

August 7, 2015

***Via Electronic and First Class Mail***

Donna Jerry, Health Policy Analyst  
Green Mountain Care Board  
89 Main Street  
Montpelier, VT 05620

**Re: Green Mountain Surgery Center  
Docket Number: GMCB-010-15con  
Vermont Association of Hospitals and Health Systems Motion to Intervene**

Dear Donna,

Enclosed please find ACTD LLC's response to the July 31, 2015 Motion to Intervene filed by the Vermont Association of Hospitals and Health Systems with respect to the above-referenced Certificate of Need application. Please feel free to contact us with any questions. Thank you.

Very truly yours,



Eileen Elliott, Esq.  
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC

Encls.

Cc: Judith Henkin (via electronic and first class mail)  
Michael Donofrio (via electronic and first class mail)  
Brian Martin (via electronic and first class mail)  
Anne E. Cramer (via electronic and first class mail)  
Kaili Kuiper (via electronic and first class mail)  
Lila Richardson (via electronic and first class mail)



- what is closer to a general interest in health care system – primarily, its role in and understanding of health reform efforts in Vermont. C.f. Certificate of Need, In re: University of Vermont Medical Center Replacement of Inpatient Beds Certificate of Need Application, Order Granting Amicus Curiae Status to Disability Rights Vermont, Inc., Docket No. GMCB-021-14con, at 2 (concluding that Disability Rights Vermont’s commitment to its clients and persons with disabilities more closely resembles a valuable general concern with the health care system as a whole in Vermont). The crux of VAHHS’s motion is that it can offer information and evidence relevant to the proceedings. Id. But having information relevant to the proceedings is not a criterion for qualifying as an interested party; rather, it is the criterion for qualifying as an amicus curiae.
3. ACTD does not object to VAHHS’s participation in these proceedings as an amicus curiae, as VAHHS plays a significant role in Vermont’s health care system and health reform efforts, and accordingly may be able to “render material assistance to the Board by providing nonduplicative evidence relevant to the Certificate of Need application decision.” Rule 4.406(6). As an amicus curiae, VAHHS would have the opportunity to submit materials into the record, which appears to be the goal underlying VAHHS’s motion. See VAHHS Motion to Intervene as an Interested Party, ¶¶ 5-9.

In responding to VAHHS’s motion, ACTD wishes to express its objection to the several mischaracterizations of the project in VAHHS’s Motion to Intervene. For instance:

- A. VAHHS mischaracterizes the proposed center as being “without obligations to the Vermont community.” The Green Mountain Surgery Center will be utilized entirely by physicians who live and work in Vermont. The Center’s owner, ACTD LLC, is a Vermont limited liability company that is owned entirely by Vermonters, all of whom are either physicians or individuals who work in the health care field in Vermont. The center and its owners will pay state taxes relating to the center. And guided by a mission

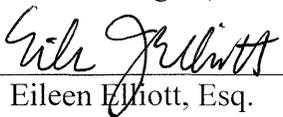
statement to provide Vermonters with a low-cost, high-quality option to access needed outpatient surgical procedures, the Center will have a charity care policy that is comparable to those offered by Vermont hospitals. We also wish to highlight the tremendous local support our proposed project has already received from organizations that collectively represent hundreds of thousands of Vermonters, such as the Vermont State Employees Association, Seventh Generation, Inc., Burton Snowboards and the Vermont State Troopers Association.

- B. VAHHS describes the proposed center as being “unregulated.” This assertion is incorrect. As described in our application, the Green Mountain Surgery Center will be regulated at the federal level by the Centers for Medicare and Medicaid Services and the Center will comply with federal conditions for coverage for ambulatory surgery centers. See 42 C.F.R. Part 416. At the State level, Vermont’s Department of Disabilities, Aging and Independent Living has jurisdiction to regulate ambulatory surgery centers. In addition, the Green Mountain Care Board may elect to retain oversight over the Green Mountain Surgery Center, similar to oversight retained by the Board (and its predecessor) over the Eye Center, Vermont’s single specialty ambulatory surgery center. Finally, the Green Mountain Surgery Center will seek accreditation from the Joint Commission.
- C. VAHHS asserts that the proposed Green Mountain Surgery Center will have a “negative impact on community access” and a “negative impact on health care costs.” Each of these assertions is unfounded. First, one of the central motivations underlying this application is a desire to *expand* access to Vermonters of all means. Access to outpatient surgical care is presently restricted in Chittenden County to the UVM Medical Center. The Green Mountain Surgery Center would for the first time give residents of Chittenden County a choice for outpatient surgery and a lower-cost alternative to hospital-based care. The center will accept all forms of insurance and offer free and discounted care to low-income Vermonters in an effort to ensure that all who need outpatient surgical care have a means of accessing it. Second, the proposed surgery center will reduce health care costs, as detailed at length in our application, as ambulatory surgery centers are

reimbursed at a far lower rate than hospitals by payers across the board. Furthermore, we fully expect that the Green Mountain Surgery Center will play a role in health care reform efforts aimed at lowering the cost of health care to Vermonters and, for instance, will serve as an important resource for the State's accountable care organizations.

ACTD acknowledges that ambulatory surgery centers are new to Vermont, even though they play an important role in the health care system of every other state. It is therefore understandable that there is considerable misunderstanding about the nature of ambulatory surgical centers and the critical function that they can play in furthering health care reform efforts. ACTD anticipates that these proceedings will afford the opportunity to correct any misunderstandings regarding ambulatory surgery centers and to engage in a discussion about the role of an ambulatory surgery center within an integrated health care system. VAHHS is appropriately positioned to offer relevant information to the Board to take into consideration in evaluating this application as an amicus curiae. VAHHS has not, however, articulated a substantial and direct impact as required under both 18 V.S.A. § 9440(c)(7) and Rule 4.406(3). Therefore, ACTD respectfully asks that the Board deny VAHHS's request for interested-party status.

Dated at Burlington, Vermont this 7<sup>th</sup> date of August, 2015.

By:   
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