

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
Patriot Medical Laboratories, LLC		
d/b/a CIAN Diagnostics	*	Docket No. MSBCA 3232
Under MDH Contract No. M00B0600439	*	
Appearance for Appellant	*	Michael A. Miller, Esq.
		Scott A. Livingston, Esq.
	*	Rifkin Weiner Livingston LLC
		Bethesda, Maryland 20814
	*	
Appearance for Respondent	*	Randi Lifson, Esq.
		Assistant Attorney General
	*	Office of the Attorney General
		Baltimore, Maryland 21201

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OPINION AND ORDER BY MEMBER CARNAHAN

Having considered Appellant’s Request for *En Banc* Review of Order Dated September 7, 202[3] and Request for Hearing, which the Board treats as a Motion, and having considered Respondent’s Opposition thereto, the Board finds as follows:

There is no statutory or regulatory authority permitting the Board to conduct an *en banc* review or hearing. MD. CODE ANN., STATE FIN. & PROC., §15-207(a)(2) provides only that “[a]n appeal before the Appeals Board shall be heard by a panel of not more than 3 members designated by the Chairman.” Therefore, the Board may only sit in panels of “not more than 3 members” in any proceedings before the Board. Further, COMAR provides that “the decision of a majority of three Appeals Board members shall constitute the decision of the Appeals Board.” Consequently, only the same panel of three Board members who issued the decision may decide a motion for reconsideration filed pursuant to COMAR 21.10.05.06F.

Here, the three members designated to serve on the panel in this appeal issued a decision on September 7, 2023, which constitutes the final decision of the Board. The same panel will issue an Order on Appellant's Motion for Reconsideration without a hearing.

ORDER

Based on the foregoing, it is this 6th day of October 2023 hereby:

ORDERED that Appellant's Request for *En Banc* Review of Order Dated September 7, 202[3] and Request for Hearing is DENIED;

ORDERED that the September 28, 2023 Scheduling Order reserving November 1, 2023 for a potential *en banc* hearing is rescinded; and it is further

ORDERED that a copy of any papers filed by any party in any subsequent action for judicial review shall be provided to the Board, together with a copy of any court orders issued by the reviewing court.

/s/
Michael L. Carnahan, Member

I concur:

/s/
Senchal D. Barrolle, Esq., Member

/s/
Sonia Cho, Esq., Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.

Md. Rule 7-203 Time for Filing Action.

(a) **Generally.** - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) **Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within ten days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I hereby certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3232, Appeal of Patriot Medical Laboratories, LLC d/b/a CIAN Diagnostics, under MDH Contract No. M00B0600439.

Dated: 10/6/2023

_____/s/
Michael A. Dosch, Jr.
Clerk