

**Constantino, Mike**

11-098

**From:** Anaya, Gloria [GAnaya@duanemorris.com] on behalf of Silberman, Mark J.  
[MJSilberman@duanemorris.com]  
**Sent:** Wednesday, September 19, 2012 5:24 PM  
**To:** Constantino, Mike  
**Cc:** Silberman, Mark J.; Urso, Frank  
**Subject:** RITACCA LASER CENTER ALTERATION REQUEST  
**Attachments:** 20120919143503598.pdf

**RECEIVED**

SEP 20 2012

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

Mike:

Please see the attached Alteration Request for Permit: #11-098 re Ritacca Laser Center. Hard copy, with exhibits, to follow by mail directed to Chairman Galassie. I wanted you and Frank to have a copy of the letter to review (if you want me to send you the enclosures electronically, just let me know). Since this is not a request to substantively alter the project, I am not certain if the submission of a fee would be required. If you determine one is necessary, just let me know and we will get the appropriate amount to you. If you have any questions, please do not hesitate to call.

Regards,

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September 19, 2012

BY E-MAIL AND U.S. MAIL:

Dale Galassie  
Illinois Health Facilities and Services  
Review Board  
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Springfield IL 62761

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**Re: Alteration Request for Permit: #11-098 Ritacca Laser Center, Vernon Hills**

Dear Chairman Galassie:

On January 10, 2012 Dr. Daniel J. Ritacca ("Dr. Ritacca") appeared before the Illinois Health Facilities and Services Review Board ("HFSRB" or "Board") seeking to expand the Ritacca Laser Center (the "Center") located in Vernon Hills, Illinois. Dr. Ritacca already performed ophthalmologic and cosmetic/reconstructive procedures at the Center, but sought to add pain management as an additional category of service. In a unanimous vote, the Board approved Project 11-098.

During consideration of the Project, Vice-Chairman Hayes inquired whether or not Dr. Ritacca would agree to a condition requiring the Center to come back before the Board "if you wanted to enter another specialty." *January 10, 2012 Transcript* (relevant portion enclosed). Dr. Ritacca agreed. Mr. Carvalho clarified that this meant Dr. Ritacca would not be able to add additional categories of service, but "would be restricted to the three specialties that you would at that point have received approval for." *Id.* Again, Dr. Ritacca agreed, but himself clarified to the Board that there are reconstructive procedures he performs (e.g. repairing a hernia during an abdominoplasty) that do not constitute and should not be considered another category of service despite the fact that the procedure could be classified as part of more than one school of medicine.

Dr. Ritacca seeks to perform cutting edge reconstructive procedures at the Center and practice to the full extent of his school of medicine. Dr. Ritacca has been approached by multiple physicians seeking to perform cosmetic / reconstructive procedures at the Center. Despite his complete comfort that these are procedures which are an appropriate part of a reconstructive practice, Dr. Ritacca sought the guidance of Board staff who raised concerns these

Dale Galassie  
September 19, 2012  
Page 2

may be viewed as performing other categories of service. Rather than risk violating the condition to his permit, Dr. Ritacca has elected to submit this alteration request to address these "crossover" procedures that are a proper part of a plastics / reconstructive practice, but could also be classified as part of another school of medicine.

An alteration request appears to be the appropriate procedure by which to obtain the clarity Dr. Ritacca needs. Section 1130.750 of the HFSRB regulations provides:

Any change to a project subsequent to HFPB's issuance of a permit constitutes an alteration to the project. Projects for which a permit has been issued can be altered during the time period between the permit issuance and the date of project completion.

77 Ill. Admin. Code §1130.750. Dr. Ritacca does not seek to change the substantive project in any way. Rather, his goal is to clarify, alter, or remove the condition placed on his permit. The HFSRB specifically defined the date of 'project completion' for any permit issued with a condition as "when HFPB deems the conditions have been met." 77 Ill. Admin. Code §1130.140. No such finding has been made and the alteration being sought only relates to the limitations imposed by the condition to his permit. Therefore, this does appear to constitute an appropriate alteration request.

Dr. Ritacca is not looking to add additional categories of service to the Center. Dr. Ritacca wants to be able to perform procedures where the focus of the procedure is reconstructive or regenerative. By way of example, he has no interest and should not have to establish a podiatric practice simply to allow a physician to perform a cosmetic repair on a hammer toe. The fact that a podiatrist could perform this same procedure as a podiatric procedure should be of no effect. Dr. Ritacca wants to be able to expand into cutting edge reconstructive / regenerative procedures and invite other physicians who are capable of doing so. One such example is where stem cells (harvested from adult fat) are utilized as part of reconstructive procedures (e.g., injecting stem cells into diabetic or venous ulcers to assist in healing or to facilitate repairing Achilles tendon injuries). Dr. Ritacca wants to be able to perform these procedures without worry that doing so would jeopardize offending this Board.

Additionally, Dr. Ritacca hopes to avoid circumstances where quality medical professionals capable of providing reconstructive care to residents in the community are being discouraged from utilizing the Center. The confusion regarding exactly what procedures are allowed and which are not has yielded such circumstances. By way of one example, consider Dr. Paul Potach. He has patiently waited, hoping to obtain clarity from this Board as to what it considers would be appropriate. As explained in his letter (enclosed) the Center is perfectly suited for him to perform various cosmetic / reconstructive procedures that are already a part of his practice. He considers these procedures to be a proper part of an aesthetic / reconstructive practice but neither he, nor Dr. Ritacca, want to offend the Board or violate the condition

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Dale Galassie  
September 19, 2012  
Page 3

imposed upon the Center. That said, both believe the ultimate determination of what procedure is a part of a particular school of medicine should be left to the discretion of the physician.

Our hope is that the alteration process will facilitate an open discussion between Dr. Ritacca and the Board that will produce the clarity necessary to allow the Center to provide appropriate services and to allow Dr. Ritacca to practice to the full extent of his school of medicine. Whether the condition upon the Center needs to be clarified, or modified, or removed is a decision for the Board. That said, Dr. Ritacca is prepared to appear before the Board and address any question the Board members or staff might have.

The effect of this uncertainty on patient's access to care is real. Dr. Ritacca has turned away several physicians and patients because of his commitment to not run afoul of the condition imposed by this Board. He has done so despite the firm belief of himself and the physicians that all of these procedures are a part of the proper practice of an aesthetic / reconstructive practice. It is important to realize that Dr. Ritacca has been seeking clarity on this issue for several months and has engaged in multiple efforts to coordinate with Board counsel and staff to identify the right course of action. (Prior correspondence enclosed with exhibits). Dr. Ritacca appreciates all of the time, assistance, and guidance provided by Mr. Urso, Mr. Morado, and Board staff. However, it has become clear that this issue requires clarity that must emanate from the Board.

It would have, perhaps, been easier to simply go forward and seek forgiveness for any transgressions of which the Board learned. However, Dr. Ritacca believes in doing the right thing and doing things the right way. He is not willing to jeopardize his good name, his business, or his ability to continue to provide care within his community by moving forward without certainty. We hope, through this alteration request, to find the clarity that will allow the Center to continue providing increased access to quality care.

Respectfully submitted,



Mark J. Silberman

Enclosures (via hard copy, only)

cc: Dr. Daniel J. Ritacca