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Attorneys for Petitioner

JOSEPH ROGAN : Court of Common Pleas of  
: Lackawanna County  
Petitioner :  
: v. : No.  
: :  
COUNTY OF LACKAWANNA and :  
Correctional Care, Inc. : Office of Open Records  
: Docket No. AP 2009-0611  
Respondents. :  
:

2009 OCT 13 P 3:04  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION  
MARY F. SINALDI  
LACKAWANNA COUNTY

**PETITION TO ENFORCE FINAL DETERMINATION  
OF OFFICE OF OPEN RECORDS  
PURSUANT TO SECTION 1302  
OF THE PENNSYLVANIA RIGHT TO KNOW LAW, 65 Pa.C.S. § 67.1302**

This Petition to Enforce arises from a Final Determination of the Office of Open Records (OOR) and is brought under the Pennsylvania Right to Know Law, 65 Pa.C.S. § 67.101 et seq. Petitioner seeks enforcement of an OOR Final Determination ordering release of a Correctional Care, Inc. (CCI) Pharmacy Contract and related financial records. Respondent County of Lackawanna has both failed to challenge the OOR Final Determination through a petition for review and to release the records. However, on September 21, 2009, Respondent County of Lackawanna filed a complaint in this Court against Respondent CCI to obtain the records ordered released to Petitioner under the OOR Final Determination sought to be enforced through this Petition. *See County of Lackawanna v. Correctional Care, Inc.*, No. 09-cv-6194 (Sept. 21, 2009). In its complaint, the County asserted that it does not possess the records, and thus, until CCI provides it with the records, it is unable to release them to Petitioner. *Id.* at 3-4. Although

Respondent County of Lackawanna seeks to obtain the records from Respondent CCI, Petitioner files this Petition to Enforce the OOR Final Determination in order to protect and preserve his right to receive the records under the Right to Know Law.

1. Petitioner seeks judicial enforcement of a Final Determination from the Pennsylvania Office of Open Records (OOR), which directed Respondent County of Lackawanna to produce certain records requested by Petitioner. That Final Determination, *Rogan v. Lackawanna County*, OOR Dkt. AP 2009-0611, which is attached to this Petition, required the County's compliance within thirty days from its issuance on August 12, 2009. Thirty Days have passed, and Petitioner has not received the records. Petitioner now turns to this Court to compel the County's production of the records.
2. When records have been requested of a "local agency," such as the County of Lackawanna,<sup>1</sup> Section 1302 of the Right-to-Know Law grants jurisdiction to the Courts of Common Pleas for judicial review of OOR Final Determinations. 65 Pa.C.S. § 67.1302(a).
3. Respondent Correctional Care, Inc. is named herein because the County has asserted that only CCI has the records at issue,<sup>2</sup> and Petitioner is therefore unable to preserve his ability to obtain enforcement of the Final Determination without bringing CCI before this Court. Immediately upon the filing of this petition, Petitioner will seek an Order from this Court that CCI preserve the records at issue.
4. The records ordered released to Petitioner include:
  - A) An unredacted copy of the Pharmacy Contract involving CCI, the provider of

<sup>1</sup> Under the Right-to-Know Law a "local agency" may include "any political subdivision . . . any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity." 65 Pa.C.S. § 67.102.

<sup>2</sup> See *County of Lackawanna v. Correctional Care, Inc.*, No. 09-cv-6194 (Sept. 21, 2009), Complaint at 3-4.

medical care at Lackawanna County Prison, and CCI's pharmacy provider.

- B) A detailed financial accounting of the pharmacy provider's dealings with CCI under Sections 6 - 15 of the Pharmacy Contract for the last three years.

*See attached, Rogan v. Lackawanna County, OOR Dkt. AP 2009-0611 at 7.*

4. Respondent had previously argued before the OOR that these third-party records are neither public nor records over which it has possession. *Id.* at 2-3.
5. However, the County seems to have publicly acknowledged that, under this Court's ruling in *SWB Yankees LLC v. Wintermantel et al.*, No. 09-cv-3691 (Sept. 9, 2009), it must release the records to Petitioner and has filed suit against CCI to obtain them. *See Charles Schillinger, Lackawanna County Suit against Prison Medical Provider, THE TIMES-TRIBUNE, Sept. 23, 2009, available at [www.thetimes-tribune.com/news/lackawanna\\_county\\_suit\\_against\\_prison\\_medical\\_provider](http://www.thetimes-tribune.com/news/lackawanna_county_suit_against_prison_medical_provider).*
6. Also, the County states, in its complaint against CCI that the services provided by CCI under contract with the County "constitute governmental functions." *See Lackawanna County v. Correctional Care Inc.*, 09-cv-6194 (Sept. 21, 2009) at 3.
6. Thus, not only has the OOR ordered the records released, but Respondent Lackawanna County appears to now agree to their release.
7. Petitioner, who was entitled to receive the records no later than September 11, 2009, seeks enforcement of the OOR Final Determination.

WHEREFORE, Petitioner requests that this Honorable Court:

- a) Order Respondents to preserve and provide all requested records to Petitioner; and

**VERIFICATION**

I, Joseph Rogan, petitioner herein, verify that the foregoing information is true and correct to the best of my knowledge and belief. I understand that my statements are made subject to the penalties of 18 Pa.C.S. § 4904, which relates to unsworn falsification to authorities.

Dated: 10-8-09

  
\_\_\_\_\_  
Joseph Rogan

**CERTIFICATE OF SERVICE**

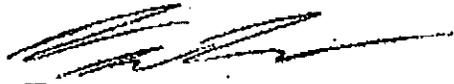
I, Valerie A. Burch, hereby certify that on this 13<sup>th</sup> day of October 2009, I served a copy of this Petition and a Notice to Defend by U.S. Mail, postage prepaid, mailed at Harrisburg, Pennsylvania, on the following:

JOHN O'BRIEN  
Oliver, Price & Rhodes  
P.O. Box 240  
1212 S. Abington Rd.  
Clarks Summit, PA 18411

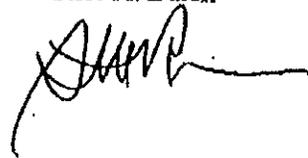
OFFICE OF OPEN RECORDS OF THE  
COMMONWEALTH OF PENNSYLVANIA  
Commonwealth Keystone Building  
400 North St., 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

COUNTY OF LACKAWANNA  
200 Adams Ave.  
Scranton, PA 18503

CORRECTIONAL CARE, INC.  
4101 Birney Ave.  
Moosic, PA 18507



Valerie A. Burch



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JOSEPH ROGAN	:	Court of Common Pleas of	3: 03
	:	Lackawanna County	
Petitioner	:	CLERK OF JUDICIAL	
	:	RECORDS CIVIL DIVISION	
v.	:	No.	
COUNTY OF LACKAWANNA and	:	Office of Open Records	
Correctional Care, Inc.	:	Docket No. AP 2009-0611	
Respondents.	:		

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**RULE RETURNABLE**

AND NOW this 13<sup>th</sup> day of October, 2009, upon consideration of the attached Petition to Enforce Final Determination of Office of Open Records pursuant to Section 1302 of the Right to Know Law, 65 Pa.C.S. § 67.1302, a Rule is hereby issued upon the Respondents to show cause, if any they may have, why the attached Petition should not be Granted.

RULE RETURNABLE the 27<sup>th</sup> day of October, 2009 at 4:00pm in the Court of Common Pleas of Lackawanna County.

A Hearing is scheduled for November 5, 2009, at 10:00.

A.M.

BY THE COURT

  
\_\_\_\_\_

JOSEPH ROGAN	:	Court of Common Pleas of Lackawanna County
Petitioner	:	
v.	:	No.
COUNTY OF LACKAWANNA and Correctional Care, Inc.	:	Office of Open Records Docket No. AP 2009-0611
Respondents.	:	

**PROPOSED ORDER ENFORCING FINAL DETERMINATION  
OF OFFICE OF OPEN RECORDS  
PURSUANT TO SECTION 1302  
OF THE PENNSYLVANIA RIGHT TO KNOW LAW, 65 Pa.C.S. § 67.1302**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration of the Petition of Joseph Rogan to Enforce the Final Determination of the Office of Open Records and any response thereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court finds that Respondent County of Lackawanna has failed to comply with the Final Determination issued by the Pennsylvania Office of Open Records on August 12, 2009, which directed it to produce certain records requested by Petitioner.
2. This Court finds that Respondent Correctional Care, Inc. performs a governmental function for the County of Lackawanna and that it alone among Respondents possesses the public records requested by Petitioner.
2. The record before this Court contains no evidence to contradict the determination by the Office of Open Records that Petitioner is entitled to the records sought. Pursuant to section 1302 of the Right-to-Know Law, therefore, Petitioner is entitled to an Order directing the County of Lackawanna to comply with the Final Determination.

3. Thus, Correctional Care, Inc. and the County of Lackawanna are hereby ORDERED to provide Petitioner with copies of the following documents (in electronic form where available) within thirty days of this Order:

- A) An unredacted copy of the Pharmacy Contract between Lackawanna County Prison, Correctional Care Inc. and Correctional Care Inc.'s pharmacy provider.
- B) A detailed financial accounting of the pharmacy provider's dealings with Correctional Care Inc. under Sections 6 – 15 of the Pharmacy Contract for the last three years.

SO ORDERED

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