

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of
Patriot Medical Laboratories, LLC
d/b/a CIAN Diagnostics

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Docket No. MSBCA 3232

Under MDH Contract No. M00B0600439 *

Appearance for Appellant

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Michael A. Miller, Esq.
Scott A. Livingston, Esq.
Rifkin Weiner Livingston LLC
Bethesda, Maryland 20814

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Appearance for Respondent

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Randi Lifson, Esq.
Assistant Attorney General
Office of the Attorney General
Baltimore, Maryland 21201

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OPINION AND ORDER BY MEMBER CHO

Upon consideration of Appellant's Motion for Reconsideration ("Motion") of the Board's Opinion and Order issued on September 7, 2023, and Respondent's Opposition thereto, the Motion is denied.

COMAR 21.10.05.06F states that a "motion for reconsideration may only be filed on the grounds that the decision of the Appeals Board was in error as a result of fraud, surprise, mistake, or inadvertence," and that the Board may "at its own discretion, alter or amend its decision or order if it determines that an error has occurred." As explained further below, we do not find that our September 7, 2023 Opinion and Order "was in error as a result of fraud, surprise, mistake, or inadvertence" and, consequently, we decline to alter or amend our decision.

First, the basis of our decision was limited to a single issue, *i.e.*, whether Appellant's claim was timely filed as required under MD. CODE ANN., STATE FIN. & PROC., § 15-217(b) and COMAR 21.10.04.02. Based on the undisputed facts, we found that Appellant's claim satisfying all

components of COMAR 21.10.04.02B, including a certification, was filed on August 30, 2022, which was, unfortunately, more than 30 days from the date Appellant filed its notice of claim on June 27, 2022. We concluded, therefore, that Appellant's claim was untimely. To that extent, we are baffled by Appellant's characterization of our decision as a *sua sponte* "declaration that a lack of Certification pursuant to COMAR 21.10.04.02B(5) is a matter of subject matter jurisdiction." Upon careful and repeated review, we find nothing in the Opinion and Order that remotely suggests that our decision was based on anything "jurisdictional" in nature.

Second, we take this opportunity to confirm that the Board did not "ignore" *Absolute Environmental Contractors, Inc.*, MSBCA 2266 (2003), since that case, along with several others, was discussed extensively in *A-Del Construction, Inc.*, MSBCA 3127 & 3128 (2022). Rather, we were not persuaded that *Absolute* is apposite to this appeal, as Appellant argued.

The decision in *Absolute* read both "substantial compliance" with the certification requirement and "material prejudice to the State" factors into the Board's analysis of whether the contractor filed a valid and timely claim, although neither factor is specified in the statute or regulation dictating how and when a claim must be filed. The Board in *Absolute* recognized that its decision was "a retreat" from *Cherry Hill Construction, Inc.*, which held that "the Government is not required to show prejudice as a result of the late filing, and the failure of the Contractor to timely file its claim is fatal." MSBCA 2056 at 10 (1999). And, as relevant to this appeal, the Board in *Absolute* stated:

Our retreat, however, is limited to the issue of certification under the particular facts of this appeal. We note that COMAR 21.10.04.02C only requires dismissal of a claim or notice of claim that is not timely filed; failure to certify a claim does not appear to require dismissal.

Further, as the Board noted in *A-Del*, the decision in *Absolute* “left the door open for the dismissal of future claims, under different factual scenarios, when there are missing or defective certifications.” *A-Del*, at 13.¹

Here, unlike in *Absolute* and *A-Del*, we are not dealing with a missing or defective certification. Appellant submitted a compliant certification on August 30, 2022, with all other required components of a claim. It was just too late. A late claim “shall be dismissed.” COMAR 21.10.04.02C.

In so far as *Absolute* was decided on factors not specified in, and was therefore inconsistent with, the statutory and regulatory law, as well a deviation from other Board precedent, in determining what is required to file a valid claim, *Absolute* is hereby overruled.

Finally, this Board is charged with interpreting the procurement law as it is written. The Board of Public Works (“BPW”), as authorized by the General Assembly, promulgated COMAR 21.10.04.02B(5) requiring a certification to be submitted when filing a claim. It is beyond the authority of this Board to pass judgment on the validity of BPW regulations, and we express no opinion as to Appellant’s contention that the certification regulation is *ultra vires*. Moreover, this issue was not raised previously and, therefore, not part of the record that led to our Opinion and Order.

¹ The Board’s discussion of prejudice in *A-Del* was dicta, where it noted that the contractor’s defective certification “materially prejudices Respondent by failing to properly put it on notice as to who Appellant claims is responsible for its damages.” *A-Del*, at 15.

ORDER

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

ORDERED that Appellant's Motion for Reconsideration is DENIED; 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/
Sonia Cho, Esq., Member

I concur:

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

/s/
Michael L. Carnahan, 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.
Deputy Clerk

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY

PETITION OF PATRIOT MEDICAL
LABORATORIES, LLC d/b/a CIAN
DIAGNOSTICS

FOR JUDICIAL REVIEW OF THE
SEPTEMBER 7, 2023 AND OCTOBER 6, 2023
OPINIONS AND ORDERS ISSUED BY THE
MARYLAND STATE BOARD OF CONTRACT
APPEALS

IN THE CASE OF THE APPEAL OF PATRIOT
MEDICAL LABORATORIES, LLC d/b/a CIAN
DIAGNOSTICS
MSBCA Docket No. 3232
Contract No. M00B0600439

CASE NO. C-15-CV-23-003753

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ORDER

Upon consideration of Maryland Department of Health ("MDH") Answer to
Memorandum, it is this 14th day of May, 2024

ORDERED that:

1. The MSBCA's Opinion and Order dated September 7, 2023, be affirmed and
2. The MSBCA's Opinion and Order dated October 6, 2023 be affirmed.

Judge

**MARGARET M.
SCHWEITZER
JUDGE**

Entered: Clerk, Circuit Court for
Montgomery County, MD
May 15, 2024

PETITIONS FOR WRIT OF
CERTIORARI

IN THE
SUPREME COURT
OF MARYLAND

September Term, 2025.¹

O R D E R

It is this 26th day of November 2025, by the Supreme Court of Maryland,

ORDERED that the following petitions for writ of certiorari are denied:

Pet. No. 200 – Michael Joiner v. State of Maryland

*Petition filed by the Office of the Public Defender on behalf of the
petitioner and informal petition filed by petitioner, pro se, are denied.*

Pet. No. 237 – Lillian Le'Sure v. Steve LeSure

Pet. No. 242 – Grayson Thomas Maxwell v. Kimberly Nichole Maxwell

Pet. No. 248 – Caroline Althea Jhingory v. Joseph Andy Jhingory

Pet. No. 252 – Marina Schwartz, et al. v. Baltimore County Government, et al.

Pet. No. 257 – Teresa Harmon v. Kaiser Permanente Insurance Company, et al.

Pet. No. 258 – Reiko Asano v. Molefi Asante

Pet. No. 260 – Robert A. Errera, et al. v. Shulman, Rogers, Gandal, Pordy &
Ecker, P.A., et al.

Pet. No. 263 – In the Matter of the Boyce Living Trust

Pet. No. 264 – Gary Sadowski v. Martin Sadowski

Pet. No. 267 – In Re: Jc. F. and Jx. F.

Pet. No. 268 – Sarahia Benn v. Shannon Menapace

Pet. No. 269 – Tumininu Rufai v. Laurence Rufai

Pet. No. 270 – Jean Bernard Germain v. State of Maryland

¹ All petitions and motions were filed in September Term 2025 unless otherwise indicated.

Pet. No. 271 – John Nunez v. State of Maryland

Pet. No. 272 – Linda Ann Banks v. Julian Irwin Brown, Jr.

Pet. No. 273 – Matthew O'Reilly v. Chet Knaup

Pet. No. 274 – Olivia M. Romano v. Cornerstone Property Management

Pet. No. 275 – Noble Ajebon v. Brennan Ferguson, et al.

Pet. No. 278 – Frederick Lightner-El v. State of Maryland

Pet. No. 279 – Felicia A. Lockett v. TM Associates Inc.

Pet. No. 280 – Scott A. Webber v. Carrie M. Ward, et al.

Pet. No. 281 – Arthur McCaden v. State of Maryland

Pet. No. 282 – Lenny Epps v. State of Maryland

Pet. No. 285 – Michele Facundim v. Scott Shepardson

Pet. No. 286 – Rhonda Humphries v. Markia Williams

Pet. No. 289 – Patriot Medical Laboratories, LLC d/b/a CIAN Diagnostics v.
Maryland Department of Health

Pet. No. 292 – Lorenzo Robinson v. Capitol One NA

Pet. No. 293 – Sahle Haileselassie v. Fikirite Haileselassie

Pet. No. 294 – Dwayne A. Booze v. State of Maryland

Pet. No. 295 – Edward Butcher v. State of Maryland

Pet. No. 300 – Thomara Speight v. Rosenberg, Meyer, Ansell, Montgomery &
Savitz, et al.

Pet. No. 301 – Antowan Clark v. State of Maryland

Pet. No. 302 – LaBria Paige v. State of Maryland

Pet. No. 303 – Ghislaine Paul v. Office of the Medical Examiner

Pet. No. 304 – Richard Jones v. State of Maryland

Pet. No. 308 – Tia Brown v. State of Maryland

Pet. No. 310 – Robert Lee Murphy v. State of Maryland

Pet. No. 319 – Marc Anthony Aguirre v. State of Maryland

Pet. No. 329 – In the Matter of William Hernandez

“Jointly-Filed Motion to Amend Brief and Change Amicus Parties’ Status to Cross-Petitioners” is denied and the amici curiae brief filed by Sébastien Fialon, Alejo Gomez, and Steven Brown is stricken.

Pet. No. 345 – Janet Neblett v. Andrea Duke

Motion for Stay Pending Appeal is denied.
Justice Watts did not participate in the consideration of this matter.

And it is further

ORDERED that the following petitions for writ of certiorari are dismissed:

Pet. No. 265 – In Re: The Estate of Jeffrey Mark Vogel

Petition is dismissed for failure to pay the required filing fee.

Pet. No. 266 – Yaakov Ezra Vogel v. Benjamin M. Vogel, et al.

Petition is dismissed for failure to pay the required filing fee.

Pet. No. 296 – Jeffrey Francis Barry v. Amy Kathleen Schwender

Motion to Dismiss Petition for Writ of Certiorari is granted and the petition is dismissed.

Pet. No. 305 – 107 Terrapin Lane, LLC v. The Cove Creek Club, Inc.

“Motion of Respondent, The Cove Creek Club, Inc., to Dismiss Petition for Writ of Certiorari for Mootness” is granted and the petition is dismissed.

And it is further

ORDERED that the motions for reconsideration filed in the following matters are denied.

Pet. No. 176 – In the Matter of Vargo K. Kromah

“Motion to Reopen of Review” and “Request for Schedule an Oral Hearing” are denied.

Pet. No. 177 – Vargo K. Kromah v. Accordius Health Center Nursing Home, et al.

“Motion of Reconciliation [] For Review” and “Request to Schedule for an Oral Hearing” are denied.

Pursuant to the Maryland Uniform Electronic Legal
Materials Act (§§ 10-1601 et seq. of the State
Government Article) this document is authentic.



Gregory Hilton, Clerk



/s/ Matthew J. Fader
Chief Justice