., Inc. v. Court of Common Pleas, Hamilton County*, 61 Ohio St.2d 60, 61, 399 N.E.2d 90 (1980) (per curiam). *See also Wellington v. Mahoning County Board of Elections*, 117 Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420 (addressing writ of prohibition in an administrative law context).
46. It is clearly unauthorized by law for Mr. Angell to exercise quasi-judicial power over Ms. Siler-Stoll and Open Arms at the hearing scheduled for September 23, 2014 in Case #2 because the exercise of such quasi-judicial power would violate, *inter alia*, (i) the due process right to a fair and impartial hearing provided by the Fourteenth Amendment to the U.S. Constitution, (ii) the due process right to a fair and impartial hearing provided by Article I, Section 16 of the Ohio Constitution, (iii) Rule 1.6 of the Ohio Rules of Professional Conduct, (iv) Rule 1.9 of the Ohio Rules of Professional Conduct, (v) Rule 1.2 of the Ohio Code of Judicial Conduct, (vi) Rule 2.4 of the Ohio Code of Judicial Conduct, (vii) Rule 2.10 of the Ohio Code of

Judicial Conduct, and (viii) Rule 2.11 of the Ohio Code of Judicial Conduct. See ¶24, 26-28, 30-31, 38-41 above; *Boiteaux, supra*, at 61.

47. Because Case #2 is an administrative hearing, appellate review of any decision rendered by Mr. Angell and DODD as a result of the hearing scheduled for September 23, 2014 in Case #2 would be limited to whether DODD's and Mr. Angell's order is supported by reliable, probative, and substantial evidence and is in accordance with law. See *University of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110, 407 N.E.2d 1265 (1980). Accordingly, a hearing before an impartial hearing examiner at the administrative level is crucial.
48. Because of the extremely limited scope of appellate review in administrative cases, an order from Mr. Angell and DODD that, because of Mr. Angell's ethical conflict of interest, violates the laws and rules listed in ¶46 above would escape appellate review in the ordinary course of law. See *Boiteaux, supra*, at 61.
49. Accordingly, unless this court issues a writ of prohibition prohibiting Mr. Angell from serving as the hearing examiner in Case #2, Ms. Siler-Stoll and Open Arms will be deprived of their right to a hearing before an impartial hearing examiner, which would result in injury (*i.e.*, denial of Open Arms' certification renewal application) for which there is no adequate remedy in the ordinary course of law. See *id.*

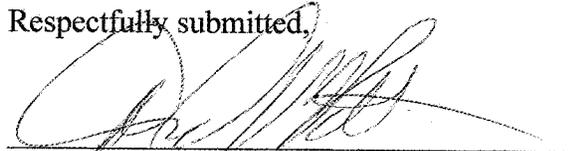
50. Pursuant to Rule 12.02(B) of The Supreme Court of Ohio Rules of Practice, this complaint is supported by an affidavit specifying the details of the claim. *See* Affidavit of Melissa N. Siler-Stoll re: Rule 12.02(B) (Exhibit 8).
51. Therefore, Ms. Siler-Stoll and Open Arms are entitled to a writ of prohibition prohibiting Mr. Angell from serving as a DODD hearing examiner in Case #2. *See* ¶¶42-50 above (discussing all of the necessary elements of a complaint for writ of prohibition).

PRAYER FOR RELIEF

Wherefore, relators Ms. Siler-Stoll and Open Arms pray for relief as follows:

- (i) Issuance of a writ of prohibition prohibiting Mr. Angell from serving as DODD's hearing examiner in Case #2;
- (ii) Issuance of an order staying the administrative hearing in Case #2 pending DODD's appointment of a lawful, impartial, unbiased substitute hearing examiner to preside over Case #2; and
- (iii) Any other relief deemed appropriate by this court

Respectfully submitted,



David V. Patton (0070930)
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P.O. Box 39192
Solon, Ohio 44139-0192

(440) 248-1078 (telephone)
(440) 201-6465 (facsimile)
dpatton@lawpatton.com (e-mail)

Counsel for Relators
Melissa N. Siler-Stoll and
Open Arms, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Complaint For Writ Of Prohibition was sent via regular U.S. Mail, postage prepaid, on September 18, 2014, to the following:

Ohio Department of
Developmental Disabilities
30 East Broad Street, 13th Floor
Columbus, Ohio 43215

Respondent

John L. Martin
Director of the Ohio Department of
Developmental Disabilities
30 East Broad Street, 13th Floor
Columbus, Ohio, 43215

Respondent

Robert C. Angell (0061151)
Hearing Examiner of the
Ohio Department of
Developmental Disabilities
13587 Capetown Avenue
Pickerington, Ohio 43147-8855¹

Respondent

The relators also request that this court serve a copy of the foregoing Complaint For Writ Of Prohibition upon all of the respondents according to the court's procedures for such service.



David V. Patton (0070930)

Counsel for Relators

¹ According to The Supreme Court of Ohio's on-line attorney directory, Mr. Angell's mailing address is 13587 Capetown Avenue, Pickerington, Ohio, 43147-8855. See http://www.sconet.state.oh.us/AttySvcs/AttyReg/Public_AtorneyDetails.asp?ID=0061151 (accessed September 17, 2014).

EXHIBITS

- Exhibit 1: Notice of opportunity for hearing #1
- Exhibit 2: Notice of opportunity for hearing #2
- Exhibit 3: Affidavit of Melissa N. Siler-Stoll
- Exhibit 4: Notice of opportunity for hearing #3
- Exhibit 5: Notice of opportunity for hearing #4
- Exhibit 6: Open Arms' Motion For Hearing Examiner Robert C. Angell To Recuse Himself From Serving As Hearing Examiner (exhibit omitted)²
- Exhibit 7: Hearing Examiner's Entry and Order
- Exhibit 8: Affidavit of Melissa N. Siler-Stoll re: Rule 12.02(B)

² The exhibit to Open Arms' Motion For Hearing Examiner Robert C. Angell To Recuse Himself From Serving As Hearing Examiner is also Exhibit 3 to this Complaint For Writ Of Prohibition.

Ohio | Department of
Developmental Disabilities

Office of Provider Standards & Review

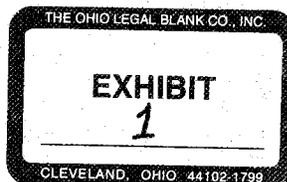
John R. Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Certified Mail # 7012 1640 0001 8221 9910

August 13, 2013

Open Arms
Attn.: Melissa Stoll
360 Reynolds
Toledo, OH 43615

Re: **Proposed Revocation of Certifications (Amended)**
DODD Provider Certification: #4803761
ODJFS Medicaid: #2819472
Individual Options Waiver
Homemaker Personal Care Effective: 5/13/08
HPC Transportation Effective: 5/13/08
Adult Day Support Effective: 5/13/08
Supported Employment- Community Effective: 5/13/08
Supported Employment- Enclave Effective: 5/13/08
Vocational Habilitation Effective: 5/13/08
Non-Medical Transportation Mileage Effective: 5/13/08
Non-Medical Transportation Per-Trip Effective: 5/13/08
Adult Foster Care Effective: 5/13/08
Community Respite Effective: 3/23/12
Residential Respite Effective: 3/23/12
Level One Waiver
Homemaker Personal Care Effective: 5/13/08
HPC Transportation Effective: 5/13/08
Adult Day Support Effective: 5/13/08
Supported Employment- Community Effective: 5/13/08
Supported Employment- Enclave Effective: 5/13/08
Vocational Habilitation Effective: 5/13/08
Non-Medical Transportation Mileage Effective: 5/13/08
Non-Medical Transportation Per-Trip Effective: 5/13/08
Community Respite Effective: 7/01/13
Residential Respite Effective: 7/01/13
Self-Empowered Life Funding Waiver
Adult Day Support Effective: 7/1/12
Supported Employment- Enclave Effective: 7/1/12
Vocational Habilitation Effective: 7/1/12
Non-Medical Transportation Mileage Effective: 7/1/12
Non-Medical Transportation Per-Trip Effective: 7/1/12
Community Respite Effective: 7/1/12
Residential Respite Effective: 7/1/12



Dear Ms. Stoll:

Please be advised that that this Proposed Revocation amends the previous Proposed Revocation dated June 28, 2013. The letter advises that the Ohio Department of Developmental Disabilities (Department) is proposing to issue an adjudication order revoking your Individual Options Waiver, Level One Waiver and Self-Empowered Waiver provider certifications.

Ohio Revised Code 5123.166

- (A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:
- (2) Revocation of a supported living certificate;
- (B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:
- (4) Miffeasance
- (5) Malfeasance
- (6) Nonfeasance
- (7) Confirmed abuse or neglect
- (8) Financial Irresponsibility
- (9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

The Support Living Provider, Individual Options Waiver, Level One Waiver and Self-Empowered Waiver provider certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for this action is as follows:

Areas of non-compliance that present significant risks to the health and safety of individuals that your agency provides services to as identified in a special review that was completed on 5/15/13. It is additionally noted, the agency was subject to a special review in 2008 in which they received nine citations, a regular review 2010 in which they were issued twelve citations and a special review on 3/2/12 & 3/5/12 in which they were issued nine citations. A review of all four compliance reviews evidenced that the agency had received a number of citations that were the same or similar in nature and have been unable to maintain prior plans of correction.

In addition to the compliance reviews, since March 2012 the agency has had several substantiated Major Unusual Incidents (MUI's) related to:

- Verbal Abuse
 - 2013-048-0094 (ID#2) *The provider attempted to interfere with Free Choice of Provider Standards. The provider used language that was coercive in an attempt to alter decisions to change providers. The residential provider agency's response to the notice given by the consumer's guardian was an emotional one and included multiple staff telling the consumer that they were saddened that she was leaving their agency.*
- Neglect
 - 2012-048-0175 (ID#4) *The PPI prepared both housemates' medications at the same time, resulting in the individual receiving the incorrect medication. Neither the PPI (nor the other staff present when the incident occurred) notified the transportation staff or day*

program provider of the medication error prior to the individual being transferred to their care.

- 2012-048-0972: (ID#5) The individual has a history of inflicting harm to self with sharps by cutting. As a result of this, sharps are secured in the individual's home as written in her behavior support plan. The individual has mental health issues including pervasive developmental disorder. She engages in behaviors aimed at getting staff attention, including hurting herself superficially. It was reported by the individual's day program that the individual had a steak knife in her purse when she arrived to the day program site. This indicates staff failed to ensure sharps were secured/or appropriate supervision allowing the individual to access the steak knife.
- 2013-048-0098: (ID#6) The PPI failed to follow the individual's supervision level. While out of staff's line of sight, the individual opened a key box and obtained the keys to his sharps box. The individual then opened his sharps box and used a razor to cut himself. The individual has a sharps restriction in his Behavior Support Plan because of previous self-injurious behavior, suicidal ideation, bipolar and antisocial personality disorders.
- 2013-048-0351: (ID#3) The provider failed to ensure individuals safety per the behavior plan while transporting. The individual's behavior support plan indicates the individual requires use of a buckle shroud during transport with one staff. An incident occurred where the individual exited the vehicle during transport due to failure to use the buckle shroud placing him in immediate risk for sever injury. It was identified that Open Arms CEO was aware of the incident and assisted in talking to the consumer to calm him. The staff admitted he was the only staff with the individual at the time of the incident. Multiple reports were verified that there were no working buckle shrouds available to staff, therefore the support had not been implemented on more occasions than the date of this incident.
- ◆ Failure to Report
 - 2013-048-0352: (ID#3) Failure to appropriately report and record, track, monitor incidents by agency management. Staff reported writing several behavior incidents that were not kept in provider records. CEO failed to document and report an incident in which she was directly involved.
- ◆ Unapproved Behavior Support
 - 2013-048-0240: (ID#7) It was reported during the investigation from the provider that the bus monitor did not use a wrist restraint. It was reported that the bus monitor stood up and told the individual to let go of the driver's hair. The bus monitor put his arm around the individual's shoulder, as using a redirection. It is assumed that the bus monitor was escorting the individual to a seat on the bus to calm. The individual's behavior support plan does not authorize escorts as an intervention; thus the provider did not report the incident timely to the county board, thus resulting in a finding of failure to report timely.
- ◆ Neglect- Death
 - 2011-048-0779: (ID#1) The provider failed to follow ISP guidelines for notifying physician of health concerns, providing adequate training to staff for dietary needs, relaying correct and adequate information to health care professionals regarding acute symptoms, and following physician orders to seek emergency room treatment at management and direct care staff levels contributing to the death.
- ◆ Findings for Late Reporting
 - 2013-048-0240: (ID#7) On 3/27/13 the Lucas County Board of Developmental Disabilities MUI unit received notification of a Unapproved Behavior Support MUI from Open Arms that occurred on 3/25/13. The incident was not reported timely.
 - 2013-048-0351: (ID#3) On April 22, 2013, the Lucas County Board of DD MUI unit received a report from a community member regarding concerns with the individual's behaviors and staff's interactions with him. One staff reported multiple behavioral incidents in the past 2 weeks, including the use of physical restraint in one of them, and

stated that he had completed 6 or 7 corresponding incident reports. A second staff reported an incident that occurred 2 weeks earlier involving the individual jumping out of a vehicle being driven by staff while in transit. These incidents were not reported timely.

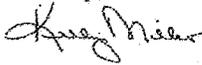
- 2012-048-0974: (ID#5) On December 3, 2012, the Lucas County Board of Developmental Disabilities MUI unit received notification of an *Unscheduled Hospitalization MUI* from *Open Arms*, the residential provider. According to the report, on November 20, 2012, the individual made suicidal threats, while at her day program, and staff called 911. The individual was transported by law enforcement to *Rescue Crisis*. The following day, the residential provider was advised that she had been admitted to the hospital for psychiatric evaluation and treatment. The residential and day program providers did not report the admission, and the MUI unit was not aware of the hospitalization until receiving discharge records from the residential provider on December 3, 2012. The incident was not reported timely.
- 2012-048-0341: (ID#8) On 5/2/12 the Lucas County Board of Developmental Disabilities MUI unit received notification of a *Known Injury MUI* from the individual's service and support specialist. It was reported that on 4/28/12 while receiving services through *Open Arms* at the *YMCA*, the individual slipped while entering the pool. The incident was not reported timely.
- 2013-048-0237: (ID#7) On March 27, 2013, the Lucas County Board of Developmental Disabilities MUI unit received notification of a *Peer-to-Peer Act (Physical Abuse) MUI* from *Open Arms*, the day program, transportation, and residential provider for the individual. According to the report, on March 25, 2013, the individual became upset while being transported home by *Open Arms* staff and became aggressive toward the driver, pulling her hair. The incident was not reported timely.

You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed revocation provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you. Corporation and limited liability companies must be represented by an attorney licensed to practice law in Ohio.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 East Broad Street, 12th Floor Columbus, Ohio 43215.

If you do not request a hearing within the time allowed, an adjudication order will be issued revoking your provider certifications.

Sincerely,



Kelly Miller, Assistant Deputy Director
Office of Provider Standards and Review

cc: John Trank, Superintendent, Lucas County Board of Developmental Disabilities
Kelly Miller, Assistant Deputy Director, Ohio Department of Developmental Disabilities
Hank Sellan, LAA Coordinator, Bureau of Community Access, ODJFS
Alan Kidder, Provider Compliance Manager, ODJFS
Kathryn Haller, Chief Legal Counsel, Ohio Department of Developmental Disabilities Legal Services
Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities Legal Services
Angel Morgan, Manager, Provider Certification, Ohio Department of Developmental Disabilities
Vanessa Prather, Review Manager, Ohio Department of Developmental Disabilities
Theresa Ryan, Review Manager, Ohio Department of Developmental Disabilities
Journal

Ohio | Department of
Developmental Disabilities

Office of Provider Standards & Review

John Kasich, Governor
John L. Martin, Director

**CERTIFIED MAIL RETURN
RECEIPT REQUESTED**

Certified Mail # 7012 1640 0001 8221 9903

August 13, 2013

Open Arms
Attn.: Melissa Stoll
360 Reynolds
Toledo, OH 43615

Re: Order Suspending Certifications (Amended)

DODD Provider Certification: #4803761

ODJFS Medicaid: #2819472

Individual Options Waiver

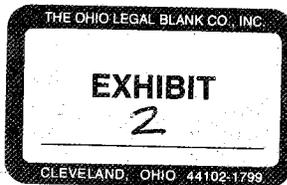
<i>Homemaker Personal Care</i>	<i>Effective: 5/13/08</i>
<i>HPC Transportation</i>	<i>Effective: 5/13/08</i>
<i>Adult Day Support</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Community</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 5/13/08</i>
<i>Vocational Habilitation</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Per-Trip</i>	<i>Effective: 5/13/08</i>
<i>Adult Foster Care</i>	<i>Effective: 5/13/08</i>
<i>Community Respite</i>	<i>Effective: 3/23/12</i>
<i>Residential Respite</i>	<i>Effective: 3/23/12</i>

Level One Waiver

<i>Homemaker Personal Care</i>	<i>Effective: 5/13/08</i>
<i>HPC Transportation</i>	<i>Effective: 5/13/08</i>
<i>Adult Day Support</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Community</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 5/13/08</i>
<i>Vocational Habilitation</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Per-Trip</i>	<i>Effective: 5/13/08</i>
<i>Community Respite</i>	<i>Effective: 7/01/12</i>
<i>Residential Respite</i>	<i>Effective: 7/01/12</i>

Self-Empowered Life Funding Waiver

<i>Adult Day Support</i>	<i>Effective: 7/1/12</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 7/1/12</i>
<i>Vocational Habilitation</i>	<i>Effective: 7/1/12</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 7/1/12</i>
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<i>Community Respite</i>	<i>Effective: 7/1/12</i>
<i>Residential Respite</i>	<i>Effective: 7/1/12</i>



Dear Ms. Stoll:

Please be advised that this Order of Suspension amends the previous Order of Suspension dated June 28, 2013. The letter advises that the Ohio Department of Developmental Disabilities (DODD) has issued this order suspending your Individual Options Waiver, Level One Waiver and Self-Empowered Life Funding Waiver provider certifications from beginning to serve any individuals not currently being served by your agency.

Ohio Revised Code 5123.166

(A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(3) Suspension of a supported living certificate holder's authority to do either or both of the following:

(b) Begin to provide supported living to one or more individuals from one or more counties who do not receive supported living from the certificate holder at the time the director takes the action.

(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

(4) Misfeasance

(5) Malfeasance

(6) Nonfeasance

(7) Confirmed abuse or neglect

(8) Financial Irresponsibility

(9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

(D)(1) The director may issue an order requiring that action specified in division (A)(3) of this section be taken before a provider is provided notice and an opportunity for a hearing if all of the following are the case:

(a) The director determines such action is warranted by the provider's failure to continue to meet the applicable certification standards;

(b) The director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the provider;

The Supported Living Provider, Level One Waiver, Self Empowered Life Funding Waiver, and Individual Options Waiver certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for this action is as follows:

Areas of non-compliance that present significant risks to the health and safety of individuals that your agency provides services to as identified in a special review that was completed on 5/15/13. It is additionally noted, the agency was subject to a special review in 2008 (see attached) in which they received nine citations, a regular review 2010 (see attached) in which they were issued twelve citations and a special review on 3/2/12 & 3/5/12

(see attached) in which they were issued nine citations. A review of all four compliance reviews evidenced that the agency had received a number of citations that were the same or similar in nature and have been unable to maintain prior plans of correction.

In addition to the compliance reviews, since March 2012 the agency has had several substantiated Major Unusual Incidents (MUI's) related to:

- Verbal Abuse
 - 2013-048-0094: (ID#2) *The provider attempted to interfere with Free Choice of Provider Standards. The provider used language that was coercive in an attempt to alter decisions to change providers. The residential provider agency's response to the notice given by the consumer's guardian was an emotional one and included multiple staff telling the consumer that they were saddened that she was leaving their agency.*
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 - 2012-048-0175 (ID#4) *The PPI prepared both housemates' medications at the same time, resulting in the individual receiving the incorrect medication. Neither the PPI (nor the other staff present when the incident occurred) notified the transportation staff or day program provider of the medication error prior to the individual being transferred to their care.*
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 - 2013-048-0351: (ID#3) *The provider failed to ensure individuals safety per the behavior plan while transporting. The individual's behavior support plan indicates the individual requires use of a buckle shroud during transport with one staff. An incident occurred where the individual exited the vehicle during transport due to failure to use the buckle shroud placing him in immediate risk for sever injury. It was identified that Open Arms CEO was aware of the incident and assisted in talking to the consumer to calm him. The staff admitted he was the only staff with the individual at the time of the incident. Multiple reports were verified that there were no working buckle shrouds available to staff, therefore the support had not been implemented on more occasions than the date of this incident.*
- Failure to Report
 - 2013-048-0352: (ID#3) *Failure to appropriately report and record, track, monitor incidents by agency management. Staff reported writing several behavior incidents that were not kept in provider records. CEO failed to document and report an incident in which she was directly involved.*
- Unapproved Behavior Support
 - 2013-048-0240: (ID#7) *It was reported during the investigation from the provider that the bus monitor did not use a wrist restraint. It was reported that the bus monitor stood up and told the individual to let go of the driver's hair. The bus monitor put his arm around the individual's shoulder, as using a redirection. It is assumed that the bus monitor was escorting the individual to a seat on the bus to calm. The individual's behavior support plan does not authorize escorts as an intervention; thus the incident would still meet criteria for an unapproved behavior support. The provider did not*

report the incident timely to the county board, thus resulting in a finding of failure to report timely.

- Neglect- Death
 - 2011-048-0779: (ID#1) The provider failed to follow ISP guidelines for notifying physician of health concerns, providing adequate training to staff for dietary needs, relaying correct and adequate information to health care professionals regarding acute symptoms, and following physician orders to seek emergency room treatment at management and direct care staff levels contributing to the death.
- Findings for Late Reporting
 - 2013-048-0240: (ID#7) On 3/27/13 the Lucas County Board of Developmental Disabilities MUI unit received notification of a Unapproved Behavior Support MUI from Open Arms that occurred on 3/25/13. The incident was not reported timely.
 - 2013-048-0351: (ID#3) On April 22, 2013, the Lucas County Board of DD MUI unit received a report from a community member regarding concerns with the individual's behaviors and staff's interactions with him. One staff reported multiple behavioral incidents in the past 2 weeks, including the use of physical restraint in one of them, and stated that he had completed 6 or 7 corresponding incident reports. A second staff reported an incident that occurred 2 weeks earlier involving the individual jumping out of a vehicle being driven by staff while in transit. These incidents were not reported timely.
 - 2012-048-0974: (ID#5) On December 3, 2012, the Lucas County Board of Developmental Disabilities MUI unit received notification of an Unscheduled Hospitalization MUI from Open Arms, the residential provider. According to the report, on November 20, 2012, the individual made suicidal threats, while at her day program, and staff called 911. The individual was transported by law enforcement to Rescue Crisis. The following day, the residential provider was advised that she had been admitted to the hospital for psychiatric evaluation and treatment. The residential and day program providers did not report the admission, and the MUI unit was not aware of the hospitalization until receiving discharge records from the residential provider on December 3, 2012. The incident was not reported timely.
 - 2012-048-0341: (ID#8) On 5/2/12 the Lucas County Board of Developmental Disabilities MUI unit received notification of a Known Injury MUI from the individual's service and support specialist. It was reported that on 4/28/12 while receiving services through Open Arms at the YMCA, the individual slipped while entering the pool. The incident was not reported timely.
 - 2013-048-0237: (ID#7) On March 27, 2013, the Lucas County Board of Developmental Disabilities MUI unit received notification of a Peer-to-Peer Act (Physical Abuse) MUI from Open Arms, the day program, transportation, and residential provider for the individual. According to the report, on March 25, 2013, the individual became upset while being transported home by Open Arms staff and became aggressive toward the driver, pulling her hair. The incident was not reported timely.

These incidents not only demonstrate staff's lack of training/knowledge but they also evidence lack of available supervisory staff to monitor and ensure implementation of all interventions per the individual service plan and providing notice of unusual/ major unusual incidents and suspected cases of abuse, neglect, exploitation, or misappropriation of funds to the county board of developmental disabilities per administrative rule 5126:14.

This warrants suspension of your certifications.

PLEASE NOTE: Throughout this report, individuals involved in the review are referenced by number and are identified for your information on the attached individual key. The key is confidential and must be withheld from public disclosure.

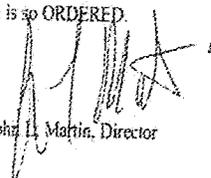
You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this suspension provided you request such a hearing and your request is received by the below

named individual within ten (10) days of receipt of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you. Corporation and limited liability companies must be represented by an attorney licensed to practice law in Ohio.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 East Broad Street, 12th Floor, Columbus, Ohio 43215.

If you timely request a hearing, you have the right to have the hearing held within 30 days of the Department's receipt of your request.

It is so ORDERED.

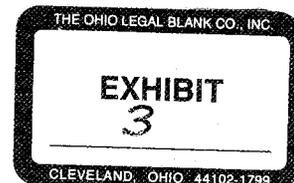

John L. Martin, Director

- John Frank, Superintendent, Lucas County Board of Developmental Disabilities*
- Keith Miller, Assistant Deputy Director, Ohio Department of Developmental Disabilities*
- Mark Solon, LIA Coordinator, Bureau of Community Access, ODDEF*
- Alan Koller, Provider Compliance Manager, ODDEF*
- Kathryn Haller, Chief Legal Counsel, Ohio Department of Developmental Disabilities Legal Services*
- Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities Legal Services*
- Angel Morgan, Manager, Provider Certification, Ohio Department of Developmental Disabilities*
- Farissa Poshier, Review Manager, Ohio Department of Developmental Disabilities*
- Theresa Ryan, Review Manager, Ohio Department of Developmental Disabilities*
- Journal Entry*
- File*

AFFIDAVIT OF MELISSA N. SILER-STOLL

In Lucas County, Ohio, on September 11, 2014, Melissa N. Siler-Stoll, after being duly sworn according to law, states as follows:

- 1) I am over eighteen years old and have personal knowledge of the facts set forth in this Affidavit.
- 2) On or about June 28, 2013, the Ohio Department of Developmental Disabilities ("ODODD") issued two notices of opportunity for hearing to me alleging that my agency, Open Arms, Inc., violated several provisions of the Ohio Revised Code and the Ohio Administrative Code. See Exhibit A (notice of opportunity for hearing #1); Exhibit B (notice of opportunity for hearing #2).
- 3) On or about July 5, 2013, I retained Melissa J. Mitchell of Collis, Smiles + Collis, LLC, 1650 Lake Shore Drive, Suite 225, Columbus, Ohio, 43204 to defend and represent me in the matter with ODODD.
- 4) On or about October 25, 2013, it became necessary to replace Ms. Mitchell and find another attorney to defend and represent me in the matter with ODODD.
- 5) On or about October 28, 2013, I contacted my regular attorney, Kimberly B. Kuhn of Churchill Smith Rice Swinkey & Kuhn, L.L.P., 9042 Lewis Avenue, Temperance, Michigan, 43623, about the situation with Ms. Mitchell. Ms. Kuhn advised me to terminate Ms. Mitchell and obtain another attorney to represent me in the matter with ODODD.
- 6) Ms. Kuhn researched Ohio professional licensure defense attorneys and referred me to several, including Jeffrey J. Jurca of Jurca & Lashuk, L.L.C., 240 North Fifth Street, Suite 330, Columbus, Ohio, 43215. Ms. Kuhn personally spoke to Mr. Jurca on my behalf.
- 7) On or about November 4, 2013, I contacted Mr. Jurca by telephone. Mr. Jurca advised me that he would love to take on my case but he was too busy at that time to take Open Arms and me on as clients. However, Mr. Jurca referred me to (i) Eric J. Plinke of Dinsmore, 191 West Nationwide Boulevard, Suite 300, Columbus, Ohio, 43215, and (ii) Robert C. Angell of Angell Law Offices, LLC, 13587 Capetown Avenue, Pickerington, Ohio, 43147-8855.



- 8) On or about November 4 or 5, 2013, I contacted Mr. Angell by telephone. During my telephone conversation with Mr. Angell, I disclosed detailed, substantive, and confidential information about the ODODD allegations, Open Arms, and myself. Mr. Angell listened to me carefully and asked several follow-up questions about Open Arms and me. Mr. Angell requested a retainer payment. Mr. Angell also requested documents related to my case. I received at least one follow-up telephone call from Mr. Angell. I did not return Mr. Angell's telephone calls because, by then, I had retained my current attorney.
- 9) The detailed, substantive, and confidential information about the ODODD allegations, Open Arms, and myself that I disclosed to Mr. Angell in November 2013 are substantially related to the administrative charges that ODODD leveled against Open Arms and me on March 6, 2014 and April 28, 2014. See Exhibit C (notice of opportunity for hearing #3); Exhibit D (notice of opportunity for hearing #4).
- 10) ODODD has retained Mr. Angell to serve as the hearing examiner in the administrative hearing regarding notices of opportunity for hearing #3 and #4.
- 11) Because I disclosed detailed, substantive, and confidential information about the original ODODD allegations, Open Arms, and myself to Mr. Angell, he has personal knowledge of facts that are also in dispute in the administrative charges that ODODD leveled against Open Arms and me in notices of opportunity for hearing #3 and #4. See Exhibits C and D.
- 12) During my November 4 or 5, 2013 telephone conversation with Mr. Angell, he indicated that he was a former Ohio Assistant Attorney General. He indicated that he personally knew Assistant Attorney General Roger Carroll. Mr. Carroll is the attorney of record for ODODD in the case against Open Arms and me. Mr. Angell indicated that Mr. Carroll is an "old friend" of his. Mr. Angell indicated that he could use his friendship with Mr. Carroll to Open Arms' and my advantage. Specifically Mr. Angell stated: "Roger is more laid back and sometimes needs to have his hand forced to see the bigger picture, but he is an old friend of mine and that could work in our favor."
- 13) During my November 4 or 5, 2013, telephone conversation in which I disclosed detailed, substantive, and confidential information about the original ODODD allegations, Open Arms, and myself to Mr. Angell, he demanded that I pay him a \$5,000 retainer. Mr. Angell indicated that the total fee would cost approximately \$15,000 if the matter did not settle and a hearing was necessary. I told Mr. Angell that my original attorney (Ms. Mitchell) had attempted settlement but that ODODD was not interested in settling the case. Mr. Angell replied: "Like I said before, maybe I can push [Mr. Carroll]'s hand a little further than [Ms. Mitchell] could." I interpreted this to mean that

Mr. Angell represented to me that he could use his friendship with Mr. Carroll to influence the outcome of my case.

- 14) I have never provided consent, express, implied, or otherwise, to Mr. Angell for him to represent another person, agency, or entity in the same or substantially related matter in which such other person, agency, or entity is materially adverse to Open Arms' or my interests, such as the ODODD's administrative charges against Open Arms and me contained in notices of opportunity for hearing #3 and #4.
- 15) To date, and since Open Arms and I have been involved in these matters with ODODD, I have incurred approximately \$85,000 in legal fees defending against ODODD's allegations and related matters. Thus, my decision to discontinue my attorney-client relationship with Mr. Angell resulted in at least \$85,000 in lost revenue to him.
- 16) Because of the financial loss to Mr. Angell described in paragraph 15, I reasonably believe that Mr. Angell cannot be impartial to Open Arms, my attorneys, or me.
- 17) Because of the financial loss to Mr. Angell described in paragraph 15, I reasonably believe that Mr. Angell has personal bias and prejudice against Open Arms, my attorneys, and me.
- 18) Mr. Angell has shown bias against Open Arms, my attorneys, and me by denying a motion to continue the hearing regarding the administrative charges that ODODD leveled against Open Arms and me in notices of opportunity for hearing #3 and #4. At the time, this was the first and only motion for a continuance that Open Arms filed in this matter. This motion was also unopposed by ODODD and the Ohio Attorney General's Office. See Exhibit E.
- 19) Mr. Angell has shown bias against Open Arms, my attorneys, and me by admonishing me regarding scheduling a hearing in this matter. Specifically, there was an email exchange among Mr. Angell, attorneys for ODODD, and my attorney. On May 14, 2014, Mr. Angell sent an email to my attorney which reads, in relevant part: "Mr. Patton, I would suggest to you that your client needs to make this a bigger priority than it seems to be at this point. We can't keep everyone waiting . . ." Although ODODD's attorneys indicated that they and/or their witnesses were unavailable on certain dates, Mr. Angell did not similarly admonish them "to make this a bigger priority." See Exhibit F (May 15, 2014 emails #1).
- 20) Mr. Angell has shown bias against Open Arms, my attorneys, and me by engaging in *ex parte* email conversations with ODODD's lawyers. When my attorney brought this to Mr. Angell's attention, Mr. Angell failed to rectify the

error. Mr. Angell did not rectify the error and include my attorney in the *ex parte* email conversation until my attorney specifically requested that he do so. See Exhibit G (May 15, 2014 emails #2).

- 21) Mr. Angell has shown bias against my attorneys by engaging in *ex parte* email correspondence directly with me. Specifically, Mr. Angell "cc'd" me on an email when he knew, or should have known, that I was represented by counsel. See Exhibit H (May 14, 2014 emails).
- 22) All of the exhibits attached to this affidavit are true, accurate, and complete copies of their respective original documents.

Affiant states nothing further.

Melissa N. Siler-Stoll
Melissa N. Siler-Stoll

Sworn to and subscribed in my presence on September 11, 2014.

Charles L. Burnham
Notary Public
9-11-14



CHARLES L. BURNHAM
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 05-12-2018

EXHIBITS

- Exhibit A: Notice of opportunity for hearing #1
- Exhibit B: Notice of opportunity for hearing #2
- Exhibit C: Notice of opportunity for hearing #3
- Exhibit D: Notice of opportunity for hearing #4
- Exhibit E: Entry denying motion for continuance
- Exhibit F: May 15, 2014 emails #1
- Exhibit G: May 15, 2014 emails #2
- Exhibit H: May 14, 2014 emails



Department of
Developmental Disabilities

Office of Provider Standards & Review

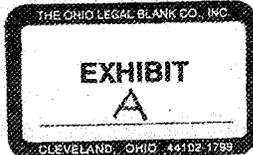
John R. Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Certified Mail # 7012 1640 0001 8221 9910

August 13, 2013

Open Arms
Attn.: Melissa Stoll
360 Reynolds
Toledo, OH 43615

Re: **Proposed Revocation of Certifications (Amended)**
DODD Provider Certification: #4803761
ODJFS Medicaid: #2819472
Individual Options Waiver
Homemaker Personal Care Effective: 5/13/08
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Residential Respite Effective: 7/1/12



Dear Ms. Stoll:

Please be advised that that this Proposed Revocation amends the previous Proposed Revocation dated June 28, 2013. The letter advises that the Ohio Department of Developmental Disabilities (Department) is proposing to issue an adjudication order revoking your Individual Options Waiver, Level One Waiver and Self-Empowered Waiver provider certifications.

Ohio Revised Code 5123.166

- (A) If good cause exists as specified in division (B) of this section ... the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:
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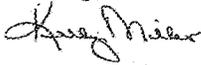
- 2012-048-0974: (ID#5) On December 3, 2012, the Lucas County Board of Developmental Disabilities MUI unit received notification of an *Unscheduled Hospitalization MUI* from Open Arms, the residential provider. According to the report, on November 20, 2012, the individual made suicidal threats, while at her day program, and staff called 911. The individual was transported by law enforcement to Rescue Crisis. The following day, the residential provider was advised that she had been admitted to the hospital for psychiatric evaluation and treatment. The residential and day program providers did not report the admission, and the MUI unit was not aware of the hospitalization until receiving discharge records from the residential provider on December 3, 2012. The incident was not reported timely.
- 2012-048-0341: (ID#8) On 5/2/12 the Lucas County Board of Developmental Disabilities MUI unit received notification of a *Known Injury MUI* from the individual's service and support specialist. It was reported that on 4/28/12 while receiving services through Open Arms at the YMCA, the individual slipped while entering the pool. The incident was not reported timely.
- 2013-048-0237: (ID#7) On March 27, 2013, the Lucas County Board of Developmental Disabilities MUI unit received notification of a *Peer-to-Peer Act (Physical Abuse) MUI* from Open Arms, the day program, transportation, and residential provider for the individual. According to the report, on March 25, 2013, the individual became upset while being transported home by Open Arms staff and became aggressive toward the driver, pulling her hair. The incident was not reported timely.

You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed revocation provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you. Corporation and limited liability companies must be represented by an attorney licensed to practice law in Ohio.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 East Broad Street, 12th Floor Columbus, Ohio 43215.

If you do not request a hearing within the time allowed, an adjudication order will be issued revoking your provider certifications.

Sincerely,



Kelly Miller, Assistant Deputy Director
Office of Provider Standards and Review

c: John Trunk, Superintendent, Lucas County Board of Developmental Disabilities
Kelly Miller, Assistant Deputy Director, Ohio Department of Developmental Disabilities
Hank Sellen, IAA Coordinator, Bureau of Community Access, ODJFS
Alan Kuddler, Provider Compliance Manager, ODJFS
Kathryn Haller, Chief Legal Counsel, Ohio Department of Developmental Disabilities Legal Services
Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities Legal Services
Angel Morgan, Manager, Provider Certification, Ohio Department of Developmental Disabilities
Vanessa Fralser, Review Manager, Ohio Department of Developmental Disabilities
Theresa Ryan, Review Manager, Ohio Department of Developmental Disabilities
Journal

Ohio | Department of
Developmental Disabilities

Office of Provider Standards & Review

John Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL RETURN
RECEIPT REQUESTED
Certified Mail # 7012 1640 0001 8221 9903

August 13, 2013

Open Arms
Attn.: Melissa Stoll
360 Reynolds
Toledo, OH 43615

Re: **Order Suspending Certifications (Amended)**

DODD Provider Certification: #4803761

ODJFS Medicaid: #2819472

Individual Options Waiver

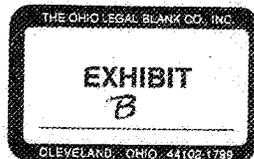
<i>Homemaker Personal Care</i>	<i>Effective: 5/13/08</i>
<i>HPC Transportation</i>	<i>Effective: 5/13/08</i>
<i>Adult Day Support</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Community</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 5/13/08</i>
<i>Vocational Habilitation</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Per-Trip</i>	<i>Effective: 5/13/08</i>
<i>Adult Foster Care</i>	<i>Effective: 5/13/08</i>
<i>Community Respite</i>	<i>Effective: 3/23/12</i>
<i>Residential Respite</i>	<i>Effective: 3/23/12</i>

Level One Waiver

<i>Homemaker Personal Care</i>	<i>Effective: 5/13/08</i>
<i>HPC Transportation</i>	<i>Effective: 5/13/08</i>
<i>Adult Day Support</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Community</i>	<i>Effective: 5/13/08</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 5/13/08</i>
<i>Vocational Habilitation</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 5/13/08</i>
<i>Non-Medical Transportation Per-Trip</i>	<i>Effective: 5/13/08</i>
<i>Community Respite</i>	<i>Effective: 7/01/12</i>
<i>Residential Respite</i>	<i>Effective: 7/01/12</i>

Self-Empowered Life Funding Waiver

<i>Adult Day Support</i>	<i>Effective: 7/1/12</i>
<i>Supported Employment- Enclave</i>	<i>Effective: 7/1/12</i>
<i>Vocational Habilitation</i>	<i>Effective: 7/1/12</i>
<i>Non-Medical Transportation Mileage</i>	<i>Effective: 7/1/12</i>
<i>Non-Medical Transportation Per-Trip</i>	<i>Effective: 7/1/12</i>
<i>Community Respite</i>	<i>Effective: 7/1/12</i>
<i>Residential Respite</i>	<i>Effective: 7/1/12</i>



Dear Ms. Stoll:

Please be advised that this Order of Suspension amends the previous Order of Suspension dated June 28, 2013. The letter advises that the Ohio Department of Developmental Disabilities (DODD) has issued this order suspending your Individual Options Waiver, Level One Waiver and Self-Empowered Life Funding Waiver provider certifications from beginning to serve any individuals not currently being served by your agency.

Ohio Revised Code 5123.166

(A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(3) Suspension of a supported living certificate holder's authority to do either or both of the following:

(b) Begin to provide supported living to one or more individuals from one or more counties who do not receive supported living from the certificate holder at the time the director takes the action.

(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

(4) Misfeasance

(5) Malfeasance

(6) Nonfeasance

(7) Confirmed abuse or neglect

(8) Financial Irresponsibility

(9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

(D)(1) The director may issue an order requiring that action specified in division (A)(3) of this section be taken before a provider is provided notice and an opportunity for a hearing if all of the following are the case:

(a) The director determines such action is warranted by the provider's failure to continue to meet the applicable certification standards;

(b) The director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the provider;

The Supported Living Provider, Level One Waiver, Self Empowered Life Funding Waiver, and Individual Options Waiver certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for this action is as follows:

Areas of non-compliance that present significant risks to the health and safety of individuals that your agency provides services to as identified in a special review that was completed on 5/15/13. It is additionally noted, the agency was subject to a special review in 2008 (see attached) in which they received nine citations, a regular review 2010 (see attached) in which they were issued twelve citations and a special review on 3/2/12 & 3/5/12

(see attached) in which they were issued nine citations. A review of all four compliance reviews evidenced that the agency had received a number of citations that were the same or similar in nature and have been unable to maintain prior plans of correction.

In addition to the compliance reviews, since March 2012 the agency has had several substantiated Major Unusual Incidents (MUI's) related to:

- Verbal Abuse
 - **2013-048-0094: (ID#2)** *The provider attempted to interfere with Free Choice of Provider Standards. The provider used language that was coercive in an attempt to alter decisions to change providers. The residential provider agency's response to the notice given by the consumer's guardian was an emotional one and included multiple staff telling the consumer that they were saddened that she was leaving their agency.*
- Neglect
 - **2012-048-0175 (ID#4)** *The PPI prepared both housemates' medications at the same time, resulting in the individual receiving the incorrect medication. Neither the PPI (nor the other staff present when the incident occurred) notified the transportation staff or day program provider of the medication error prior to the individual being transferred to their care.*
 - **2012-048-0972: (ID#5)** *The individual has a history of inflicting harm to self with sharps by cutting. As a result of this, sharps are secured in the individual's home as written in her behavior support plan. The individual has mental health issues including pervasive developmental disorder. She engages in behaviors aimed at getting staff attention, including hurting herself superficially. It was reported by the individual's day program that the individual had a steak knife in her purse when she arrived to the day program site. This indicates staff failed to ensure sharps were secured/or appropriate supervision allowing the individual to access the steak knife.*
 - **2013-048-0098: (ID#6)** *The PPI failed to follow the individual's supervision level. While out of staff's line of sight, the individual opened a key box and obtained the keys to his sharps box. The individual then opened his sharps box and used a razor to cut himself. The individual has a sharps restriction in his Behavior Support Plan because of previous self-injurious behavior, suicidal ideation, bipolar and antisocial personality disorders.*
 - **2013-048-0351: (ID#3)** *The provider failed to ensure individuals safety per the behavior plan while transporting. The individual's behavior support plan indicates the individual requires use of a buckle shroud during transport with one staff. An incident occurred where the individual exited the vehicle during transport due to failure to use the buckle shroud placing him in immediate risk for sever injury. It was identified that Open Arms CEO was aware of the incident and assisted in talking to the consumer to calm him. The staff admitted he was the only staff with the individual at the time of the incident. Multiple reports were verified that there were no working buckle shrouds available to staff, therefore the support had not been implemented on more occasions than the date of this incident.*
- Failure to Report
 - **2013-048-0352: (ID#3)** *Failure to appropriately report and record, track, monitor incidents by agency management. Staff reported writing several behavior incidents that were not kept in provider records. CEO failed to document and report an incident in which she was directly involved.*
- Unapproved Behavior Support
 - **2013-048-0240: (ID#7)** *It was reported during the investigation from the provider that the bus monitor did not use a wrist restraint. It was reported that the bus monitor stood up and told the individual to let go of the driver's hair. The bus monitor put his arm around the individual's shoulder, as using a redirection. It is assumed that the bus monitor was escorting the individual to a seat on the bus to calm. The individual's behavior support plan does not authorize escorts as an intervention; thus the incident would still meet criteria for an unapproved behavior support. The provider did not*

report the incident timely to the county board, thus resulting in a finding of failure to report timely.

- Neglect- Death
 - 2011-048-0779: (ID#1) The provider failed to follow ISP guidelines for notifying physician of health concerns, providing adequate training to staff for dietary needs, relaying correct and adequate information to health care professionals regarding acute symptoms, and following physician orders to seek emergency room treatment at management and direct care staff levels contributing to the death.
- Findings for Late Reporting
 - 2013-048-0240: (ID#7) On 3/27/13 the Lucas County Board of Developmental Disabilities MUI unit received notification of a Unapproved Behavior Support MUI from Open Arms that occurred on 3/25/13. The incident was not reported timely.
 - 2013-048-0351: (ID#3) On April 22, 2013, the Lucas County Board of DD MUI unit received a report from a community member regarding concerns with the individual's behaviors and staff's interactions with him. One staff reported multiple behavioral incidents in the past 2 weeks, including the use of physical restraint in one of them, and stated that he had completed 6 or 7 corresponding incident reports. A second staff reported an incident that occurred 2 weeks earlier involving the individual jumping out of a vehicle being driven by staff while in transit. These incidents were not reported timely.
 - 2012-048-0974: (ID#5) On December 3, 2012, the Lucas County Board of Developmental Disabilities MUI unit received notification of an Unscheduled Hospitalization MUI from Open Arms, the residential provider. According to the report, on November 20, 2012, the individual made suicidal threats, while at her day program, and staff called 911. The individual was transported by law enforcement to Rescue Crisis. The following day, the residential provider was advised that she had been admitted to the hospital for psychiatric evaluation and treatment. The residential and day program providers did not report the admission, and the MUI unit was not aware of the hospitalization until receiving discharge records from the residential provider on December 3, 2012. The incident was not reported timely.
 - 2012-048-0341: (ID#8) On 5/2/12 the Lucas County Board of Developmental Disabilities MUI unit received notification of a Known Injury MUI from the individual's service and support specialist. It was reported that on 4/28/12 while receiving services through Open Arms at the YMCA, the individual slipped while entering the pool. The incident was not reported timely.
 - 2013-048-0237: (ID#7) On March 27, 2013, the Lucas County Board of Developmental Disabilities MUI unit received notification of a Peer-to-Peer Act (Physical Abuse) MUI from Open Arms, the day program, transportation, and residential provider for the individual. According to the report, on March 25, 2013, the individual became upset while being transported home by Open Arms staff and became aggressive toward the driver, pulling her hair. The incident was not reported timely.

These incidents not only demonstrate staff's lack of training/knowledge but they also evidence lack of available supervisory staff to monitor and ensure implementation of all interventions per the individual service plan and providing notice of unusual/ major unusual incidents and suspected cases of abuse, neglect, exploitation, or misappropriation of funds to the county board of developmental disabilities per administrative rule 5126:14.

This warrants suspension of your certifications.

PLEASE NOTE: Throughout this report, individuals involved in the review are referenced by number and are identified for your information on the attached individual key. The key is confidential and must be withheld from public disclosure.

You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this suspension provided you request such a hearing and your request is received by the below

named individual within ten (10) days of receipt of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you. Corporation and limited liability companies must be represented by an attorney licensed to practice law in Ohio.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 East Broad Street, 12th Floor, Columbus, Ohio 43215.

If you timely request a hearing, you have the right to have the hearing held within 30 days of the Department's receipt of your request.

It is so ORDERED.



John L. Martin, Director

- John Utz, Superintendent, Lucas County Board of Developmental Disabilities*
- Kelly Miller, Assistant Deputy Director, Ohio Department of Developmental Disabilities*
- Mark Bellon, LIA Coordinator, Bureau of Community Access, ODHHS*
- Alan Kuller, Provider Compliance Manager, ODHHS*
- Kathryn Haller, Chief Legal Counsel, Ohio Department of Developmental Disabilities Legal Services*
- Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities Legal Services*
- Angel Morgan, Manager, Provider Certification, Ohio Department of Developmental Disabilities*
- Taressa Prather, Review Manager, Ohio Department of Developmental Disabilities*
- Theresa Ryan, Review Manager, Ohio Department of Developmental Disabilities*
- Journal Entry*
- File*

Ohio | Department of Developmental Disabilities

John Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 6, 2014

Open Arms, Inc.
Melissa Siler-Stoll
360 Reynolds
Toledo, Ohio 43615

Re: Provider Applications

Dear Ms. Siler-Stoll:

Please be advised that the Department is proposing to issue an adjudication order denying your application to renew your certification as an (1) IO Waiver, Adult Day Support, (2) IO Waiver, Adult Foster Care, (3) IO Waiver, Community Respite, (4) IO Waiver, Homemaker Personal Care, (5) IO Waiver, Non-Medical Transportation, (6) IO Waiver, Residential Respite, (7) IO Waiver, Supported Employment Community, (8) IO Waiver, Supported Employment Enclave, (9) IO Waiver, Transportation, (10) IO Waiver, Vocational Habilitation, (11) Level 1 Waiver, Adult Day Support, (12) Level 1 Waiver, Community Respite, (13) Level 1 Waiver, Homemaker Personal Care, (14) Level 1 Waiver, Non-Medical Transportation, (15) Level 1 Waiver, Residential Respite, Transportation, (16) Level 1 Waiver, Supported Employment Community, (17) Level 1 Waiver, Supported Employment Enclave, (18) Level 1 Waiver, Vocational Habilitation, (19) SELF Waiver, Adult Day Support, (20) SELF Waiver, Community Respite, (21) SELF Waiver, Non-Medical Transportation, (22) SELF Waiver, Residential Respite, (23) SELF Waiver, Supported Employment Enclave, and (24) SELF Waiver, Vocational Habilitation provider.

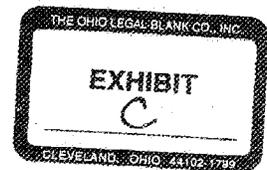
Ohio Revised Code 5123.166

(A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(1) Refusal to issue or renew a supported living certificate

(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

The State of Ohio is an Equal Opportunity Employer and Provider of Services



- (4) Misfeasance
- (5) Malfeasance
- (6) Nonfeasance
- (7) Confirmed abuse or neglect
- (8) Financial irresponsibility
- (9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

The Supported Living Provider, Individual Options Waiver, and Level One Waiver certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for denying each of the above applications is as follows:

- On February 21, 2014, Melissa Stoll, CEO for Open Arms sent the Ohio Department of Developmental Disabilities a faxed copy of her BCII report. Upon review the Department determined that the document appeared to have been altered. The Department contacted the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation and confirmed that Melissa Stoll had not submitted her fingerprints for a criminal background check in 2013 as indicated on the BCII report.
- On February 28, 2014, the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation notified the Ohio Department of Developmental Disabilities in writing that the BCII report submitted to the Department on February 21, 2014 is not a valid document. Ms. Stoll thus submitted a forged document to the Department in the course of submitting an application for certification.

To minimize the disruption of services to the individuals currently receiving services from Open Arms, Inc., the Department is extending the agency's existing certification from March 14, 2014 through May 13, 2014.

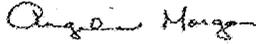
You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed denial provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or

contention in writing, and you may present evidence and examine witnesses appearing for and against you.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 E. Broad St., 12th floor, Columbus, Ohio 43215.

If you do not request a hearing within the time allowed, an adjudication order will be issued denying your provider certification applications.

Sincerely,



Angelia Morgan
Provider Certification Manager

cc: Kathryn Haller, Chief Legal Counsel, DODD
Brad Singer, Associate General Counsel, DODD
Patrick Stephan, Deputy Director, Medicaid Development & Administration, DODD
Debbie Hoffine, Operations Administrator, DODD
Roger Carroll, Principal Assistant Attorney General, Ohio Attorney General
Theresa Ryan, Manager, DODD
Maryann Burns, Acting Superintendent, Lucas County Board of DD

Ohio

Department of
Developmental Disabilities

30 E. Broad Street
13th Floor
Columbus, Ohio 43218-3434

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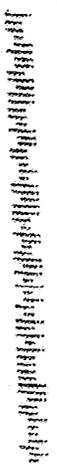


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Ohio | Department of
Developmental Disabilities

John Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REVISED

April 28, 2014

Open Arms, Inc.
Melissa Siler-Stoll
360 Reynolds
Toledo, Ohio 43615

Re: Provider Applications

Dear Ms. Siler-Stoll:

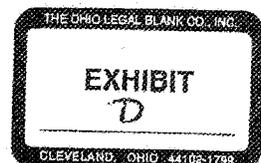
Please be advised that the Department is proposing to issue an adjudication order denying your application to renew your certification as an (1) IO Waiver, Adult Day Support, (2) IO Waiver, Adult Foster Care, (3) IO Waiver, Community Respite, (4) IO Waiver, Homemaker Personal Care, (5) IO Waiver, Non-Medical Transportation, (6) IO Waiver, Residential Respite, (7) IO Waiver, Supported Employment Community, (8) IO Waiver, Supported Employment Enclave, (9) IO Waiver, Transportation, (10) IO Waiver, Vocational Habilitation, (11) Level 1 Waiver, Adult Day Support, (12) Level 1 Waiver, Community Respite, (13) Level 1 Waiver, Homemaker Personal Care, (14) Level 1 Waiver, Non-Medical Transportation, (15) Level 1 Waiver, Residential Respite, Transportation, (16) Level 1 Waiver, Supported Employment Community, (17) Level 1 Waiver, Supported Employment Enclave, (18) Level 1 Waiver, Vocational Habilitation, (19) SELF Waiver, Adult Day Support, (20) SELF Waiver, Community Respite, (21) SELF Waiver, Non-Medical Transportation, (22) SELF Waiver, Residential Respite, (23) SELF Waiver, Supported Employment Enclave, and (24) SELF Waiver, Vocational Habilitation provider.

Ohio Revised Code 5123.166

(A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(1) Refusal to issue or renew a supported living certificate

The State of Ohio is an Equal Opportunity Employer and Provider of Services



(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

(4) Misfeasance

(5) Malfeasance

(6) Nonfeasance

(7) Confirmed abuse or neglect

(8) Financial irresponsibility

(9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

The Supported Living Provider, Individual Options Waiver, and Level One Waiver certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for denying each of the above applications is as follows:

- On February 21, 2014, Melissa Stoll, CEO for Open Arms sent the Ohio Department of Developmental Disabilities a faxed copy of her BCH report. Upon review the Department determined that the document appeared to have been altered. The Department contacted the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation and confirmed that Melissa Stoll had not submitted her fingerprints for a criminal background check in 2013 as indicated on the BCH report.
- On February 28, 2014, the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation notified the Ohio Department of Developmental Disabilities in writing that the BCH report submitted to the Department on February 21, 2014 is not a valid document. Ms. Stoll thus submitted a forged document to the Department in the course of submitting an application for certification.
- On February 18, 2014, Ms. Stoll submitted a copy of a Bachelor's in Nursing Degree from Owens Community College as part of her application for renewal certification. Upon review of this document, the Department determined that the document is fraudulent. The Department contacted Owens Community College and verified that Ms. Stoll never received a degree from the college.

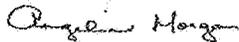
To minimize the disruption of services to the individuals currently receiving services from Open Arms, Inc., the Department is extending the agency's existing certification from May 13, 2014 through July 1, 2014.

You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed denial provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 E. Broad St., 12th floor, Columbus, Ohio 43215.

If you do not request a hearing within the time allowed, an adjudication order will be issued denying your provider certification applications.

Sincerely,



Angelia Morgan
Provider Certification Manager

cc: Kathryn Haller, Chief Legal Counsel, DODD
Brad Singer, Associate General Counsel, DODD
Patrick Stephan, Deputy Director, Medicaid Development & Administration, DODD
Debbie Hoffine, Operations Administrator, DODD
Roger Carroll, Principal Assistant Attorney General, Ohio Attorney General
Theresa Ryan, Manager, DODD
Maryann Burns, Acting Superintendent, Lucas County Board of DD

BEFORE THE OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES
COLUMBUS, OHIO

IN RE: OPEN ARMS, INC.

April 21, 2014

THE OHIO DEPARTMENT OF
DEVELOPMENTAL DISABILITIES

Robert C. Angell, Esq.
Hearing Examiner

Petitioner,

vs.

OPEN ARMS, INC.

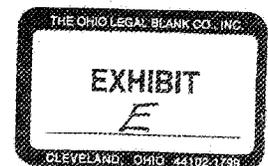
Respondent.

ENTRY AND ORDER

This matter comes before me on Respondent's motion for a continuance of the hearing now scheduled for April 23, 2014. Counsel for Respondent represents that a continuance is necessary because Respondent's investigation of the factual allegations "is not yet complete" and Respondent "requires more time to finish its investigation" so that it can "conclusively demonstrate" that a document in issue is genuine and not a forgery. Respondent "must complete its investigation prior to any hearing so that it can adequately exercise its due process rights ... pursuant to R.C. Chapter 119." In separate communications, counsel for the Department have indicated that they do not oppose the motion.

For the following reasons, Respondent's motion is not well taken and will be denied. However, the currently scheduled hearing date will be vacated on the basis of a joint request by the parties.

As an initial matter, the hearing date was selected in a telephone scheduling conference on April 3, 2014 in which counsel for both parties participated fully. To claim, two days before



the hearing date, that Respondent "needs more time" to "complete its investigation" of the factual allegations, after having participated in the selection of the hearing date, raises an inference that the motion has been interposed for purposes of delay.

Secondly, Respondent's expectation that further investigation would enable it to "conclusively demonstrate" that it should prevail in the hearing is not a ground for granting a continuance under R.C. 119 (or, for that matter, under the Civil Rules). In theory, any party could delay resolution of a case indefinitely by claiming that it can "conclusively demonstrate" a dispositive issue in the case, if only it were given more time to investigate. Not even the standard of proof in a criminal case contemplates that degree of certainty.

Finally, no due process interest is implicated by Respondent's motion. In a case such as this, the applicable laws and regulations require that the respondent be given notice and an opportunity to respond, in accordance with R.C. Chapter 119., on the action contemplated by the agency. Those requirements are met where, as here, the agency provides the respondent with a notice of opportunity for hearing, specifying the factual allegations and the laws or rules alleged to be violated, and the respondent timely requests a hearing.

For all of these reasons, Respondent's motion for continuance is not well taken and is hereby DENIED. At the joint request of the parties, the hearing date now scheduled for April 23, 2014 is hereby VACATED. Counsel for the parties shall confer and schedule a telephone status conference to occur no earlier than April 30, 2014 and no later than May 2, 2014, and shall notify the hearing examiner in advance of the date and time selected.

It is so ordered.



4/21/2014
Date

Robert C. Angell
Hearing Examiner

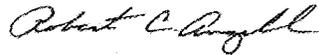
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the following individuals by electronic mail only, this 21st day of April, 2014:

Roger F. Carroll, Esq.
Principal Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
E-mail: roger.carroll@ohioattorneygeneral.gov

Brad C. Singer, Esq.
Associate General Counsel
Division of Legal and Oversight
30 East Broad Street, 12th Floor
Columbus, Ohio 43215
E-mail: bradley.singer@dodd.ohio.gov

Respondent: David V. Patton, Esq.
P.O. Box 39192
Solon, Ohio 44139-0192
E-mail: dpatton@lawpatton.com



Robert C. Angell

Monday, June 30, 2014 10:54:17 PM Eastern Daylight Time

Subject: Re: Open Arms
Date: Thursday, May 15, 2014 9:18:22 AM Eastern Daylight Time
From: rangell0593
To: David Patton, Roger Carroll
CC: bradley.singer@dodd.ohio.gov

In response, I replied to everyone yesterday, so if anyone didn't get it, I don't think the problem was on my end. I am trying to get used to a new smartphone, but I had no indication that there was a problem.

I have not yet scrapped the August dates, but I am available for the dates suggested in September. If we do that, it will be the earliest available date, e.g., September 9. Obviously I will not set dates until I have heard back from all of you. Mr. Patton, I would suggest to you that your client needs to make this a bigger priority than it seems to be at this point. We can't keep everyone waiting, and I can't fill my calendar with contingent dates.

Have a good day, everyone.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: David Patton
Date: 05/15/2014 7:05 AM (GMT-07:00)
To: Roger Carroll ,rangell0593@sbcglobal.net
Cc: bradley.singer@dodd.ohio.gov
Subject: Re: Open Arms

Good morning, everyone. A few items:

- (1) Based upon Roger's below email, it looks like Bob Angell sent Roger an email yesterday (5/14). I did not receive a copy of any such email. If there was such an email, please forward a copy to me.
- (2) I will check with my client & potential witnesses to see if Roger's proposed dates work for them.
- (3) Thank you all for your understanding re: my client's August schedule & availability.

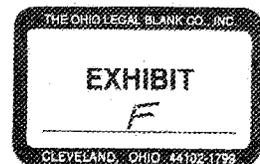
-DVP

David V. Patton
Attorney at Law
P.O. Box 39192
Solon, OH
44139-0192

Ph: 440-248-1078
Fx: 440-201-6465

dpatton@lawpatton.com

www.lawpatton.com



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From: Roger Carroll <roger.carroll@ohioattorneygeneral.gov>
Date: Thursday, May 15, 2014 8:52 AM
To: "rangel0593@sbcglobal.net" <rangel0593@sbcglobal.net>
Cc: "bradley.singer@dodd.ohio.gov" <bradley.singer@dodd.ohio.gov>, David Patton <dpatton@lawpatton.com>
Subject: Open Arms

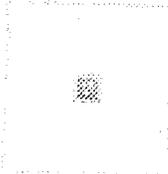
Mr. Angell

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I have contacted my witnesses and the week of August 25 does not work for DODD.

As alternatives we would be available for a three day hearing beginning on either September 9, or September 16 or September 23.

Please let me know if you have any questions.



Roger F. Carroll
Principal Assistant Attorney General – Health & Human Services
Office of Ohio Attorney General Mike DeWine
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Office number: 614-466-8600
Direct: 614-466-1971
Fax number: 866-826-3991
Roger.Carroll@OhioAttorneyGeneral.gov

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Monday, June 30, 2014 11:04:25 PM Eastern Daylight Time

Subject: Re: Open Arms
Date: Thursday, May 15, 2014 10:21:30 AM Eastern Daylight Time
From: David Patton
To: rangell0593, Roger Carroll
CC: bradley.singer@dodd.ohio.gov
BCC: Melissa Stoll, Bill LINDSLEY

Despite the location or source of the malfunction, the fact remains that the hearing examiner sent an email to the assistant attorney general in this case & respondent's counsel did not receive a copy of the email.

My email address is: dpatton@lawpatton.com

My fax number is: (440) 201-6465

Please email or fax a copy of yesterday's email to me at your earliest convenience.

--DVP

David V. Patton
Attorney at Law
P.O. Box 39192
Solon, OH
44139-0192

Ph: 440-248-1078
Fx: 440-201-6465

dpatton@lawpatton.com

www.lawpatton.com



DAVID V. PATTON
ATTORNEY AT LAW



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From: rangell0593 <rangell0593@shcglobai.net>

Date: Thursday, May 15, 2014 9:18 AM

To: David Patton <dpatton@lawpatton.com>, Roger Carroll <roger.carroll@ohioattorneygeneral.gov>

Cc: "bradley.singer@dodd.ohio.gov" <bradley.singer@dodd.ohio.gov>

Subject: Re: Open Arms

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Subject: Re: Open Arms

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--DVP

David V. Patton
Attorney at Law
P.O. Box 39192
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Ph: 440-248-1078
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dpatton@lawpatton.com

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Cc: "bradley.singer@dodd.ohio.gov" <bradley.singer@dodd.ohio.gov>, David Patton <dpatton@lawpatton.com>
Subject: Open Arms

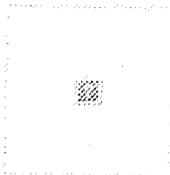
Mr. Angell

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I have contacted my witnesses and the week of August 25 does not work for DODD.

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Please let me know if you have any questions.



Roger F. Carroll
Principal Assistant Attorney General – Health & Human Services
Office of Ohio Attorney General Mike DeWine
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Office number: 614-466-8600
Direct: 614-466-1971
Fax number: 866-826-3891
Roger.Carroll@OhioAttorneyGeneral.gov

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Monday, June 30, 2014 11:04:46 PM Eastern Daylight Time

Subject: Re: Open Arms; hearing dates
Date: Thursday, May 15, 2014 2:57:34 PM Eastern Daylight Time
From: David Patton
To: rangell0593
CC: Roger Carroll, bradley.singer@dodd.ohio.gov
BCC: Open Arms, Bill LINDSLEY

Receipt acknowledged.

David V. Patton
Attorney at Law
P.O. Box 39192
Solon, OH
44139-0192

Ph: 440-248-1078
Fx: 440-201-6465

dpatton@lawpatton.com

www.lawpatton.com



DAVID V. PATTON
ATTORNEY AT LAW

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From: rangell0593 <rangell0593@shcglobal.net>
Date: Thursday, May 15, 2014 11:37 AM
To: David Patton <dpatton@lawpatton.com>
Subject: Fwd: RE: Open Arms; hearing dates

This is a forward of the email you are asking about. Please acknowledge receipt. Thanks.

RA

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: rangell0593
Date: 05/14/2014 11:48 AM (GMT-07:00)
To: David Patton , Roger Carroll , "Singer, Bradley"
Cc: Melissa Stoll , Bill LINDSLEY
Subject: RE: Open Arms; hearing dates

I am available that week, but you need to move quickly because August is going to start filling up for me. Suggest you confer asap with Mr. Carroll and Mr. Singer, since they will have to check on availability of the state's witnesses.

Sent from my Verizon Wireless 4G LTE smartphone

Monday, June 30, 2014 11:14:30 PM Eastern Daylight Time

Subject: Fwd: RE: Open Arms; hearing dates
Date: Thursday, May 15, 2014 11:37:49 AM Eastern Daylight Time
From: rangell0593
To: David Patton

This is a forward of the email you are asking about. Please acknowledge receipt. Thanks.

RA

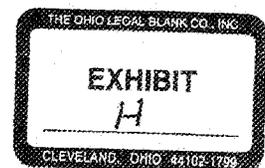
Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: rangell0593
Date: 05/14/2014 11:48 AM (GMT-07:00)
To: David Patton , Roger Carroll , "Singer, Bradley"
Cc: Melissa Stoll , Bill LINDSLEY
Subject: RE: Open Arms; hearing dates

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Sent from my Verizon Wireless 4G LTE smartphone



Ohio | Department of Developmental Disabilities

John Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 6, 2014

Open Arms, Inc.
Melissa Siler-Stoll
360 Reynolds
Toledo, Ohio 43615

Re: Provider Applications

Dear Ms. Siler-Stoll:

Please be advised that the Department is proposing to issue an adjudication order denying your application to renew your certification as an (1) IO Waiver, Adult Day Support, (2) IO Waiver, Adult Foster Care, (3) IO Waiver, Community Respite, (4) IO Waiver, Homemaker Personal Care, (5) IO Waiver, Non-Medical Transportation, (6) IO Waiver, Residential Respite, (7) IO Waiver, Supported Employment Community, (8) IO Waiver, Supported Employment Enclave, (9) IO Waiver, Transportation, (10) IO Waiver, Vocational Habilitation, (11) Level 1 Waiver, Adult Day Support, (12) Level 1 Waiver, Community Respite, (13) Level 1 Waiver, Homemaker Personal Care, (14) Level 1 Waiver, Non-Medical Transportation, (15) Level 1 Waiver, Residential Respite, Transportation, (16) Level 1 Waiver, Supported Employment Community, (17) Level 1 Waiver, Supported Employment Enclave, (18) Level 1 Waiver, Vocational Habilitation, (19) SELF Waiver, Adult Day Support, (20), SELF Waiver, Community Respite, (21) SELF Waiver, Non-Medical Transportation, (22) SELF Waiver, Residential Respite, (23) SELF Waiver, Supported Employment Enclave, and (24) SELF Waiver, Vocational Habilitation provider.

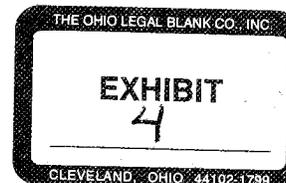
Ohio Revised Code 5123.166

(A) If good cause exists as specified in division (B) of this section ...the director of developmental disabilities may issue an adjudication order requiring that one of the following actions be taken against a person or government entity seeking or holding a supported living certificate:

(1) Refusal to issue or renew a supported living certificate

(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

The State of Ohio is an Equal Opportunity Employer and Provider of Services



- (4) Misfeasance
- (5) Malfeasance
- (6) Nonfeasance
- (7) Confirmed abuse or neglect
- (8) Financial irresponsibility
- (9) Other conduct the director determines is or would be injurious to individuals who receive or would receive supported living from the person or government entity.

The Supported Living Provider, Individual Options Waiver, and Level One Waiver certifications are all considered "supported living certificates" because each of them are considered "supported living" services as defined O.R.C. §§ 5123.01(Z), 5126.01(U).

The basis for denying each of the above applications is as follows:

- On February 21, 2014, Melissa Stoll, CEO for Open Arms sent the Ohio Department of Developmental Disabilities a faxed copy of her BCII report. Upon review the Department determined that the document appeared to have been altered. The Department contacted the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation and confirmed that Melissa Stoll had not submitted her fingerprints for a criminal background check in 2013 as indicated on the BCII report.
- On February 28, 2014, the Civilian Identification Unit of the Bureau of Criminal Identification and Investigation notified the Ohio Department of Developmental Disabilities in writing that the BCII report submitted to the Department on February 21, 2014 is not a valid document. Ms. Stoll thus submitted a forged document to the Department in the course of submitting an application for certification.

To minimize the disruption of services to the individuals currently receiving services from Open Arms, Inc., the Department is extending the agency's existing certification from March 14, 2014 through May 13, 2014.

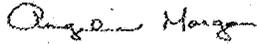
You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed denial provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or

contention in writing, and you may present evidence and examine witnesses appearing for and against you.

If you would like a hearing, please submit your request to Brad Singer, Associate General Counsel, Ohio Department of Developmental Disabilities, 30 E. Broad St., 12th floor, Columbus, Ohio 43215.

If you do not request a hearing within the time allowed, an adjudication order will be issued denying your provider certification applications.

Sincerely,



Angelia Morgan
Provider Certification Manager

cc: Kathryn Haller, Chief Legal Counsel, DODD
Brad Singer, Associate General Counsel, DODD
Patrick Stephan, Deputy Director, Medicaid Development & Administration, DODD
Debbie Hoffine, Operations Administrator, DODD
Roger Carroll, Principal Assistant Attorney General, Ohio Attorney General
Theresa Ryan, Manager, DODD
Maryann Burns, Acting Superintendent, Lucas County Board of DD

Ohio

Department of
Developmental Disabilities

30 E. Broad Street
13th Floor
Columbus, Ohio 43215-3434

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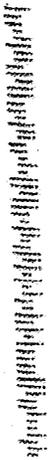
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Ohio | Department of
Developmental Disabilities

John Kasich, Governor
John L. Martin, Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REVISED

April 28, 2014

Open Arms, Inc.
Melissa Siler-Stoll
360 Reynolds
Toledo, Ohio 43615

Re: Provider Applications

Dear Ms. Siler-Stoll:

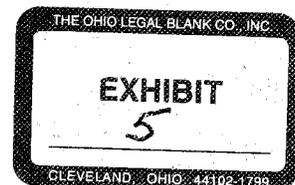
Please be advised that the Department is proposing to issue an adjudication order denying your application to renew your certification as an (1) IO Waiver, Adult Day Support, (2) IO Waiver, Adult Foster Care, (3) IO Waiver, Community Respite, (4) IO Waiver, Homemaker Personal Care, (5) IO Waiver, Non-Medical Transportation, (6) IO Waiver, Residential Respite, (7) IO Waiver, Supported Employment Community, (8) IO Waiver, Supported Employment Enclave, (9) IO Waiver, Transportation, (10) IO Waiver, Vocational Habilitation, (11) Level 1 Waiver, Adult Day Support, (12) Level 1 Waiver, Community Respite, (13) Level 1 Waiver, Homemaker Personal Care, (14) Level 1 Waiver, Non-Medical Transportation, (15) Level 1 Waiver, Residential Respite, Transportation, (16) Level 1 Waiver, Supported Employment Community, (17) Level 1 Waiver, Supported Employment Enclave, (18) Level 1 Waiver, Vocational Habilitation, (19) SELF Waiver, Adult Day Support, (20) SELF Waiver, Community Respite, (21) SELF Waiver, Non-Medical Transportation, (22) SELF Waiver, Residential Respite, (23) SELF Waiver, Supported Employment Enclave, and (24) SELF Waiver, Vocational Habilitation provider.

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The State of Ohio is an Equal Opportunity Employer and Provider of Services



(B) The following constitute good cause for taking action under paragraph (A) of this section against a person or government entity seeking or holding a supported living certificate:

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(5) Malfeasance

(6) Nonfeasance

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- On February 18, 2014, Ms. Stoll submitted a copy of a Bachelor's in Nursing Degree from Owens Community College as part of her application for renewal certification. Upon review of this document, the Department determined that the document is fraudulent. The Department contacted Owens Community College and verified that Ms. Stoll never received a degree from the college.

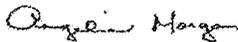
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You are hereby advised that you are entitled to a hearing in accordance with Chapter 119 of the Ohio Revised Code regarding this proposed denial provided you request such a hearing and your request is received by the below named individual within thirty (30) days of the mailing of this letter. At any such hearing, you may appear in person or be represented by an attorney, or you may present your position, argument, or contention in writing, and you may present evidence and examine witnesses appearing for and against you.

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Brad Singer, Associate General Counsel, DODD
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Debbie Hoffine, Operations Administrator, DODD
Roger Carroll, Principal Assistant Attorney General, Ohio Attorney General
Theresa Ryan, Manager, DODD
Maryann Burns, Acting Superintendent, Lucas County Board of DD

OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES

In the matter of Proposed Denial of) DODD Provider Certification
Application to Renew Certifications of) No. 4803761
Open Arms, Inc., Provider.) Hearing Examiner
Robert C. Angell

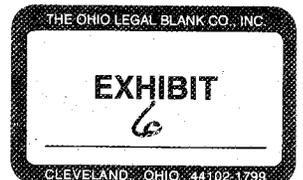
**OPEN ARMS' MOTION FOR HEARING EXAMINER ROBERT C. ANGELL TO
RECUSE HIMSELF FROM SERVING AS HEARING EXAMINER**

I. Introduction

This matter is set for hearing on September 23, 2014. The Ohio Department of Developmental Disabilities ("DODD"), pursuant to R.C. §119.09, has appointed attorney Robert C. Angell as the independent hearing examiner to hear this matter. For the reasons more fully set forth below, respondent respectfully requests that Mr. Angell recuse himself from hearing this matter and that the Director of DODD appoint an independent hearing examiner to hear this matter.

Respondent consulted with Mr. Angell as a private attorney in DODD investigations of Open Arms, Inc. occurring in 2013. Those investigations are not yet dismissed. Open Arms is Mr. Angell's former client within the meaning of Rule 1.9 of the Ohio Rule of Professional Conduct ("ORPC"). Open Arms has not waived the conflict. Mr. Angell has confidential information about Open Arms and DODD's investigations and cannot be independent and impartial in any matter coming before him involving Open Arms.

One cannot unlearn things learned in confidence in an attorney-client relationship. Should he recommend to the Director of DODD that Open Arms' certification be non-renewed, it is apparent that he will have used information gained as a result of the



attorney-client privilege and his former representation of Open Arms in violation of ORPC Rules 1.9(c) and 1.6. For these reasons, Open Arms requests that Mr. Angell recuse himself from hearing the instant matter and that the Director of DODD appoint an independent hearing examiner.

II. Facts

On or about June 28, 2013, DODD issued two notices of opportunity for hearing alleging that Open Arms, Inc. violated several provisions of the Ohio Revised Code and the Ohio Administrative Code. *See* Affidavit of Melissa N. Siler-Stoll ¶2 (Exhibit 1). The Affidavit of Melissa N. Siler-Stoll is hereby expressly incorporated by reference herein.

On or about July 5, 2013, Melissa Siler-Stoll (the president of Open Arms) retained Melissa J. Mitchell of Collis, Smiles + Collis, LLC, 1650 Lake Shore Drive, Suite 225, Columbus, Ohio, 43204, to defend and represent Open Arms and her in the matter with DODD. *See id.* ¶3.

On or about October 25, 2013, it became necessary to replace Ms. Mitchell and find another attorney to defend and represent Open Arms and Ms. Siler-Stoll in the matter with DODD. *See id.* ¶4.

On or about October 28, 2013, Ms. Siler-Stoll contacted her regular attorney, Kimberly B. Kuhn of Churchill Smith Rice Swinkey & Kuhn, L.L.P., 9042 Lewis Avenue, Temperance, Michigan, 43623, about the situation with Ms. Mitchell. Ms. Kuhn advised Ms. Siler-Stoll to terminate Ms. Mitchell and obtain another attorney to represent Open Arms and her in the matter with DODD. *See id.* ¶5.

Ms. Kuhn researched Ohio professional licensure defense attorneys and referred several to Ms. Siler-Stoll, including Jeffrey J. Jurca of Jurca & Lashuk, L.L.C., 240 North Fifth Street, Suite 330, Columbus, Ohio, 43215. Ms. Kuhn personally spoke to Mr. Jurca on Ms. Siler-Stoll's behalf. *See id.* ¶6.

On or about November 4, 2013, Ms. Siler-Stoll contacted Mr. Jurca by telephone. Mr. Jurca advised Ms. Siler-Stoll that he would love to take on her case but he was too busy at that time to take Open Arms and Ms. Siler-Stoll on as clients. However, Mr. Jurca referred Ms. Siler-Stoll to (i) Eric J. Plinke of Dinsmore, 191 West Nationwide Boulevard, Suite 300, Columbus, Ohio, 43215, and (ii) Robert C. Angell of Angell Law Offices, LLC, 13587 Capetown Avenue, Pickerington, Ohio, 43147-8855. *See id.* ¶7.

On or about November 4 or 5, 2013, Ms. Siler-Stoll contacted Mr. Angell by telephone. During Ms. Siler-Stoll's telephone conversation with Mr. Angell, she disclosed detailed, substantive, and confidential information about DODD allegations, Open Arms, and herself. Mr. Angell listened to her carefully and asked several follow-up questions about Open Arms and her. Mr. Angell requested a retainer payment. Mr. Angell also requested documents related to the case. Ms. Siler-Stoll received at least one follow-up telephone call from Mr. Angell. She did not return Mr. Angell's telephone calls because, by then, she had retained her current attorney. *See id.* ¶8.

The detailed, substantive, and confidential information about DODD allegations, Open Arms, and Ms. Siler-Stoll that she disclosed to Mr. Angell in November 2013 are substantially related to the administrative charges that DODD leveled against Open Arms and her on March 6, 2014 and April 28, 2014. *See id.* ¶9.

DODD has appointed Mr. Angell to serve as hearing examiner in the administrative hearing regarding the allegations contained in the March 6, 2014 and April 28, 2014 letters. *See id.* ¶10.

Because Ms. Siler-Stoll disclosed detailed, substantive, and confidential information about the original DODD allegations, Open Arms, and her to Mr. Angell, he has personal knowledge of facts that are also in dispute in the administrative charges that DODD leveled against Open Arms and her in March 6, 2014 and April 28, 2014 letters. *See id.* ¶11.

During Ms. Siler-Stoll's November 4 or 5, 2013 telephone conversation with Mr. Angell, he indicated that he was a former Ohio Assistant Attorney General. He indicated that he personally knew Assistant Attorney General Roger Carroll. Mr. Carroll is the attorney of record for DODD in the case against Open Arms and Ms. Siler-Stoll. Mr. Angell indicated that Mr. Carroll is an "old friend" of his. Mr. Angell indicated that he could use his friendship with Mr. Carroll to Open Arms' and Ms. Siler-Stoll's advantage. Specifically Mr. Angell stated: "Roger is more laid back and sometimes needs to have his hand forced to see the bigger picture, but he is an old friend of mine and that could work in our favor." *See id.* ¶12.

During Ms. Siler-Stoll's November 4 or 5, 2013, telephone conversation in which she disclosed detailed, substantive, and confidential information about the original DODD allegations, Open Arms, and herself to Mr. Angell, he demanded that she pay him a \$5,000 retainer. Mr. Angell indicated that the total fee would cost approximately \$15,000 if the matter did not settle and a hearing was necessary. Ms. Siler-Stoll told Mr. Angell that her original attorney (Ms. Mitchell) had attempted settlement but that

DODD was not interested in settling the case. Mr. Angell replied: "Like I said before, maybe I can push [Mr. Carroll]'s hand a little further than [Ms. Mitchell] could." Ms. Siler-Stoll interpreted this to mean that Mr. Angell represented to her that he could use his friendship with Mr. Carroll to influence the outcome of the case in Open Arms' and her favor. *See id.* ¶13.

Open Arms and Ms. Siler-Stoll have never provided consent, express, implied, or otherwise, to Mr. Angell for him to represent another person, agency, or entity in the same or substantially related matter in which such other person, agency, or entity is materially adverse to Open Arms' or Ms. Siler-Stoll's interests, such as DODD's administrative charges against Open Arms and her contained in the March 6, 2014 and April 28, 2014 letters. *See id.* ¶14.

Ms. Siler-Stoll has good reason to believe that Mr. Angell cannot be impartial to Open Arms, her attorneys, or her. Ms. Siler-Stoll also has good reason to believe that Mr. Angell has personal bias against Open Arms, her attorneys, and her. *See id.* ¶15-21.

III. Law and argument

In the instant case, DODD's April 28, 2014¹ letter notifying Open Arms that it proposes to issue an adjudication order denying the renewal of its certification indicated that the company is entitled to an administrative hearing pursuant to R.C. Chapter 119. *See* R.C. §5123.166(D)(2). R.C. §119.09 permits the director to appoint a hearing officer or referee to hear the case. The director of DODD appointed Mr. Angell as the hearing examiner.

¹ *I.e.*, DODD's revised notice of opportunity for hearing in this case.

A. Due process concerns requiring Mr. Angell's recusal

The Fourteenth Amendment to the United States Constitution prohibits any state from depriving "any person of life, liberty, or property, without due process of law." *State ex rel. Haylett v. Ohio Bur. of Workers' Comp.* (1999), 87 Ohio St.3d 325, 331. Under the Ohio Constitution, "Section 16, Article I . . . states that 'every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law.'" *Id.* See also, *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422-423, citing *Direct Plumbing Supply Co. v. Dayton* (1941), 138 Ohio St. 540, 544 (stating that "[t]he 'due course of law' provision [in Section 16, Article I of the Ohio Constitution] is the equivalent of the 'due process of law' provision in the Fourteenth Amendment to the United States Constitution"); *Chirila*, supra, at 593, citing *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 688 (stating that "[d]ue process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings").

Althof v. Ohio State Board of Psychology, 10th Dist. No. 05AP-1169, 2007-Ohio-1010,

¶12.

"In a due process challenge pursuant to the Fourteenth Amendment, the first inquiry is whether a protected property or liberty interest is at stake." *Haylett*, at 331, citing *Am. Mfrs. Mut. Ins. Co. v. Sullivan* (1999), 526 U.S. 40, 59, 119 S.Ct. 977, 989; *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893.

Id. ¶15. Revocation of a license implicates a property interest for which due process must be afforded. *Id.* ¶16. A service provider granted a certificate pursuant to R.C. §5123.045 has a property interest in that certificate. Action taken against a provider's certificate must comport with R.C. Chapter 119.

Open Arms has a number of waivers and certificates issued to it pursuant to R.C. §5123.045. Accordingly, it has a property interest in those certificates and waivers. Any action DODD takes against those certificates or waivers must comport with due process under both the Fourteenth Amendment to the U.S. Constitution and the Article I, Section 16 of the Ohio Constitution.

Proceedings pursuant to R.C. Chapter 119 must comport with the U.S. and Ohio Constitutions. R.C. §119.12 allows a respondent to challenge the constitutional sufficiency of any decision reached.

“When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets at least currently prevailing standards of impartiality.” *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950). “And, of course, an impartial decisionmaker is essential.” *Cf. In re Murchison*, 349 U.S. 133 (1955); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 339 U.S. 45-46 (1950). *Goldberg v. Kelly* (1950), 397 U.S. 254, 271. *Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio* (1937), 301 U.S. 292, 304-305, 57 S.Ct. 724, 730-731, 81 L.Ed. 1093, discussed the procedural safeguards required of quasi-judicial administrative agencies. . . .

“Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. . . . Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the inexorable safeguard . . . of a fair and open hearing be maintained in its integrity. . . . The right to such a hearing is one of ‘the rudiments of fair play’ . . . assured to every litigant by the Fourteenth Amendment as a minimal requirement. * * * “ (Citations omitted.)

State ex rel. Ormet Corp. v. Industrial Comm'n. of Ohio, 54 Ohio St.3d 102, 103, 561 N.E.2d 920 (1990).

The right to a fair and open hearing is one of the rights given to every litigant by the Fourteenth Amendment to the U.S. Constitution. This principle applies equally in administrative proceedings. *See id.* at 104 (citing *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *State, ex rel. Canter, v. Indus. Comm'n.*, 28 Ohio St.3d 377, 504 N.E.2d 26 (1986); *State, ex rel. Finley, v. Dusty Drilling Co.* (1981), 2 Ohio App.3d 323, 441 N.E.2d 1128, (1981)).

A conflict of interest, like Mr. Angell's is inconsistent with due process evidencing partiality that requires disqualification. A hearing officer that acted as counsel to the respondent is the type of conflict of interest for which the hearing officer must be disqualified. See *American Cyanimid Co. v. FTC*, 363 F.2d 757 (6th Cir. 1966).

"An administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."

Id. at 767 (citing *Amos Treat Co. v. Securities and Exchange Commission*, 306 F.2d 260 (D.C. Cir. 1962)).

"It is fundamental that both unfairness and the appearance of unfairness should be avoided. Wherever there may be reasonable suspicion of unfairness, it is best to disqualify. See *Prejudice and the Administrative Process*, 59 Nw.U.L.Rev. 216, 231 (1964); *Disqualification of Administrative Officials for Bias*, 13 Vand.L.Rev. 713, 727 (1960)."

Id.

"Litigants are entitled to an impartial tribunal whether it consists of one man or twenty and there is no way which we may know of whereby the influence of one upon the others can be quantitatively measured." *Berkshire Employees Association of Berkshire Knitting Mills v. NLRB*, 121 F.2d 235, 239 (3d Cir. 1941).

In the instant case, Ms. Siler-Stoll (Open Arms' president), consulted Mr. Angell (the hearing examiner appointed to hear this matter) specifically on allegations and investigations occurring before DODD. The investigations about which Ms. Siler-Stoll consulted Mr. Angell were before DODD and are substantially related to the instant matter. Accordingly, Mr. Angell cannot sit in judgment on the instant case consistent with due process.

Mr. Angell has a conflict of interest of the nature that the Sixth Circuit in *American Cyanimid* indicated requires disqualification in an administrative proceeding. To allow him to preside over the current matter violates the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16 of the Ohio Constitution. Mr. Angell cannot be unbiased about the matter before him and is, therefore, necessarily disqualified from hearing it.

B. Conflict of interest concerns requiring Mr. Angell's recusal

ORPC Rule 1.9 addresses an attorney's duties to former clients. Such a conflict cannot be waived. While it is true that Open Arms ultimately retained other counsel, nevertheless Mr. Angell is privy to confidential information protected by the attorney-client privilege set forth in ORPC Rule 1.6. Mr. Angell is not permitted to reveal those communications without Ms. Siler-Stoll's express consent. She has not given such consent. Nor has she or Open Arms waived the conflict of interest in ORPC Rule 1.9.

Inasmuch as DODD is actually prosecuting Open Arms, there is no question that, as the factfinder, Mr. Angell has information that he will use adverse to his former client should his decision be to non-renew Open Arms' certificates. Mr. Angell has a continuing duty of loyalty to his former client. That duty never expires.

Nor is the fact that Open Arms never retained him dispositive. Where, as here, a potential client has contacted an attorney and revealed confidential information regarding a pending or impending legal matter, the attorney is prohibited from revealing the information regardless of whether the client actually hires him. *See In re OM Securities Litigation*, 22 F.R.D. 579 (N.D. Ohio 2005).

Communications made to an attorney for the purpose of seeking legal representation are protected by privilege and an attorney may not subsequently reveal them absent waiver. *See* R.C. §2317.02. The statute defines “client” as one who consults an attorney for the purpose of retaining the attorney or securing his professional legal services or advice. *See* R.C. §2317.021. The attorney cannot be compelled to reveal, nor is he permitted to reveal, the privileged communication. *See Spitzer v. Stillings* (1924), 109 Ohio St. 297, 142 N.E. 365 (1924).

Nor is the privilege waived by the crime fraud exception to ORPC Rule 1.6. ORPC Rule 1.6 (b)(2) applies to future acts and DODD’s April 28, 2014 letter addresses alleged past acts. For the exception to apply, an attorney would have to learn that his client intended to commit a crime or fraud and notify the appropriate authority to prevent it or the client would have to use the attorney’s services in furtherance of the fraud or crime. Neither of those situations exists in the instant matter.

As is set forth in Comment [2] to ORPC Rule 1.9, the degree to which an attorney is involved is a factor. Here, Mr. Angell was directly involved in Ms. Siler-Stoll’s rendering of confidential information to him regarding DODD’s investigation and prosecution of Open Arms. Where that is so, Comment [2] provides that it is an absolute prohibition for the lawyer to represent a party adverse to the former client’s interests. How much more prohibited then, is it for an attorney to actually sit in judgment on a case the very issues of which his former client discussed with him in previous consultation? It cannot be done. There can be no objectivity. Mr. Angell simply knows too much.

Comment [3] to ORPC Rule 1.9 gives an example of “substantially related” matters. There it states that a lawyer representing a client to obtain environmental

permits to build a shopping center could not then represent a client seeking to oppose rezoning of the property based on the permits. That example is on all fours with the current situation. Having obtained confidential information from Ms. Siler-Stoll relative to DODD's revocation of Open Arms' certifications, he cannot now sit as a hearing examiner in DODD's hearing to deny the renewal of the certificates.

ORPC Rule 1.9, Comment [5] makes clear that the prohibition exists for attorneys with actual knowledge regarding information protected by ORPC Rule 1.6. Comment [7] makes clear the attorney's continuing duty to preserve the information protected by ORPC Rule 1.6. Comment [8] clearly sets forth ORPC Rule 1.9(c)'s prohibition of using this confidential information in subsequent proceedings against the client. If DODD issued an order denying renewal of Open Arms' certifications, then Mr. Angell would necessarily violate this rule if he is the hearing examiner. There simply is no way to differentiate or forget what he learned in confidence. Open Arms' hearing will not be before an impartial hearing examiner if Mr. Angell remains the hearing examiner in this case.

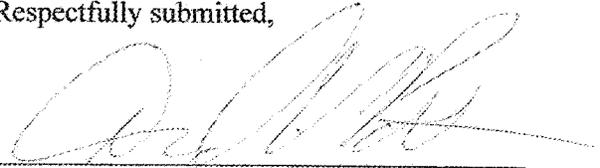
IV. Conclusion

Open Arms is entitled, pursuant to both the U.S. and Ohio Constitutions, to an independent hearing officer for DODD's hearing scheduled for September 23, 2014. Mr. Angell's former consultation with Mr. Siler-Stoll and Open Arms makes it impossible for him to act impartially in this matter. The impropriety and appearance of impropriety is too great to allow Mr. Angell to pass judgment on the instant matter. Due process requires that Mr. Angell recuse himself from acting in such a capacity.

As former counsel to Ms. Siler-Stoll and Open Arms, Mr. Angell has a conflict of interest that Ms. Siler-Stoll and Open Arms have not waived regarding the instant matter. There is no way to unlearn confidential information learned during the course of the attorney-client relationship. Should he rule against the respondent, it is clear that he will be using information learned from his consultation with Ms. Siler-Stoll and Open Arms against his former clients. As a result, Mr. Angell would necessarily violation ORPC Rule 1.9(a) and (c).

For the foregoing reasons, Open Arms respectfully requests that Mr. Angell recuse himself and that the Director of DODD appoint another independent hearing examiner to hear this matter.

Respectfully submitted,



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Counsel for Open Arms, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Open Arms' Motion For Hearing Examiner Robert C. Angell To Recuse Himself From Serving As Hearing Examiner was sent via (i) email, and (ii) regular U.S. Mail, postage prepaid, on September 12, 2014, to the following:

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Counsel for DODD



David V. Patton (0070930)

Counsel for Open Arms, Inc.

EXHIBITS

Exhibit 1: Affidavit of Melissa N. Siler-Stoll

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Entry and Order was served upon the following by electronic mail only this 15th day of September, 2014:

Roger Carroll, Esq.
roger.carroll@ohioattorneygeneral.gov

David V. Patton, Esq.
dpatton@lawpatton.com

Bradley C. Singer, Esq.
bradley.singer@dodd.ohio.gov



Robert C. Angell
Ohio Supreme Court #0061151

AFFIDAVIT OF MELISSA N. SILER-STOLL RE: RULE 12.02(B)

In Lucas County, Ohio, on September 16, 2014, Melissa N. Siler-Stoll, after being duly sworn according to law, states as follows:

- 1) I am over eighteen years old and have personal knowledge of the facts set forth in this Affidavit.
- 2) I am competent to testify to all matters stated in this Affidavit and in the accompanying Complaint For Writ Of Prohibition.
- 3) The accompanying Complaint For Writ Of Prohibition is hereby incorporated by reference to this Affidavit.
- 4) This Affidavit is made pursuant to Rule 12.02(B) of The Supreme Court of Ohio Rules of Practice.
- 5) All of the allegations and exhibits of the accompanying Complaint For Writ Of Prohibition are true, accurate, and correct to the best of my current knowledge, information, and belief.

Affiant states nothing further.

Melissa N. Siler-Stoll
Melissa N. Siler-Stoll

Sworn to and subscribed in my presence on September 16, 2014.

Beverly D. Solomon
Notary Public

BEVERLY D. SOLOMON
Notary Public, State of Ohio
My Commission Expires 07-02-2019

