

November 12, 14

Alfred Gobeille
Chair, Green Mountain Care Board
89 Main Street
Montpelier, VT 05620

RE: In Re Fletcher Allen Health Care South Burlington Property Acquisition Certificate of Need, GCMB-015-14con

The Vermont Federation of Nurses and Health Professionals, Local 5221 ("VFNHP") requests Interested Party status under 18 V.S.A. §9440(c)(7) and Green Mountain Care Board ("GMCB" or the "Board") Rule 4.406 in the above Certificate of Need proceeding in which Fletcher Allen Health Care ("FAHC") is seeking to acquire 99.35 acres of real estate in South Burlington. While we do not do not oppose the proposed real estate purchase, we have serious concerns about the impact the purchase will have on the wages, hours, and working conditions of our members and the quality of care their patients receive.

I. Vermont Federation of Nurses and Health Professionals

The Vermont Federation of Nurses and Health Professionals is the legal representative for collective bargaining purposes of nearly 2,000 health care professionals at Fletcher Allen Health Care, including the RNs, Nurse Practitioners, LPNS, and many technicians in outpatient clinics across the FAHC campus and those at the Tilley Drive facilities.

II. Interested Party Standard

Under 18 V.S.A. §9940(c)(7), "interested party status shall be granted to...persons who demonstrate that they will be substantially and directly affected by the new health care project under review." Green Mountain Care Board Rules provide that "a substantial and direct impact shall include, but not be limited to, a direct financial or other business interest in the proposed project." Green Mountain Care Board Rule 4.406. The rule also requires a request for interested party status should "contain a detailed statement of the requestor's interest in the CON proceeding; illustrate how relevant CON criteria and health care policy goals relate to the request to intervene, and explain how the requestor's interests relate to the project under review." Green Mountain Care Board Rule 4.406(2).

III. VFNHP's Statement of Interest

As the legal representative for collective bargaining purposes of nearly 2,000 health care professionals, we have the statutory right to bargain with FAHC over our members' wages, hours and working conditions. See 29 U.S. Code § 159. VFNHP has always worked to secure "working conditions" through collective bargaining and other means that ensure our health care professionals have a dignified workplace environment that allows them to provide safe and quality services to our patients. Quality patient care is at the center of all that we do. We hear regularly from patients and community members that are appreciative of what our organization has accomplished for the

benefit of employees and patients alike. VFNHP's interest is significant based on the substantial and direct effects the project may have on our members and the patients we serve.

The potential relocation of a substantial part of FAHC's outpatient facilities to the Mountain View Business Park in South Burlington will potentially involve the relocation of members of VFNHP. VFNHP members will also face changes in their work activities and potentially a change in their job classifications. VFNHP should be granted interested party status because of the substantial impact the project could have on the job classifications of VFNHP members.

Finally, the capital costs of the project—both in terms of the initial cash outlay and the longer term cost of financing—will have a substantial and direct impact on FAHC's ability to meet its contractual obligations to our members in the form of wages, benefits, and other forms of support. VFNHP has previously raised concerns, See *In Re Fletcher Allen Health Care Replacement of Inpatient Bed Certificate of Need*, GMCB-021-14con, about FAHC's use of interest rate swap agreements since 2008. FAHC's unwillingness to address the actual and potential losses of these agreements, especially in the context of the long term financing of a real estate purchase, continues to trouble VFNHP.

IV. Relevance of Certificate of Need Criteria and Health Care Policy Goals

As stated in Board Rule 4.402(1), the "Board shall not grant a Certificate of Need unless the proposed project is consistent with the policy and purposes set forth in Chapter 221 of Title 18, the statutory purposes set forth in 18 V.S.A. § 9372, and the criteria set forth in 18 V.S.A. § 9437." Of specific concern in this project is the statutory requirement that "the cost of the project [be] reasonable because...the applicant's financial condition will sustain any financial burden likely to result from the completion of the project." 18 V.S.A. §9437(2)(A). While FAHC's application includes a financial analysis of the proposed property acquisition, it does not consider the upward adjustment of interest rates that will very likely take effect in the coming months as result of the activity of the Federal Reserve, which will materially impact capital costs over the term of the commercial loans.

Recent economic reports indicate the Federal Reserve may halt its bond-buying program and raise interest rates as the economy gains momentum in the recovery.¹ FAHC indicated in the CON application that it has received a "commitment from lenders for a mix of taxable and tax-exempt financing with an "overall blended interest rate of 3.48%" (p. 48). However, the application does not indicate whether these rates are fixed or variable, nor do they take into account what effect an upward adjustment in interest rates may have on FAHC's operating expenses and cash flow over term of the loan agreements.

The application also excludes any mention of the impact FAHC's interest rate swap agreements could have on FAHC's fiscal health. VFNHP has already summarized for the Board the potential pitfalls of these agreements. See *In Re Fletcher Allen Health Care Replacement of Inpatient Bed Certificate of Need*, GMCB-021-14con. The Board should consider FAHC's track record on financial investments and the likelihood of an increase in interest rates when determining if the cost of the

¹ "Fed's Rate Debate Looks Set to Heat Up," *Wall Street Journal*. July 25, 2014.

project is reasonable. VHNHP should be permitted to represent its members' interest in the fiscal health of FAHC so that they can continue to provide high quality care for a fair wage.

Finally, The "Policy and Purpose" of Chapter 221 of Title 18 states:

It is declared to be the public policy of this state that the general welfare and protection of the lives, health, and property of the people of this state require that all new health care projects be offered or developed in a manner which avoids unnecessary duplication and contains or reduces increases in the cost of delivering services, while at the same time maintaining and improving the quality of and access to health care services, and promoting rational allocation of health care resources in the state; and that the need, cost, type, level, quality, and feasibility of providing any new health care project be subject to review and assessment prior to any offering or development.

18 V.S.A. §9431(a). Recent developments at FAHC call into question its commitment to "maintaining and improving the quality of and access to health care services." Nationwide, the delivery of health care has been shifting to the outpatient setting as hospitals respond to new patient needs, advances in information technology, and a changing reimbursement environment. FAHC's proposed project is a testament to the growth of outpatient services. Indeed, in this new health care delivery environment, it is increasingly difficult to distinguish between care delivered in the inpatient and outpatient settings.

FAHC acknowledges in the CON application that the Inpatient Program at the Main Campus is "geographically constrained" (p. 5) by the urban setting. So, while FAHC intends to keep only those outpatient programs with "the greatest affinities with the Inpatient Program" at the Main Campus, many outpatient functions with a close relationship to the Inpatient Program may, by virtue of geographic constraints, be relocated to the South Burlington location. Given the close and oftentimes indistinguishable distinction between inpatient and outpatient care, VFNHP has sought pay equity between the two care settings. However, we estimate that outpatient caregivers earn, on average, 10 percent less than their counterparts in the inpatient setting. Moreover, VFNHP's members have raised concerns about the staffing levels at some of FAHC's outpatient facilities, especially in comparison to FAHC's inpatient facilities.

The lack of parity affects the quality of patient care provided in both settings. Research shows that hospitals with higher RN-to-patient ratios and higher percentages of RNs on staff had lower-than-predicted patient mortality rates² and that nurse staffing shortages are a factor in one out of every four unexpected hospital deaths or injuries caused by errors.³ Thus, given the expansion of the outpatient setting and the very real possibility that many outpatient programs with a close affinity to the Inpatient Program may relocate to the South Burlington location, VFNHP has an interest in ensuring that this transition is not used as pretext by FAHC to lower the standard of support provided to our members, the frontline caregivers.

V. VFNHP's Interests and the Proposed Project

² Linda H. Aiken, Herbert L. Smith, and Eileen T. Lake, "Lower Medicare Mortality among a Set of Hospitals Known for Good Nursing Care," *Medical Care* 32, no. 8 (1994): 771-787

³ Joint Commission on Accreditation of Healthcare Organizations, 2002.

While VFNHP acknowledges the many merits of the proposed property acquisitions in South Burlington, the project nevertheless involves significant risks to our members' working conditions and livelihoods and to Vermont health care policy goals. The cost and resulting shifting of healthcare services of the project will have a substantial and direct impact on VFNHP members. Unreasonably high project costs will constrain FAHC's ability to invest in frontline healthcare workers who work for the safety and well-being of patients. Moreover, FAHC's application indicates that the property acquisition will potentially be used shift a number outpatient services to locations besides the main campus in Burlington. The shifting of these services will undoubtedly lead to a shift of staff--some of which are members of VFNHP—and new staffing needs.

Conclusion

We have an interest in monitoring and ensuring the financial health of FAHC for our members and the patients they serve. As the front-line caregivers and voices of our patients at FAHC, VFNHP, at a minimum, will offer the Board a unique voice to ensure the proposed project does not adversely impact patient care. Again, while VFNHP does not oppose the acquisition of the property, we would respectfully request the Board grant interest party status given the impact the purchase will have on the wages, hours, and working conditions of our members and the quality of care their patients receive.

Sincerely,



Mari Cordes, RN
President