IN THE SUPREME COURT OF OHIO

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

MERIT BRIEF OF APPELLEE MEDCORP, INC.

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INTRODUCTION

At issue here is who has the power to interpret law which controls access to Courts from administrative agency action and how severe that interpretation will be. The Bar and many other segments of our American society since the Depression Era have become convinced the administration of law is extremely difficult and complex. Consequently, distrust has developed about the separation of powers under which our government was formed and intended to operate. Though mixing of powers was a minor feature of government operations in the 1800's, the legislature has increasingly moved toward the delegation of greater powers to the Executive branch through the creation of boards, bodies, bureaus, etc., which writes law, executes law and acts in a quasi-judicial capacity as well (all three in one, if you will). See e.g. 2 Ohio Jur. 3d., *Administrative Law*, §§ 1, 2, and citations/footnotes therein.

Those involved in reviewing the actions of administrative officers who exercise legislative-conferred should be mindful that the vast majority of citizens' only encounter with a government agency will be through an administrative process, be it the Bureau of Motor Vehicles for some driver's license action, renewal of a beautician's license or similar professional license, dispute with the taxing authority, etc. Citizens expect those encounters to be handled in a manner in which they are treated with respect, and, more importantly, *fairly*. In the absence of fairness there is no point to having an administrative process.

Appellant's strained and severe interpretation of law works singularly as a means-end self-benefit to the public's detriment. If hearings are to be or become nothing more than a speed bump to delay a foregone conclusion made by an administrative agency then there is no point in having an administrative hearing. If judicial review is to be a blind acquiescence to agency action through the guise of "deference," those unfortunate taxpayers who come before an

administrative agency stand to lose (not to mention Hearing Examiner's whose contracts are not renewed after issuing adverse Report and Recommendations) no matter how meritorious their position may be. When an agency takes a position that seeks to deny judicial review, obtains a "relaxed" standard of evidence under which hearsay becomes commonplace, and otherwise is permitted to deviate from according citizens their full due process rights, we permit an administrative-law system which can only be perceived as unfair and weighted in favor of itself, for itself, and by itself (the "itself" being government) against Ohio's citizens. This notion runs contrary to encyclopedic text, which synthesizes more than 110 years of case law:

> ""Due process" requires that a power conferred by law will be exercised judiciously with an honest intent to fulfill the purpose of the law, and since it is a part of the judicial function to see that that requirement is met, the door to judicial review to the acts of administrative officers cannot be completely closed. Care must be taken that the Constitutional guaranty of due process of law is not violated by the agency's procedures.....
>
> If the legislature fails to make statutory provision for the constitutional minimum of judicial review, then such review may be invoked by common law methods. Whether or not the legislature grants by statute power to a court to review a particular administrative act, the guaranty of due process of law permits a court of competent jurisdiction in an appropriate proceeding to review questions .....[listing omitted]."
>
> 2 Ohio Jur. 3d., Administrative Law §134 (footnotes omitted)

Though Ohio's statutory scheme for common pleas review of administrative agency orders has existed from the days of the General Code through the enactment of "notice pleading" standards, this Court has never addressed the admittedly "simple question" posed by Appellant Ohio Department of Job and Family Services (the "Department"): whether an appealing party's "grounds for review" in its Notice of Appeal to the Common Pleas Court from an agency's Adjudication Order must be something other than those expressly set forth in R.C. 119.12?

However, the simpler question – one that yields the answer to this appeal but not asked by the Department - is ***why*** the so-called "grounds requirement" in R.C. 119.12 should ***not*** be dependent upon and congruent with what it has characterized as the "standard of review" language in that same statute?

Alas, the Department has attempted to bait this Court into expanding the statute's plain and general "grounds requirement" into "something" more. The Department is reticent to define what that "something" may or should be (see, Department Merit Brief, p. 15) lest it expose its result-oriented reason for bringing this appeal to this Court (i.e., the Department's ultimate loss on the underlying merits). However, concerns grounded in law, policy and fairness dictate the formal adoption by this Court of a simple, practical, and uniform approach. Such an approach will be consistent not only with decisional law years before the advent of notice pleading and modern court practice, but will be congruent with modern and common practice itself.

Simply, Medcorp's approach is one which equates the "grounds requirement" with what the Department characterized as the "standard of review." This Court's refusal to adopt the Department's argument avoids the disservice to the bar and litigants by burdening them with a hyper-technical rule, making the appeals process continuously open for determination on the merits of the litigant's arguments. The sound resolution of this matter is the application of its syllabus holding in ***Henry's Cafe, Inc. v. Board of Liquor Control*** (1959) 170 Ohio St. 233, 163 N.E.2d 678 in a manner congruent with the reasoning in ***Appeal of Stocker*** (1968), 16 Ohio App. 2d 66, 71, 241 N.E.2d 779.

The very unsettling and problematic aspect of adopting the Department's unprecedented, expansive view of "Notice" also negates a possibility that the so-called "jurisdictional defects" in all victories against a state agency or department in every prior, successful administrative appeal

will be retroactively vacated for want of jurisdiction.[1] Of course, by affirming the appeals decision below, the Court will definitely thwart the inherent, unfair prejudice to an appellant in any pending case with the prospective application the Department's rule, and certainly so without implicating the misuse of the rule-making powers constitutionally entrusted to the judicial branch. Affirming the decision below also acts to cease wholesale, unrelenting and indiscriminate attacks on jurisdiction by this Appellant, such as those set forth in ***Giese v. Ohio Dept. of Job & Fam. Serv.***, (5/18/2007), Erie County App. E-06-034, 2007 WL 1452835, 2007-Ohio-2395 (a family entitled to more food stamps filed an improper notice of appeal by not amplifying the "grounds"). See also, ***Hummel v. Ohio Dept. of Job & Family Servs.***, 164 Ohio App.3d 776, 2005-Ohio-6651 (attempted denial of entitled medical services to an autistic child based on improper notice of appeal by not amplifying the "grounds"). A government which treats its citizens this way should be ashamed to govern.

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[1] Even in the context of prior administrative appeals to this Court, for instance in ***WCI v. Ohio Liquor Control Comm.*** 116 Ohio St. 3d 547, 549, 2008-Ohio-88 (2008), the common pleas courts determined (without objection or assigning error) that the administrative appellant's "general assignment of error is that the order of the Commission is not supported by reliable, probative and substantial evidence." *See,* DECISION AND ENTRY ON ADMINISTRATIVE APPEAL, FRANKLIN COUNTY COURT OF COMMON PLEAS CASE NO. 04CV-6510, *WCI, v. Ohio Liquor Control Comm.*, at. p. 3 (attached as *Exh. 4 in Appendix to 2/20/07 Merit Brief of Appellant Ohio Liquor Control Commission* in Supreme Ct. Docket No. 2006-1360 (attached as Appendix A. Naturally, this was not just happenstance, but something was congruent with (and corroborative of) the actual Notice of Appeal filed with the common pleas court in that case. *See,* NOTICE OF APPEAL, FRANKLIN COUNTY COURT OF COMMON PLEAS CASE NO. 04CV-6510, ***WCI v. Ohio Liquor Control Comm,*** attached as Appendix B. Similarly, the appeal notice filed in common pleas against another administrative agency of State government, namely the Ohio Real Estate Appraiser Board (within the Ohio Department of Commerce), indicates what can only be characterized by Appellee as the State's *acquiescence* in the filing of supposedly jurisdictionally-defective notices of appeal. S*ee,* NOTICE OF APPEAL, FRANKLIN COUNTY COURT OF COMMON PLEAS CASE NO. 07CVF-2 02925, ***Rickett v. Ohio Real Estate Appraiser Bd.***, attached as Appendix C.

STATEMENT OF THE CASE AND FACTS

The Department sought this Court's jurisdiction to advance a proposition of law that will overturn the Tenth District Appeals Court's affirmation of the Franklin County Common Pleas Court's substantive merit determination. Specifically, the Department sought to recoup Medicaid reimbursement from Medcorp due to findings made during an audit of Medicaid claims paid between March 1, 1996 and September 30, 1997. However, as a result of an administrative hearing under R.C. Chapter 119, the Department's Hearing Examiner found Medcorp was required to reimburse the Department only the sum of $1,850.02 (instead of $534,719.27 as claimed by the Department) because the Department knowingly used a wholly invalid statistical-sampling methodology in conducting its audit. The Department disagreed with its Hearing Examiner's findings, and reissued its proposed adjudication order as a final adjudication order to recoup all the monies originally sought in the invalid audit.

Medcorp timely filed an appeal of the Department's Adjudication Order to the Franklin County Common Pleas court by a Notice of Appeal similar to thousands of other appeals from agency orders previously-filed with common pleas courts across the State:

> Pursuant to sections 119.12 and 5111.06 of the Ohio Revised Code, Medcorp, Inc., by and through counsel, hereby appeals from the Adjudication Order issued by the Ohio Department of Job and Family Services dated April 19, 2006, a copy of which is attached and incorporated herein by reference and styled: In the Matter of: Medcorp, Inc., Docket No. 01SUR25. The Adjudication Order is not in accordance with law ***and*** is not supported by reliable, probative, and substantial evidence.
>
> *See*, Medcorp's Notice of Appeal (without adjudication order, which was originally attached) (attached as Appendix D) (***emphasis*** added).

The Department filed a Motion to Dismiss Medcorp's administrative appeal on the ground that Medcorp's notice of appeal did not comport with the statutory standard of R.C. 119.12, which was implicitly rejected as the court did not address it. Instead, the common pleas

court reinstated the Report and Recommendation of the Department's own Hearing Examiner and reversed the Department's adjudication order because it was not based on reliable, probative and substantial evidence and was not in accordance with law.

The Department appealed the common pleas decision to the Tenth Appellate District, which affirmed the lower court's decision on the merits and rejected the Department's procedural issue. The Department has not appealed the merit issue to this Court but obtained certification of a conflict between the Tenth District's decision(s) below and in ***Derakhshan v. State Med. Bd. of Ohio*** (10/30/2007), Franklin App. No. 07AP-261, 2007-Ohio-5802 with ***David May Ministries v. State of Ohio ex rel. Petro*** (July 6, 2007) Green App. No. 2007CA1, 2007-Ohio-3454.

ARGUMENT OF LAW

APPELLEE'S RESPONSE TO APPELLANT'S PROPOSITION OF LAW: R.C. 119.12 does not require the party prosecuting an administrative appeal to set forth specific factual or legal grounds in the Notice of Appeal.

The Department argues that Medcorp's Notice of Appeal does not assert grounds for appeal it feels are required by R.C. 119.12, so therefore the common pleas court lacked jurisdiction over Medcorp's appeal. The Department's proposed rule of law is a tortured and unnecessary expansion of the plain language of a clear statute. It will needlessly burden an administrative appellant's compliance by requiring a document meet an "intermediate appellate briefing" standard, rather than a simple notice. Adopting the Department's position is unnecessary since the parties to administrative appeals frame many of the issues at the level of the agency proceedings, where they also file briefs on the law and objections to evidence. Since the common pleas court decides the appeal based on the record and the written briefs, the latter of which include assignments of error, there is no justifiable purpose in requiring that a notice of

appeal contain anything more than what the plain grounds set forth in R.C. 119.12. Adoption of the Department's standard would start courts down a slippery slope to abandonment of a "notice" system instituted in 1970 to avoid the exact uncertainty and prejudice the Department's standard creates and which appeals courts (by the Department's admission) would need to continually address on a case-by-case basis.

In addressing the Department's arguments below, the Court will observe the notice-filing aspects of administrative appeals vary little as a practical matter from appeals filed from a common pleas court to an appellate court.

A) "BOILERPLATE" APPEAL NOTICES ARE NOT UNFAIR. RATHER, UNIFORM NOTICE PROCEDURE IS DESIROUS WHERE IT PRESERVES AND FOSTERS THE ABILITY OF APPEALS TO BE DETERMINED ON THEIR MERITS.

The Department's perception that every appeal notice containing "boilerplate" language is unfair is unmerited. A rule of law that ensures a standard of uniformity in the context of any form of appellate procedure is rarely perceived to be a bad thing. Except by the Department. See Department's Merit Brief, p. 10 ("All such parties could use the same grounds statement. Put another way, a lawyer with a varied practice could cut-and-paste the same line into every notice of appeal").

The Department never really gets around to why this is such a bad thing, other than its misperception that permitting non-case-specific grounds somehow "renders" meaningless an unidentified "something" from R.C. 119.12. However, as explained below, a very natural interpretation of the statute mandates the construction given to it by the Tenth District's decision below and in ***Derakhshan***. Further, one is hard-pressed to claim uniformity is an evil to be remedied when a uniform standard ensures simply that appeals (like the cases that underlie them) will be heard on their merits. After all, judicial policy favoring determinations on the merits is

fundamental in Ohio. ***DeHart v. Aetna Life Ins. Co.*** (1982), 69 Ohio St.2d 189, 431 N.E.2d 644; ***AMCA Intern. Corp. v. Carlton*** (1984), 10 Ohio St.3d 88, 91, 461 N.E.2d 1282. Finally, it is simply untrue that boilerplate notices would permit litigants to file appeals without "even decid(ing) on (grounds) to appeal." Department's Merit Brief, p. 10. Rather, parties will (and should) continue to decide in their inherent discretion whether to appeal on grounds of law, fact, or both. Naturally, doing so avoids the irrational assumption that counsel would expend their resources (and their client's) to advance a frivolous appeal.

The Department's "slippery slope" argument exposes the fallacy of its underlying premise, which is that no substantive difference exists between the statutorily-stated grounds (specifically delineating an appeal taken on law, fact, ***or both***) and a statement that does not delineate whether the appeal is on legal and/or factual grounds (i.e., "The challenged order does not meet the standard required of it by R.C. 119.12" or, "The order is wrong."). Compare, Department's Merit Brief, p. 11. Ironically, since the Department shies from stating what the standard should be under R.C. 119.12 (other than to state that Medcorp has not met "that" standard), one wonders why a statement (as posited by the Department's brief) that "The order does not meet the standard of review required by law" would be an unavailing. After all, it is not as if this Department should be unaware of the factual and legal issues it creates when it willfully engages in writing an Adjudication Order in a manner completely contrary to its own Hearing Examiner's Report and Recommendation.

More pointedly, it is not as if a state agency, the reviewing court, and the appealing party are not guided by that same adjudication order and Report and Recommendation in determining what the issues would be in any event. Not only does the Department's position ignore the statutory right to file objections to a report and recommendation under R.C. 119.09 (which

further clarifies issues in dispute before appeal is even available), the circumstances in cases cited by the Department, most notably ***WCI v. Ohio Liquor Control Comm.***, 116 Ohio St. 3d 547, 2008-Ohio-88 (2008), show the Notice of Appeal *actually filed* with the common pleas court looked *substantively no different than Medcorp's Notice here*![2] Thus, the Department is misleading this Court in its characterization of ***WCI*** as supporting the view that "the grounds requirement does not require an appellant to state specific facts if it asserts that the agency's order was not supported by law; in the latter case, a party needs to identify the legal error but need not cite specific facts." See, Department Merit Brief, p. 8 (citing ***WCI***, 116 Ohio St. 3d 547, 549, 2008-Ohio-88, ¶ 8-9).

Comparing the Notice of Appeal to the common pleas below in that case to the Department's claim that "[WCI's] legal theory was its grounds for appeal" (***Id.***), the only conclusion is the Department's position is fabricated. The Department undertakes no effort to explain the truth and reality of the situation: the only manner in which one could ascertain the "legal theory" for the appeal is based upon the briefs of the parties, not the content of the Notice of Appeal. It is less than astonishing that the common pleas court was not faced with a procedural cry relating to WCI's appeal notice there, but the Department, as another State agency here, claims that it would be unfairly prejudiced and the courts thrown into chaos by not adopting the Department's position here and dismissing Medcorp's notice of appeal.

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[2] *See*, Nt. 1, p. 4, *infra*, referencing NOTICE OF APPEAL, FRANKLIN COUNTY COURT OF COMMON PLEAS CASE NO. 04CV-6510, ***WCI v. Ohio Liquor Control Comm.***, (attached as Appendix B).

B) MEDCORP'S NOTICE IS FUNDAMENTALLY ADEQUATE

1) MEDCORP'S NOTICE OF APPEAL STATES PARTICULAR GROUNDS RECOGNIZED UNDER R.C. 119.12.

The Department does not suggest what ***type*** of grounds might be appropriate, only that the "grounds" stated in Medcorp's notice are insufficient despite that these same grounds are those specifically provided by the General Assembly in R.C. 119.12. However, neither R.C. 119.12 nor R.C. 5111.06 requires that *particular* grounds be set forth in a notice of appeal, only that *grounds* be set forth. Section 119.12 simply reads: "Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal." R.C. 119.12.

This Court clearly defined what the term "grounds" means in R.C. 119.12 nearly 50 years ago. In ***Henry's Cafe, Inc. v. Board of Liquor Control*** (1959) 170 Ohio St. 233, 163 N.E.2d 678, paragraph two of the syllabus, the Supreme Court held: "On appeal from an order of an agency . . . to the Court of Common Pleas, the power of the court to modify such order is limited to **the grounds set forth in Section 119.12**, Revised Code, **i. e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence.**" (**emphasis** added) That syllabus law made it clear that the *grounds* for appeal, reversal, affirmance or modification pursuant to R.C. 119.12, is whether the order is supported by reliable, probative, and substantial evidence and in accordance with the law. No good reason is advanced to ignore this case law.

2) THE DEPARTMENT'S ROLE IN FASHIONING THE ISSUES AND CONTROVERSY PROVIDES NO CHANCE OF UNFAIR SURPRISE IN DEFENDING ITS ADJUDICATION ORDER FOLLOWING A NOTICE OF APPEAL LIKE THE INSTANT NOTICE.

The Department's notion that an administrative agency could possibly be caught "off-guard" with surprise or novel arguments in defending an administrative appeal is as fantastic in the general as it is laughable when applied to the circumstances leading to this appeal. Modern-

day administrative law practice does not occur in a vacuum. In fact, modern practice and the law provide every administrative agency in the State of Ohio with exacting opportunity to be completely and directly involved in fashioning the orders released by the agency. The Department certainly took advantage of such here.[3]

By the time an administrative agency order has reached the stage where its Final Adjudication Order can be appealed, the agency has: a) provided notice of its action to the intended/affected party by service of a proposed Adjudication Order; b) has provided discovery opportunities for the parties; c) has provided a hearing over which a Hearing Examiner selected by the agency presides; d) has presumably considered and reviewed a report and recommendation of that Hearing Examiner setting forth findings of fact and conclusions of law, most likely after s/he has provided the parties an opportunity to submit post-hearing briefs and e) received objections to the Report and Recommendation as provided in RC 119.12. The Department's claim that an administrative appeal notice posits nothing of value (Merit Brief, at pp. 10-12) is fictional because at the point such a notice is filed, the agency already has had a very active hand in creating and framing the controversy. [4] Several steps have occurred to solidify the record giving rise to the legal and/or factual issues from which the non-agency appellant might wish to appeal by the time an administrative matter is appealed into the common pleas court. Thus, the "record" is fully developed and the common pleas court does not face a blank record from which it must guess its way to a determination.

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[3] The Department cannot dispute this, as it totally ignored the Hearing Examiner's report and recommendation in fashioning the Final Adjudication Order from which Medcorp appealed to the Franklin County Common Pleas court.

[4] Appellant authors its own Adjudication Orders and thus is never the appealing party initially. And for good reason: it is absurd for it not re-write an adverse adjudication order just to gain the supposed advantage of writing 2 briefs (i.e., one in chief, one in reply) from its own appeal of an adjudication order it could have easily authored to support its own views.

Under R.C. 119.12, a party wishing to appeal may ***expressly*** do so on ***legal*** grounds (i.e., the order is "not in accordance with law"), ***factual*** grounds (i.e., the order is "not supported by reliable, probative, and substantial evidence"), ***or both***. As it stands, compliance with procedures set forth in R.C. 119.12 by including a "general recitation" of the so-called "grounds requirement," suffices as a matter of fairness and notice grounded in due process because at the very least the appealing party has:

- Identified for the agency the specific order being appealed;
- Provided adequate notice of its intent to appeal by first filing the notice of appeal with the agency itself; and,
- Identified whether the appeal is being taken on issues of fact, law, or both.

The supposed evils in not stating, case-specific factual and/or legal grounds in an appeal notice in the administrative context pose no more of a real or practical danger here than in any civil appeal, where the Notice of Appeal need not state anything at all if it otherwise meets certain procedural requirements consistent with the notification requirements with Civil or Appellate Rule. After all, such a document is entitled a "Notice of Appeal" for a reason, as it is designed simply as a notification to the other side that an order or judgment is incorrect and objectionable.

C) THE LEGISLATURE HAS NOT ACTED.

The Department's fictional "parade of horribles", unconvincing "slippery slope" arguments, and cries of confusion ignore the plain reading of R.C. 119.12 and modern-day civil practice. The purpose and intent of a notice of appeal is to provide general notice and nothing more. If the legislature wanted the scheme or standard changed, it certainly could have amended R.C. 119.12 to provide for more exacting requirements. Of course, the issue presented by the Department comes after decades of Chapter 119 jurisprudence from this Court, many presumably perfected from appeals that were properly initiated below by the filing of

unobjectionable notices of appeal remarkably similar (if not the same) as Medcorp's filing with the common pleas court below. See, Nt. 2 at p. 4, *infra*.

In essence, the Department asks this Court to read additional terms into R.C. 119.12. Instead of stating "the grounds of the party's appeal" (which are found in the statute) the Department would like R.C. 119.12 to require appellants to allege "facts" or "errors" of the party's appeal. R.C. 119.12 does not contain such a requirement. If the General Assembly had intended an appeal notice state facts or errors, it would have done so expressly as it did in R.C. 3319.16 (governing appeals of teacher contract terminations); or R.C. 5126.23 (governing appeals of employee terminations by county boards of mental retardation and developmental disabilities); or R.C. 5747.55 (governing appeals of county budget commission actions). Instead, R.C. 119.12 requires an appellant to state the "grounds" of an appeal and it provides those grounds in the statute. It is not the function of courts to add to clear legislative language, especially where the statute is to be strictly construed. ***In re Adoption of Holcomb*** (1985), 18 Ohio St.3d 361, 481 N.E.2d 613. See also, ***State ex rel. Russo v. McDonnell*** (2006), 110 Ohio St.3d 144, 2006-Ohio-3459.

D) THE DEPARTMENT'S "NON-BRIEFING" SCENARIO IS A FICTION, LACKS LEGAL SUPPORT IN AND OUTSIDE OF OHIO, AND IS FUNDAMENTALLY CONTRARY TO MODERN CIVIL PRACTICE.

While the Department claims to recognize the legal burden of an administrative appellant to "try to meet the (R.C. 119.12) test" (see Department Merit Brief, p. 8), for some reason, the Department seems to feel very uncomfortable with the practical result of that burden. The Department never fully grasps the burden naturally falling upon the appealing party to prove the merits of its appeal to the common pleas court. The Department never had that burden, nor under the current statutory scheme will it ever have that burden.

Instead, the Department wishes to impose an obligation that is impractical. In the Department's view, the Court's obligation to review the administrative record (even in a case where a brief has not been filed by the appealing party - presumably for reasons sounding in professional neglect or inadvertence) mandates the imposition of a case-specific appeal notice to see that an agency or the Court (mostly the agency it seems, from the Department's view) would not be burdened in trying to "figure out" the merits of (or defend against) an appeal whose prosecution has been practically and professionally abandoned. This is a curious argument because appeals (like all other matters) not prosecuted are either routinely determined adversely as a matter of course or dismissed outright for failure to prosecute. Neither of these scenarios disadvantages a non-appealing agency. *But see*, ***Red Hotz, Inc. v. Liquor Control Comm.*** (8/17/1993), Franklin App. 93AP-87, 93-LW-3582, 1993 Ohio App. Lexis 4032, 1993 WL 325591; ***Minello v. Orange City Sch. Dist. Bd. of Educ.*** (8th Dist.), Cuyahoga App.44659, 82-LW-0288, 1982 Ohio App. Lexis 11662.

Notwithstanding the Department's clever avoidance of the role it fulfills in getting an agency order to the common pleas court, the notion that the agency needs to be told "more" in the appeal notice is seemingly born out of the Department's own conceit, its wholesale ignorance of the roles of the appealing party in prosecuting the review of the common pleas court, and respect for the role of the reviewing court. Much of the Department's alleged concern is rooted in the haste in which the Department asserts that administrative appeals actually (or perhaps in the Department's view, "should") move. The need for such haste is utterly absent. The Department neglects to mention not only that the vast majority of administrative reviews are filed in Franklin County, but also that certain administrative appeals ***must*** be filed in Franklin County by express provisions of R.C. 119.12. In Franklin County, local rule mandates briefing in

accordance with (and in recognition of) a process that is temporally tethered by the filing of the administrative record that by law can take 30 days to file, but which usually takes longer. ***See***, Franklin County Common Pleas R. 59 (attached as Appendix E).

The Department's "no briefing" argument is premised on a flimsy, fantastical fiction: a world where judicial time is such an abundant resource it is prone to great waste. In that universe, common pleas judges forego briefing in advance of decision and simply pick up and look (in all their "idle" time) at a Notice of Appeal before plowing through a box containing the record of administrative proceedings (including transcripts, briefs, exhibits, and the like) in some "match-game" effort to see if the Notice was congruent with (the Department's) standard of review. To conjure an image of an over-worked, under-appreciated public servant such as a common pleas judge undertaking such an effort (in his or her "spare time") requires an imagination of uncommon expanse and requires this Court to engage in sophistry far worse than the Department's hypothetical.

Only slightly less fantastic (because it is at least theoretically plausible) but equally untenable is Appellant's argument that "appellate-style" framing of "grounds" allows an agency to pursue settlement immediately, saving the court's and parties' time, if the grounds indicate something that the agency would rather settle. At the same time, the Department asserts such a standard "flushes out flawed appeals at the earliest opportunity, and it does so with the most efficient use of judicial resources." *See*, Department Merit Brief, at pp. 14-15. These contrary arguments are fictitious (particularly so under the facts of this case) and expose the Department's equally unrealistic and impractical reasoning to use the judiciary to create a trap for unwary

appellants solely for the convenience of administrative agencies. [5]

Indeed, the Department itself recognizes that "procedural issues under RC. 119 are often ironed out quickly, as most such cases are brought in the Tenth District—because appeals against many agencies belong *exclusively in Franklin County...*" *Id*, at 15 (*emphasis* added). The Department has had its share of success in spotting out these "procedural issues" to the extreme prejudice of the appealing party, often dispatching cases on purely technical grounds such as where the original notice of appeal was filed, when a copy of the notice was filed with the common pleas court, and the like. Many of those cases were decided in Franklin County and affirmed by the same Tenth District court that in the Department's opinion somehow got it wrong below and in ***Derakhshan***, *supra.*

As to requiring an appellant to provide "appellate-style" framing of "grounds," such might arguably be within the bailiwick of local court practice or rule, but has never been proposed in any jurisdiction in Ohio to the undersigned's research based belief. Such would be impractical, anyhow. In the Tenth District Appeals, local appellate practice and rule requires the submission in the docketing statement of prospective issues and responses to specific questions in all administrative appeals. See, Tenth District Court of Appeals Docketing Statement (Appendix F.). However, the statement of errors/issues is anticipatory and thus non-binding (*Id.*, at item/no. 16), which necessarily recognizes that even the framers of local rules understood that the period of time for an appeal may be insufficient to allow counsel to properly frame all issues at the time of the filing of the notice of appeal. Perhaps this example more than any other

[5] How or why the Department would "settle" here is a mystery. After all, its own Hearing Examiner said the Department got it fundamentally wrong on an alleged million dollar overpayment, and the Department merely ignored his Decision, rewrote it, and called it a "Final Adjudication Order." The Department does not appeal the merit finding, opting instead for a procedural "end-run."

highlights the sophistry behind the Department's implicit claim that -- no more than any other case -- administrative appeals would move along at lithium-crystal-induced warp speed if only the judges presiding over them had something to guide them to resourcefully use their free-time by prospectively reviewing the case ***prior to*** the filing of the record or the submission of briefs.

The Department's positions fall particularly short under a rule of statutory construction and interpretation known as "*in para materia,*" which mandates a rejection of the Department's central argument that the "grounds requirement" and the "standard of review" must be afforded separate and independent meanings. To be certain, a significant and uncontested body of case law recognizes that a failure to strictly comply with the filing requirements for administrative appeals deprives a reviewing court of jurisdiction. However, this Court has never addressed, let alone upheld, the broad notice rule advanced by the Department. The Department's position stands in stark contrast to the Third District's ruling in ***Appeal of Stocker*** (1968), 16 Ohio App. 2d 66, 71, 241 N.E.2d 779, and a very recent ruling from the 10th District Court of Appeals (***Derakhshan,*** *supra*). Curiously, the Department's brief contains no discussion of ***Derakhshan,*** the "conflict" case leading to the certified question before the Court. The Department certainly did not provide an explanation of why the state agency in ***Derakhshan*** could live with the Tenth District's decision, but this Department could not.

In ***Derakhshan***, the appellant specifically identified four separate grounds for appeal. ***Derakhshan*** at ¶22. The court in that case went on to hold that R.C. 119.12 only requires an appellant to "set[] forth . . . the grounds of the party's appeal" and does not require an appellant to set forth specific facts to support the grounds. That same appeals court found in this case there was no meaningful difference between the grounds for appeal set for in ***Derakhshan*** and the grounds for appeal set forth in Medcorp's notice of appeal. *Medcorp* at ¶11. Thus, the court

declined to adopt a requirement that an appellant set forth specific facts to support the grounds for appeal required by R.C. 119.12, finding the notice of appeal set forth grounds for the appeal sufficient to invoke the jurisdiction of the court.

The Department contends that the language used by Medcorp constitutes the mere standard of review recited in R.C. 119.12 and does not qualify as *grounds* for appeal. The Department's position is unsupportable. As Ohio courts have long held, "the grounds of an appeal from an administrative board may be simply stated in the operative words of Section 119.12, Revised Code, that the order appealed from is not supported by reliable, probative, and substantial evidence, and/or is not in accordance with law." [Emphasis added.] ***Appeal of Stocker*** (1968), 16 Ohio App. 2d 66, 71, 241 N.E.2d 779.

The Department also relies on ***Green v. State Bd. of Registration For Professional Engineers and Surveyors*** (3/31/ 2006), Greene App. No. 05CA121, 2006-Ohio-1581. However, *Green* wholly contradicts the Department's position. In that case, the appellant's notice stated only that he was "adversely affected," and it was the agency itself which pointed out and argued to the court that "the necessary grounds for appeal are those set out in R.C. 119.12, which are that the Board's order is not 'supported by reliable, probative, and substantial evidence and is (not) in accordance with law.'" [Emphasis added.] ***Green*** at ¶ 12. This is the exact language utilized in the instant case by Medcorp.

Finally, the Department encourages this Court to adopt the reasoning of the Second Appellate District in the recent case of ***David May Ministries v. State of Ohio ex rel. Jim Petro*** (July 6, 2007) Green App. No. 2007CA1. The Tenth Appellate District rightly rejected ***David May Ministries*** in both ***Derakhshan*** (which was not appealed by the state) and this case for very good reason: ***David May Ministries*** relied on the inapplicable decision in ***Green*** (explained

above), which in turn relied on ***Zier v. Bureau of Unemployment Compensation*** (1949), 151 Ohio St. 123, 84 N.E.2d 746. ***Zier*** is no longer applicable for the purpose cited here, however. ***Zier*** was decided prior to the adoption of the Civil Rules, when fact-specific pleading was required. *See, e.g.,* ***Pham v. Ohio St. Bd of Cosmetology*** (5/18/1998), Stark App.1997 CA 00378, 98-LW-1266, 1998 WL 401103. Moreover, while the appeals court expressed agreement with that line of cases holding that a notice of appeal pursuant to R.C. 119.12 that contains no grounds for appeal deprived the trial court of jurisdiction, it distinguished those cases from ***Derakhshan*** and this case.

Similarly, other states have rejected the proposed adoption of a harsh standard to obtain judicial review of an administrative order. In Georgia one must "state generally the grounds upon which appeal is sought." OCGA § 34-9-105(b). Where an appellant stated only that they were "dissatisfied with the Findings of Fact, the Conclusions of Law and the Award made...." The Court of Appeals of Georgia held the notice sufficient, stating "[I]t is not essential to a valid appeal that the exact language of the statute be embodied in the assignment of error on appeal. It is sufficient if the appeal can reasonably be construed as assigning an error on one of the grounds provided for by the statute." ***Truckstops of America, Inc. v. Engram*** ((Ga. App 1996), 220 Ga. App. 289, 290, 469 S.E.2d 425, 427 (citation omitted).

Ohio's Eighth District Court of Appeals adopted the Georgia Court's practice long before Georgia, when the Court held as adequate a notice of appeal taking an appeal "as provided by law" pursuant to R.C. 119.12:

> "R.C. 119.12 is a general statute embracing appeals from many agencies. The language of the statute must be of a general nature to accommodate the many agencies within its purview. It is a remedial statute under which R.C. 1.11 requires that all proceedings "shall be liberally construed in order to promote their object and assist the parties in obtaining justice." This means that "a litigant, where possible, should win or lose his case on the merits and not on a procedural

matter." *Baldine v. Klee* (7th Dist., 1968), 14 Ohio App.2d 181, 185, 237 N.E.2d 905.

"The primary function of a notice of appeal is to advise the opposite party of the filing of an appeal. It is usually sufficient if it contains enough information to apprise the opposite party of the particular judgment which is sought to be reviewed. *Produce, Inc. v. Bowers* (4th Dist., 1963) 119 Ohio App. 283, 286, 197 N.E.2d 903.

"While we have been given extensive citations supporting the theory that grounds of appeal should be specific, the cases cited are distinguishable. They involve specific statutory language dealing particularly with taxes and assessments, or actions brought against agencies governed by special statutes such as those regulating public utilities, boards of tax appeals and workmen's compensation boards of review, rather than the general grounds of appeal in R.C. 119.12.

"We hold that the language "as provided by law" was sufficient in the present case to apprise the Board of these statutory grounds of appeal, viz. that the order is not 'supported by reliable, probative, and substantial evidence', and therefore not 'in accordance with law.'"

Weissberg v. State of Ohio (12/22/1977), Cuyahoga App. 37207, 1977 WL 201689.[6]

Based on the totality of the case law and modern practice, the notice of appeal at issue before this Court clearly vested jurisdiction in the common pleas court below to hear and decide the merits of the administrative appeal. The Department's "means-end" positions and arguments must be rejected in favor of a decision that both upholds the merits of the lower courts' findings and does not disturb the existing judicial landscape by inventing new law which unfairly foists

[6] In contrast, a sister appeals court reluctantly found no jurisdiction where the administrative appeal notice stated *nothing* remotely akin to R.C. 119.12's requirements. ***Meadowbrook Manor Nursing Home v. Department of Health***, (9/2/1983), Trumbull App. No. 3160, 1983 WL 6091. ***Meadowbrook Manor*** noted, however, "It is, indeed, the sentiment of this court that these two (2) requirements of R.C. 119.12 pertaining to administrative appeals should not be applied with vengeance so as to unnecessarily proscribe the opportunity for such matters to be reviewed on the merits. This argument of the appellant is not received by unsympathetic ears. However, where there is ***no*** compliance with one of these requirements, it is difficult, if not impossible, for this court to ignore the dictates of the Ohio Supreme Court in American Restaurant and Zier, supra. The basis for substantial compliance as in Weissberg, supra, is missing." Id. (***emphasis*** added).

unnecessary hurdles upon the litigants and their counsel that are incongruent with the realities of long-standing, modern legal practice.

CONCLUSION

Medcorp satisfied the "grounds requirement" under R.C. 119.12 by declaring in its Notice of Appeal the adjudication order referenced therein was not in accordance with law and was not supported by reliable, probative, and substantial evidence. For all the reasons set forth herein, Appellee Medcorp respectfully submits that there is no support for the proposition of law espoused by the Department and this Court should AFFIRM the determination of the Tenth District below.

Respectfully submitted,

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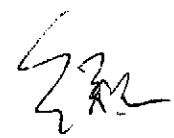
Counsel for Appellee Medcorp, Inc.

PROOF OF SERVICE

I hereby certify that a copy of the original of the foregoing was served via U.S. mail, postage pre-paid to the following counsel of record on September 25, 2008:

William P. Marshall, Solicitor General
Stephen P. Carney, Deputy Solicitor
Ara Mekhjian, Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 17th Floor
Columbus, Ohio 43215



Eric B. Hershberger (0055569)
Geoffrey E. Webster (0001892)
J. Randall Richards (0061106)

APPENDIX

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

WCI, INC.,

APPELLANT,

VS.

OHIO LIQUOR CONTROL COMMISSION,

APPELLEE.

CASE NO. 04CV-6510

JUDGE JENNIFER L. BRUNNER

FINAL APPEALABLE ORDER

DECISION AND ENTRY ON ADMINISTRATIVE APPEAL

Entered this 18th day of July, 2005.

This matter is before the court upon an appeal pursuant to R.C. 119.12 filed June 22, 2004. Appellant appeals the Ohio Liquor Control Commission orders dated June 2, 2004, which imposed two consecutive 30-day suspensions of appellant's liquor permit. The suspensions are based upon two separate violations. In case no. 782-04, the violation was for conviction of an employee, Brooke Orshoski, for trafficking in cocaine, in violation of R.C. 4301.25(A). In case no. 783-04, the violation was for knowingly and/or willfully allowing upon the permit premises improper conduct, specifically, possession of dangerous drugs by employee Bobbi Herald. The cited regulation was Ohio Administrative Code Rule 4301: 1-1-52, referenced further as Rule 52.

FACTUAL BACKGROUND

WCI, Inc. operates Cheeks Gentlemen's Club in West Carollton, Ohio. On February 6, 2003, an undercover purchase of $100 of cocaine was made from "Sarah", a dancer at the club. On February 13, 2003, agents again purchased cocaine from the same individual. The individual was later identified as Ms. Orshoski. She was convicted in Montgomery County, Ohio, on December 22, 2003, of trafficking in cocaine, a felony of the fifth degree, based upon these events. A second employee, Bobbi Herald, who danced under the stage name, Brooklyn, was granted treatment in lieu of conviction on

the charge of trafficking drugs. This plea was based upon an undercover purchase on March 27, 2003, of a controlled drug, Clonazepam.

Appellant was granted a hearing before the Commission on May 19, 2004. Appellant's counsel and also its manager, Erick Cochran, appeared before the Commission and stipulated to the facts in the investigators' and agents' reports. They sought to offer mitigating evidence as to a lack of knowledge of the dancers' activities and attempts to discourage such activities from occurring on the premises.

STANDARD OF REVIEW

R.C. 119.12 and the multitude of cases addressing that section govern the Court's review of a decision of an administrative agency, such as the Ohio Liquor Control Commission. In reviewing an administrative appeal filed pursuant to R.C. 119.12, the trial court must review the state agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad*[1]

The court in *Conrad* stated at pages 111 and 112 that,

> In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. The findings of the agency are not conclusive. Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, the court may reverse, vacate or modify the administrative order. Where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.

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[1] 63 Ohio St. 2d 108, 407 N.E.2d 1265, (1980).

The *Conrad* case has been cited with approval numerous times.[2] Although a review of applicable law is *de novo*, the reviewing court should defer to the agency's factual findings.[3]

DISCUSSION OF ASSIGNMENTS OF ERROR

Appellant's general assignment of error is that the order of the Commission is not supported by reliable, probative and substantial evidence. Appellant asserts that the Commission impermissibly applied R.C. 4301.25(A) as to the felony conviction of Ms. Orshoski. Appellant offers that the state legislature did not intend to punish a permit holder for the actions of an employee where those actions are not related to the conduct of the business. While appellant is correct that the cases of *Waterloo v. Ohio Liquor Control Commission*[4] and *Shotz Bar & Grill v. Ohio Liquor Control Commission*[5] address the requirement that the felony conviction occurred during employment or the employment continued after the conviction, both of these cases involve convictions unrelated to the permit business. Neither court addressed the issue of a conviction for activity occurring at the permit premises and while working for the permit holder. R.C.4301.25 provides:

> (A) The liquor control Commission may suspend or revoke any permit issued under this chapter or Chapter 4303. of the Revised Code for the violation of any of the applicable restrictions of either chapter or of any lawful rule of the Commission, for other sufficient cause, and for the following causes:
>
> > (1) Conviction of the holder or the holder's agent or employee for violating a section of this chapter or Chapter 4303. of the Revised Code or for a felony;***

This Court is unaware of any case that supports Appellant's theory that discharge of the offending employee may exculpate the permit holder where the felony conviction

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2 *City of Hamilton v. State Employment Relations Bd.*(1994), 70 Ohio St. 3d 210, 638 N.E.2d 522; *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591.

3 *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748. Rehearing denied by: *Pons v. State Medical Bd.* (1993), 67 Ohio St. 3d 1439, 617 N.E.2d 688.

4 (Franklin App. No. 02 AP-1288) 2003-Ohio-3333.

arises out of activities committed on the permit premises. To the contrary, several cases have concluded that drug activity by an employee is sufficient to warrant license sanctions.[6] The contention of Appellant as to this assigned error is not supported by the relevant case law.

As to the second violation, appellant asserts that the order of Commission is not supported by reliable, probative or substantive evidence, because Appellant was found by the Commission to violate Rule 52 for possession of a dangerous drug. The evidence before the Commission was insufficient to make this finding. Rule 52 makes it a prohibition for Appellant to:

> Allow in upon or about the licensed permit premises, or engage in or facilitate in, the possession, use, manufacture, transfer, or sale of any dangerous drug, controlled substance, narcotic, harmful intoxicant, counterfeit controlled substance, drug, drug paraphernalia, or drug abuse instrument as said terms are defined in ORC Chapter 2925.

OAC 4301:1-1-52(B)(5).

The elements for possession are set forth in R.C. 2925.11; however, "[a]ny person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs" is excluded from this statute. The evidence before the commission consisted of stipulated facts indicating that undercover agents approached an employee of Appellant's, Bobbi Harold, and asked if she had any pills. Ms. Harold indicated that she did not have any but could obtain Clonazepam pills for $2.00 per pill. Clonazepam is an anti-seizure medication. Harold proceeded to obtain ten (10) pills and sold the pills to the undercover agents for $20.00.

As Ms. Harold was not convicted as a result of the incident, the Commission cited

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5 (Franklin App. No. 02 AP-1141) 2003-Ohio-2659

6 See *Goldfinger Enters., Inc. v. Ohio Liquor Control Comm'n* (Franklin App. No. 2002 Ohio 2770, Appeal denied in 96 Ohio St. 3d 1533, 2002 Ohio 5351, 776 N.E.2d 112, 2002 followed by, *Flamingo Lounge of Ashtabula, Inc. v. Ohio Liquor Control Comm'n* (Franklin App. No.

Appellant for two violations of Rule 52, rather than R.C. 4301.25, due to Harold's conduct: possession of dangerous drugs and trafficking in drugs. The state dismissed the violation for trafficking in drugs; however, the Commission suspended Appellant's license for thirty days as a result of the possession violation.

Under OAC 4301:1-1-65(E), at all hearings before the Commission, "the burden of proof in all cases shall rest upon the director of the department of public safety or the superintendent of the division of liquor control." The record contains no evidence regarding how Harold obtained the Clonazepam pills, a prescription drug. The only evidence in the record is that Harold sold the drugs to the undercover agents. While this evidence may have been sufficient to support a suspension due the trafficking violation, the Court finds that Commission's order suspending Appellant's license due the possession violation is not supported by reliable, probative and substantive evidence.

The Court agrees with Appellant as to the right to modify a penalty imposed by the Commission where one or more violations are found to be unsupported. Accordingly, the Court hereby modifies the penalty to provide that Appellant's license shall only be suspended for thirty days as a result of the violation in case no. 782-04. The Commission's order suspending Appellant's license for an additional violation, as a result of the violation is in case no. 783-04 is hereby vacated.

CONCLUSION

The Court has reviewed the record of proceedings and the arguments offered in the instant action and concludes that Appellant's first assignment error is not well taken. The Court further finds that in its second assignment of error, Appellant has demonstrated that the Order of the Commission is not supported by evidence, and the

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02AP-1079, 2003-Ohio- 3126; See also *Backside, Inc. v. Ohio Liquor Control*

Court hereby modifies the Order as set forth above. It is therefore,

ORDERED, ADJUDGED AND DECREED that the decision of Appellee, Ohio Liquor Control Commission is AFFIRMED in part and MODIFIED in part. It is further

ORDERED, ADJUDGED AND DECREED The court further finds that there is no just cause for the delay in the entry of this Order.

Judge Jennifer L. Brunner

July 25, 2005
Date

Appearances:

Chris O. Paparodis
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Hilliard, OH 43026
Attorney for Appellant

Charles E. Febus
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215
Attorney for Appellee

Commission,.(Franklin App. Nos. 03AP-516 and 03AP-604) 2004-Ohio-1009

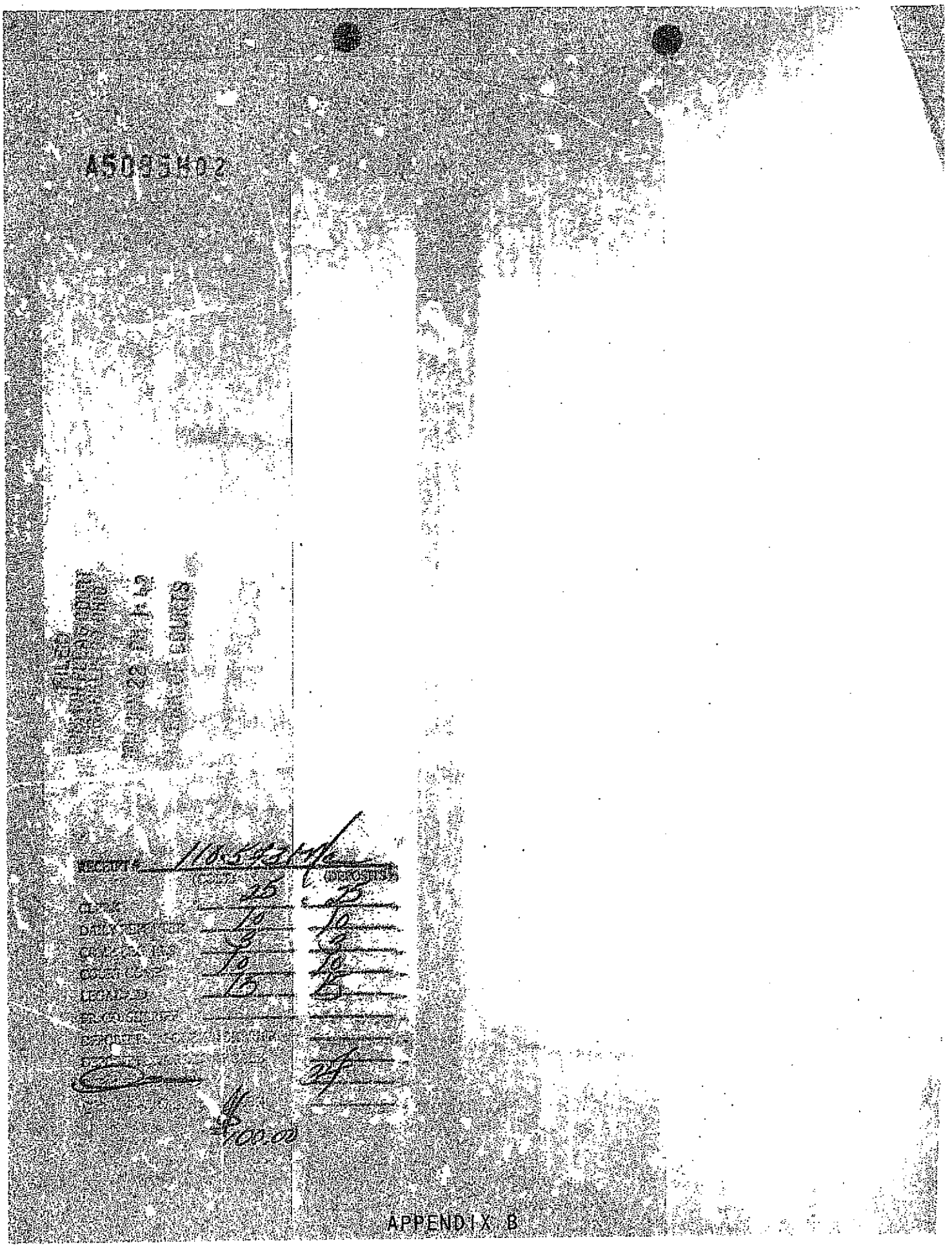
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

WCI, INC. d.b.a. Cheeks 906 Tower Ln West Carrollton, Ohio 45449 Appellant,	:	Case No. 04CVF06 6511 Judge Notice of Appeal
vs.	:	
OHIO LIQUOR CONTROL COMMISSION 77 South High Street, 18th Floor Columbus, Ohio 43266-0565, Appellee.	:	

1. In accordance with the provisions of Section 119.12 of the Ohio Revised Code, WCI, Inc. d.b.a. Cheeks, hereby gives notice of its appeal to the Court of Common Pleas of Franklin County, Ohio from the Orders of the Liquor Control Commission dated June 2, 2004 in Case Nos. 782-04 and 783-04, of which copies are attached hereto and incorporated in this Notice by reference as if fully set forth herein.

2. This appeal is taken upon the following grounds:

A5093K02



APPENDIX B

a) That the Orders appealed are not supported by reliable, probative, admissible and substantial evidence;

b) That the Orders appealed are not in accordance with law; and,

c) That there are other errors apparent upon the record in the proceedings of said Commission to the prejudice of the Appellant.

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CERTIFICATE OF SERVICE

Copy of the foregoing Notice of Appeal together with attachment was hand delivered to the Liquor Control Commission on the 22nd day of June, 2004.

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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

07CVF-2-02925

ROBERT ANTHONY RICKETT **4277 Marks Road** **Medina, Ohio 44256,**	:	**CASE NO.:** 07CVF-2-02925 **Div. of Real Estate Case No. 2004-000017**
Appellant	:	
-v-	:	**JUDGE** _____
OHIO REAL ESTATE APPRAISER BOARD **DIVISION OF REAL ESTATE AND PROFESSIONAL LICENSING** **OHIO DEPARTMENT OF COMMERCE** **77 South High Street, 20th Floor** **Columbus, OH 43215-6133,**	:	**NOTICE OF APPEAL**
Appellee.	:	

The Appellant, Robert Anthony Rickett ("Mr. Rickett"), hereby appeals under Ohio Rev. Code § 4763.11 and § 119.12 from the final decision of the Ohio Real Estate Appraiser Board, Division of Real Estate & Professional Licensing, Department of Commerce ("Division") dated and mailed February 16, 2007. *See attached Exhibit.* This appeal is upon questions of law and fact. The decision of the Division is contrary to the law and the facts. The Division's decision is unconstitutional, illegal, arbitrary and capricious, unreasonable, unsupported by substantial, reliable and probative evidence, and an abuse of discretion, and therefore the decision should be reversed.

RECEIPT# 1393290 15

	(COST)	(DEPOSITS)
CLERK	$ 25	$ 25
DAILY REPORTER	10	10
COMP LEG RES	3	3
COURT COMP	10	10
LEGAL AID	26	26
FR CO THERIEF		
DEPOSIT FOR FOREIGN SHERIFF		
DEPOSIT FOR ORDER OF SALE		
DEPOSIT FOR BOND		
DEPOSIT FOR APPROPRIATION		24

100

The Division's original case number for this matter is 2004-000017 C7895C19

Respectfully submitted,

PETER A SCHMID (0077387)
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Attorney for R Anthony Rickett

PRAECIPE TO THE DIVISION OF REAL ESTATE

TO Kelly Davids, Superintendent
Division of Real Estate and Professional Licensing
Ohio Department of Commerce
77 South High Street, 20th Floor
Columbus, OH 43215-6133

Please prepare and file with the Clerk of Courts of the Franklin County Common Pleas Court a complete transcript of all original papers, exhibits, documents, testimony and evidence offered, heard, and taken into consideration by the Ohio Real Estate Appraiser Board, Division of Real Estate & Professional Licensing, Department of Commerce concerning its decision based upon hearings of August 17, 2006 and February 9, 2007, and mailed to the parties on February 16, 2007 in case number 2004-000017, and concerning appellant R Anthony Rickett

PETER A SCHMID

C7895C20

CERTIFICATE OF SERVICE

This is to certify that the original of this Notice of Appeal was served by overnight U S mail upon Kelly Davids, Superintendent, Division of Real Estate and Professional Licensing, Ohio Department of Commerce, 77 South High Street, 20th Floor, Columbus, OH 43215-6133, and that a duplicate original of the foregoing Notice of Appeal was filed via overnight U S mail with the Clerk of Courts of the Franklin County Common Pleas Court this 27th day of February, 2007

PETER A SCHMID

TO THE CLERK OF COURTS

Please serve a file stamped copy of this Notice of Appeal by certified mail, return receipt requested, upon the following

Kelly Davids, Superintendent
Division of Real Estate and Professional Licensing
Ohio Department of Commerce
77 South High Street, 20th Floor
Columbus, OH 43215-6133

PETER A SCHMID

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MEDCORP, INC. 745 Dayton Street Toledo, Ohio 43608	:	
Appellant,	:	06CVF04 5622 Case No.:
v.	:	Judge:
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES 30 East Broad Street, 32nd Floor Columbus, Ohio 43215	:	
Appellee.	:	

NOTICE OF APPEAL

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

Respectfully submitted,

Geoffrey E. Webster (00001892)
J. Randall Richards (0061106)
Attorneys at Law
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Telephone: (614) 461-1156
Facsimile: (614) 461-7168

Attorneys for Appellant

CERTIFCATE OF SERVICE

I hereby certify that the original of the foregoing was delivered via Hand-Delivery to the Director of the Ohio Department of Job and Family Services, 30 East Broad Street, 32nd Floor, Columbus, Ohio, 43215, and a true and accurate copy was served via regular U.S. Mail was served upon the Ohio Attorney General Office, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio, 43215 this 27th day of April, 2006.

J. Randall Richards
Attorney at Law

Local Rules

Local Rule 51 Production Of Hospital Records - updated 01/13/2005
Local Rule 53 Dispositive Motions - updated 01/13/2005
Local Rule 55 Default Judgments - updated 01/13/2005
Local Rule 57 Summary Judgment Motions - updated 01/13/2005
Local Rule 59 Administrative Appeals - updated 01/13/2005
Local Rule 61 General Application - updated 01/13/2005
Local Rule 63 Grand Jury Proceedings - updated 01/13/2005
Local Rule 65 Bail Or Surety - updated 01/13/2005
Local Rule 67 Bail Forfeiture - updated 01/13/2005
Local Rule 69 Inactive Criminal Cases - updated 01/13/2005
Local Rule 71 Criminal Arraignments And Assignments - updated 01/13/2005
Local Rule 73 Nolle Prosequi Procedure - updated 01/13/2005
Local Rule 75 Motions - updated 01/13/2005
Local Rule 76 76.01 Creation Of Specialized Docket, "The Ties Program." - updated 08/25/2005
Local Rule 77 Indigent Defendants - updated 06/07/2007
Local Rule 77 Indigent Defendants - updated 06/07/2007
Local Rule 77 Indigent Defendants - updated 01/13/2005
Local Rule 78 Appointed Counsel Review Board - updated 01/13/2005
Local Rule 79 Continuances - updated 01/13/2005
Local Rule 81 The Record - updated 01/13/2005
Local Rule 82 The Retention And Disposal Of Court Reporter Notes, Depositions, Transcripts And Exhibits In Civil
Local Rule 83 Disclosure Of Presentence Reports - updated 01/13/2005
Local Rule 85 Certification Of Assets - updated 01/13/2005
Local Rule 88 Home Incarceration Program - updated 01/13/2005
Local Rule 89 Post Conviction Petitions - updated 01/13/2005
Local Rule 90 Security - updated 01/13/2005
Local Rule 91 Admission Of Out-Of-State Attorneys - updated 01/13/2005
Local Rule 92 Compliance - updated 06/13/2005
Local Rule 93 Receiverships - updated 01/13/2005
Local Rule 95 Attorney's Fees In Suits For Partition Of Real Estate - updated 01/13/2005

Local Rule 59
Administrative Appeals
59.01 All Administrative Appeals (F) shall be placed on the appeals track, which shall consist of the following sequence of events within these time limits:

LATEST TIME OF OCCURRENCE EVENT (in weeks)
Filing Notice of Appeal (and Demand for Record, if required) 0
Filing of Record 4
Dispositive Motions 6
Filing of Record, if extension granted 8
Filing of Appellant's Brief 10
Filing of Appellee's Brief 12
Filing of Appellant's Reply Brief and non-oral hearing date 13
Oral Argument, if allowed 14

The Trial Judge may extend this schedule upon written motion of a party or sua sponte for good cause shown, such as the complexity of case or the length of the Record. The appeal shall be deemed submitted at a non-oral hearing on the date set for the filing of the Reply Brief. The Trial Judge may set a shorter schedule for expedited appeals.

DOCKETING STATEMENT

MEDCORP, INC.

Case No. _____

OHIO DEPT. OF JOB AND FAMILY SERVICES

THIS APPEAL SHOULD BE ASSIGNED TO:

X The regular calendar.
___ The accelerated calendar for the reasons checked:

___ 1. No transcript required.
___ 2. Transcript consists of 50 or fewer pages, or it is of such length that its preparation and time will not be a source of delay.
___ 3. An agreed statement will be submitted within 20 days.
___ 4. Administrative hearing record was filed with the trial court.
___ 5. All parties to this appeal agree to an assignment to the accelerated calendar.

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Although the appeal meets one or more of the reasons for being assigned to the accelerated calendar, it should not be assigned to the accelerated calendar because:

X 1. Brief in excess of 15 pages (see Loc.R. 7(B)) is necessary to set forth adequately the facts and argue the issues in the case.
X 2. Appeal concerns unique issue of law which will be of substantial precedential value in determination of similar cases.
___ 3. _____

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(QUESTIONS 1 through 4 APPLY TO ALL APPEALS)

1. Is this a "premature" appeal filed after the decision (or sentence) but before any entry of judgement? See App. R. 4(A) and (B). [ ] Yes [X] No

2. Is a copy of an order of the transcript from the court reporter filed herewith? [ ] Yes [X] No
[ ] An App.R 9(C) statement will be filed. [ ] An App.R. 9(D) statement will be filed.

3. Will the court reporter complete and file the transcript within 40 days? (20 days if on accelerated calendar?) [ ] Yes [ ] No [X] Not Applicable

If not, to what date is an extension requested? _____ Is a properly supported motion for extension being filed? [ ] Yes [ ] No

4. Will the appellant's brief be filed within 20 days after transmittal of record on appeal? (15 days if on accelerated calendar?) [X] Yes [ ] No

If not, to what date is an extension requested? _____ Is a properly supported motion for extension being filed? [ ] Yes [ ] No

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(CONTINUED ON PAGE 2)

(QUESTIONS 5 THROUGH 15 APPLY TO CIVIL AND ADMINISTRATIVE APPEALS ONLY)

Did the judgement or order dispose of all claims by and against all parties? [X] Yes [ ] No

If not, does the judgement or order include an express determination that there is "no just reason for delay?" See Civ.R. 54(B). [X] Yes [ ] No

6. Has an appeal in this trial court case been previously filed with this court? [ ] Yes [X] No If yes, what is the prior appellate court case number? _____

7. Nature of Case:

[X] Administrative Appeal	[ ] Domestic Relations	[ ] Personal Injury
[ ] Contract	[ ] Juvenile	[ ] Probate
[ ] Declaratory Judgement	[ ] Medical Malpractice	[ ] Other, please specify

_____

8. Is this appeal from an order of the trial court which grants or denies the adoption of a minor child or grants or denies termination of parental rights? [ ] Yes [X] No

9. Has counsel for appellant changed on appeal? [ ] Yes [X] No

10. Do you know of another case(s) pending before this court or recently decided by this court which raises the sameissue or issue(s)? [ ] Yes [X] No If yes, please cite the case number(s) _____

11. Have the parties to this appeal been parties to a previous appeal filed in this court? [ ] Yes [X] No If yes, please cite the case number(s) _____

12. Does the appeal turn on an interpretation or application of a particular case(s) or statute(s)? [X] Yes [ ] No If yes, please cite the case(s) or statute(s) R.C. 119.09; R.C. 119.12; R.C. 2505.06; O.A.C. 5101:3-15-01

13. How would you characterize the extent of your settlement discussions prior to judgement? [X] None [X] Minimal [ ] Moderate [ ] Extensive

14. Have settlement discussions taken place since the judgement or order appealed from was entered? [ ] Yes [X] No

15. Would a prehearing "settlement" conference be of any assistance to the resolution of this matter? * [ ] Yes [ ] No Please explain (optional) _____

16. Briefly summarize the assignments of error presently anticipated to be raised on appeal, unless a statement of the assignments of error has been filed with the clerk of the trial court pursuant to App.R. 9(B). (Attach a separate sheet if necessary.) Lower court (1) lacked subject-matter jurisdiction; (2) erred in its interpretation of O.A.C. rules; (3) incorrectly weighed the evidence & applied incorrect legal standards; (4) others T.B.A.

Ara Mekhjian
Appellant or Attorney for Appellant

0068800
Supreme Court Registration Number

* Notice

THE PRIMARY PURPOSE OF A PREHEARING CONFERENCE IS TO ENCOURAGE THE PARTIES TO EXPLORE ANY POSSIBILITIES THERE MAY BE FOR SETTLEMENT OF THE CASE BEFORE INCURRING ADDITIONAL EXPENSES, OR, IF THAT IS NOT POSSIBLE, TO LIMIT THE ISSUES.

LOC.R. 4(F) PROVIDES THAT THIS COURT MAY ASSESS REASONABLE EXPENSES, INCLUDING ATTORNEY FEES, ASSESS ALL OR A PORTION OF THE APPELLATE COSTS, OR DISMISS THE APPEAL FOR FAILURE TO COMPLY WITH PROVISIONS OF THIS RULE.