

August 19, 2016

Via Email and Courier

Ms. Donna Jerry
Senior Health Policy Analyst
State of Vermont
89 Main Street
Montpelier, VT 05620-3101

Re: Letter of Intent and Request for Emergency Review: Acquisition of Burlington Labs

Dear Ms. Jerry:

This Letter of Intent concedes Green Mountain Care Board Certificate of Need jurisdiction, and seeks an emergency approval process for the following project.

I. Introduction

Burlington Labs Acquisition, LLC (the “Applicant”) proposes to purchase the assets of Burlington Labs, a diagnostic testing facility headquartered in Burlington, Vermont (“Burlington Labs”). This purchase requires emergency review by the Green Mountain Care Board (the “Board”) because of the near certainty that Burlington Labs will cease doing business if the proposed transaction is not completed in the next 30 days.

The Applicant is led by a seasoned executive and a strong executive team and will include investments from many private individuals and from the University of Vermont Health Network (“UVMHN”). Biographical information on each member of the board and members of the senior management is summarized on Exhibit A hereto. The University of Vermont Health Network is involved because it believes that Burlington Lab’s opiate testing services are vital to the communities that UVMHN serves. UVMHN’s vision and mission align with the Applicant’s commitments to continue Burlington Lab’s recovery-oriented values, and UVMHN sees this project as an important component of UVMHN’s population health management initiatives in Vermont.

II. Jurisdiction and Request for Emergency Review

In accordance with 18 V.S.A. § 9440(c) and the Certificate of Need Program Rule 4.00, the Applicant files this letter of intent seeking emergency approval, without a hearing and with such other abbreviated process as the Board deems appropriate, of a “new health care project” to purchase the assets of Burlington Labs.

It is important to emphasize that this project does not involve the construction of any new health care facilities, the purchase of any new diagnostic or treatment equipment, the introduction of

any new health services or any change in the existing services of Burlington Labs. It involves only a change of ownership of the assets of Burlington Labs, an existing diagnostic testing facility.

Under Rule 4.303.1(b), an emergency review may be granted if circumstances beyond the control of the applicant create an emergent need for expenditures that will fall within Certificate of Need jurisdiction. As explained more fully below, this project fits that definition.

Therefore, we respectfully request that the Board declare this application uncontested and issue written notice granting a Certificate of Need without any further process.

III. Project Summary

In accordance with 18 V.S.A. § 9440(c)(2) and the underlying CON regulations and guidelines we provide the following information concerning the Project, which will be amplified in our forthcoming application:

Project Scope: The Applicant proposes to own and operate a diagnostic testing laboratory that focuses primarily on serving healthcare providers treating chronic pain problems and members of the population with drug addictions, predominantly opiate drug addictions. The Applicant has negotiated a letter of intent for the purchase of substantially all of the assets of Burlington Labs. The Applicant plans, initially, to conduct the same business as currently conducted by Burlington Labs, serving the same population and using the same physical locations.

Project Timing: Because of the grave financial condition of Burlington Labs, described more fully below, the proposed project – the purchase of Burlington Labs assets by the Applicant – must take place within the next 30 days. Otherwise, the investors in the Applicant will have to abandon the project due to the large amount of capital that will be required to keep the company operational and the very high level of financial risk that will follow from the company's continued operation.

Project Rationale and Objectives: The Applicant's objective in the project is to acquire Burlington Lab's assets through a structure that will prevent the Burlington Lab's imminent failure. A rapid purchase of the business by the Applicant will allow it to continue the vital services that the business provides to the community without disruption.

Burlington Labs serves a critical need in Vermont's efforts to combat substance abuse, especially opiate addiction. Burlington Labs employs approximately 180 people in six states (of whom approximately 150 are Vermont residents), and operates walk-in patient service centers in Barre, Bennington, Burlington, Middlebury, Morrisville, Rutland, St. Albans and Springfield. A location in White River Junction was planned for late 2016. This location likely will not open if the proposed transaction is not approved. In addition, Burlington Labs offers on-site collection services to treatment centers, sober houses and medical offices.

Recently, Burlington Labs has negotiated a settlement agreement with the Vermont Attorney General's office to resolve allegations relating to overstatement of Medicaid claim amounts by

Burlington Labs. Under the settlement agreement, Burlington Labs would pay approximately \$6,500,000 in damages to the State of Vermont, of which approximately \$2,300,000 must be paid to the United States Government in repayment of the Medicaid match. Since January 2016, Vermont Medicaid has withheld approximately 50% of all payments that would have otherwise been paid to Burlington Labs, exacerbating Burlington Lab's cash flow problems.

Burlington Labs is currently in default under its senior bank loan with KeyBank NA, and, because of this, Burlington Labs has had no access to bank financing. Burlington Labs is currently indebted to KeyBank under a \$2 million demand note and a \$2,894,600 SBA-guaranteed term loan. The total and outstanding indebtedness to KeyBank is \$4,894,600.

Due to the reduction of revenue from Vermont Medicaid, the inability of Burlington Labs to access its line of credit, and other factors, Burlington Labs is not able to meet its financial obligations. Burlington Labs is in default under numerous contracts and has trade debt of approximately \$3,700,000, much of which is overdue.

By late Spring, it became clear to the current owners of Burlington Labs, Michael and Jodie Casarico, that the company could not continue to operate without a new source of capital. In May 2016, Burlington Labs engaged Dorman & Fawcett to provide assistance on cash flow management.

Dorman & Fawcett is a consulting, financial advisory and turnaround firm located in Quechee, Vermont. Over the past 27 years, Dorman & Fawcett has represented private and public companies in construction, entertainment, hospitality, food products, printing, communications, manufacturing and technology industries. All members of Dorman & Fawcett's senior team have been founders or key executives at growth companies and all have extensive experience in crisis management.

Beginning in late June 2016, an investor group (the "Investor Group") led by the former CEO of IDX Systems, Inc., James H. Crook Jr. ("Mr. Crook"), has provided assistance to Burlington Labs in the form of loans. On June 30, 2016, Mr. Crook made a secured loan to Burlington Labs in the amount of \$800,000 in order to enable Burlington Labs to meet its payroll obligations and pay its most critical suppliers and vendors. Since that date, Mr. Crook has advanced an additional \$600,000, nearly all of which has been spent.

As of the date of this letter, Burlington Labs lacks sufficient cash to meet its ongoing payroll and trade debt obligations. The monthly expenses of Burlington Labs currently exceed monthly revenue by approximately \$400,000. Without the continued support of Mr. Crook and the Investor Group, Burlington Labs has no option but to cease operations.

If the Applicant is able to successfully complete the purchase of assets of Burlington Labs, the Applicant would guarantee payment of the \$6,500,000 settlement amount due to the State of Vermont, refinance the defaulted \$4,894,600 KeyBank loan, and assume the trade obligations of approximately \$3,700,000. If the Applicant is not able to complete the purchase of Burlington Labs, the obligations mentioned above will go unpaid, the State of Vermont will owe the federal government approximately \$1.3 million, the SBA will owe KeyBank 75% of the \$2,894,600

term loan, all trade debt will be unpaid, and approximately 180 jobs will be lost. Burlington Labs made a practice of hiring recovering drug addicts as part of its “second chance” corporate culture. Approximately 20-25 of these employees are people in recovery from addiction.

The Applicant’s willingness to purchase the assets and to continue to operate the business depends on its ability to close the transaction quickly and take control of Burlington Labs. Doing so will facilitate three critical events (1) Burlington Labs will be able to make good on its obligations to the State of Vermont and the Federal Government, (2) the Applicant will be able to retain the employees and assets of the company without interruption, and (3) the patients and health care providers who rely on Burlington Labs’ services will continue to have access to those services without interruption.

Because the financial situation at Burlington Labs is entirely outside the Applicant’s control, and because the delay will materially affect the Applicant’s ability to acquire the assets and operate the business, the Applicant respectfully requests that the Board grant an emergency CON in this matter.

The Applicant: The Applicant is a newly formed limited liability company created for the purpose of acquiring the assets of Burlington Labs. As stated above, the Applicant would continue the business of Burlington Labs in the same physical locations. The Applicant intends to keep the center of operations and the location of its principal lab in Chittenden County.

The Applicant will be led by a Board of Directors that includes three former senior executives of IDX Systems Corporation, Mr. Crook, Christopher Powell and John Kane. It is expected that a representative of University of Vermont Health Network, Todd Keating, will also serve on the board along with Burlington Labs founder Michael Casarico. The senior management team of the Applicant will be led by Christopher Powell, as the company’s Chief Executive Officer, and Cherian Philip, as the Applicant’s Chief Financial Officer. As noted above, biographical information on each member of the board and each member of senior management is summarized on Exhibit A.

The Applicant will be capitalized with \$4,500,000 of equity by the Investor Group at the time of its purchase of the Burlington Labs assets. It is expected that University of Vermont Health Network will have some level financial participation in the Applicant. In addition, the Investor Group will include senior business executives of healthcare-related companies, who are likely to be of value to the Applicant by providing financial backing and having the capability of creating business opportunities for the Applicant. Because of the solid financial backing of the Investor Group, the Applicant is confident in its ability to refinance the KeyBank debt.

The Board of Directors and senior management team of Applicant are seasoned business professionals with a great depth of experience in operating large and complicated businesses. Many of the board members and members of the management team have extensive background and experience in healthcare compliance.

Health Care Needs Addressed: Initially, the Applicant will provide the same services currently provided by Burlington Labs. The Applicant will provide a comprehensive clinical drug testing

lab, offering both enzyme immunoassay (EIA) screening and LC/GC confirmations. The Applicant will provide enzyme immunoassay screening and oral fluid drug testing services to drug treatment centers and counselors, hospitals and doctors, drug courts and treatment courts. It expects to distinguish itself by providing the most accurate test result information in the shortest turnaround time. It will deliver same-day screening results for any samples received in its laboratory by 3 p.m.

Like Burlington Labs, the Applicant will run walk-in patient centers and on-site collector services. The Applicant will offer its proprietary "color line" program that enables healthcare providers to conduct simple, randomized drug testing for both convenience and to improve accountability measures for people and treatment. It will focus on not just healthcare providers but also on providing services that work the best for the end customer – the patient. The Applicant will also provide drug testing services to drug courts and treatment courts as a means of allowing counselors and courts to hold their clients responsible for their behavior.

Cost, Access, Quality: By purchasing Burlington Labs and continuing to operate it, the Applicant hopes to maintain access to these services and improve operating efficiencies such that the costs of the services will stay the same and may even decrease.

Location: The Applicant will assume the existing lease of Burlington Labs' corporate offices at 199 Main Street, Burlington, Vermont. It will also assume numerous other small-scale leases of drop-off and other patient service centers in the following from our locations: Barre, Bennington, Middlebury, Mooresville, Rutland, St. Albans and Springfield. The Applicant will also have patient service centers in Worcester, Massachusetts and Lexington, Kentucky.

Service Areas: As noted above, the services area extends throughout the state of Vermont. Burlington Labs also has collection sites in Massachusetts and Kentucky.

Projected Expenditures: The Applicant will purchase substantially all the assets of Burlington Labs in exchange for the issuance of membership interests of the Applicant having a value at the time of the initial closing equal to \$2,000,000. This project includes no other capital expenditures other than expenditures for (1) purchase of the assets of Burlington Labs in exchange for equity of the Applicant and (2) assumption of pre-closing liabilities and obligations of Burlington Labs, which includes assumption of lease obligations.

As noted, Mr. Crook and the Investor Group will make equity investments totaling \$4,500,000 at the initial closing (inclusive of the conversion of Mr. Crook's pre-closing loans to Burlington Labs). University of Vermont Health Network is expected to make an equity investment at the initial closing and may also provide debt financing.

Path Forward: Mr. Crook and his senior management team have worked diligently over the past two months to develop an operating plan and a financial plan that will allow this business to continue to provide desperately needed services to residents of the State of Vermont. Despite the very heavy burden of bank debt (\$4,894,600), trade payables (\$3,700,000) and Attorney General settlement (\$6,500,000), Mr. Crook and his team have devised a plan in which the combination of new equity investment, management and operational changes, debt restructuring and business

cash flow will allow the business to continue. The infusion of funds will allow the new management to stabilize the company and repay those debts currently due. Operational changes will improve cash flows going forward which will be adequate to cover debt services and the portion of the Attorney General's settlement that is payable over time.

Mr. Crook and his team have extensive experience in healthcare technology and billing compliance, such that Burlington Labs Acquisition LLC will have the ability to better monitor and address compliance issues going forward.

IV. Conclusion

The Applicant intends to submit an application for Emergency Certificate of Need very shortly. The Application will address the general CON Standards set forth in the Health Resource Allocation Plan. However, the Applicant understands that the Board may have additional questions. To expedite the CON process, please contact me at your earliest convenience to let us know what additional material the board would like to see to support this request, so that we may provide it to you as rapidly as possible.

Sincerely yours,



Elizabeth R. Wohl

/jsn

cc: Spencer R. Knapp Esq.
Jeffrey J. McMahan, Esq.
William A. Mason, IV, Esq.

EXHIBIT A

Executive Bios

James H Crook Jr. – Chairman of Board – Mr. Crook has over 35 years of leadership experience with a strong track record of growing companies in healthcare IT. He began his career with IBM, followed by 25 years with IDX Systems Corporation where he held a number of executive operating roles, including President and Chief Executive Officer. He served as the company's Chief Executive Officer through the years of extensive growth and the ultimate sale of IDX Systems Corporation to GE Healthcare in 2006 for \$1.5 billion. Currently, Mr. Crook is a private equity investor in several healthcare IT companies and serves on multiple related boards, including MediRevv, OpenTempo, RCxRules and Arcadia Healthcare Solutions. He is also on the advisory board of Peloton Equity, LLC, a healthcare growth capital company, and a member of the Colby College Board of Trustees.

Christopher Powell – Chief Executive Officer – Mr. Powell most recently served as President of Health Information Management (“HIM”) for MedAssets-Precyse (now nThrive). With more than 20 years of experience, including his prior role as Chief Executive Officer of Precyse, Mr. Powell led the 1,600-member HIM team and was responsible for the strategic and operational success of MedAssets-Precyse's HIM services, technology and education businesses. During his tenure at Precyse, Powell led day-to-day operational performance and leadership of the company, including implementing strategic operational plans to advance the company's mission and objectives. He was also responsible for operations, service delivery, sales, marketing, finance, and information technology, and served as a member of the organization's Executive Council and Board of Directors. Previously, Mr. Powell worked for GE Healthcare as Vice President and General Manager of Sales and Marketing with GE Healthcare Americas Commercial Healthcare IT business including the US, Canada, Central and South America. Prior to GE, Mr. Powell led sales as Vice President and later Senior Vice President at IDX Systems Corporation, which was then acquired by GE Healthcare in 2006. Mr. Powell holds a B.S. degree in Psychology from Colby College in Waterville, Maine.

Cherian Philip - Chief Financial Officer - Mr. Philip currently serves as the VP of Finance for Data Innovations a healthcare software business focused on providing products and services to the laboratory markets. Data Innovations is the market leader in lab middleware and has over 160 employees with offices in the US, Hong Kong, Belgium and Brazil. Mr. Philip has over 15 years of financial experience and started his career in the financial industry working his way from the Equity Derivatives markets for two major banks on Wall Street before transitioning to Healthcare. He joined GE Healthcare in 2007 as Senior Technical Accounting specialist providing guidance specific to Software revenue recognition. In 2008, Mr. Philip was promoted to Finance Manager of the Independent Practice business within GE Healthcare a \$250M revenue generating business. In 2012, Mr. Philip was promoted to Commercial Finance Manager Role for GE's North America Healthcare IT business before taking the Controller position at Data Innovations in 2013. In 2015, Data Innovations was purchased by Roper Technologies and Mr. Philip was promoted to VP Finance overseeing the Finance, IT and Production departments for the company.

John A. Kane - Investor and Financial Advisor - Mr. Kane has extensive business leadership and management experience, including serving as Senior Vice President, Chief Financial Officer & Treasurer for IDX Systems Corporation where he was responsible for financial strategy, strategic partnerships and alliances, mergers and acquisitions, Wall Street relations, information systems, real estate, and facilities-related operations. Mr. Kane currently serves and has served on numerous healthcare-related boards, including Athenahealth, Getwell Network, Health Catalyst, Spheris, QuadraMed, API Healthcare, Healthland, and Aesynt. Mr. Kane began his career with Ernst & Young LLP. He holds a B.S. degree and a Masters of Accountancy from Brigham Young University.

Todd Keating -- Board Member – Currently Chief Financial Officer, UVM Health Network, Mr. Keating has more than 26 years of experience in health care finance. He joined UVM Health Network in 2014, moving from UMass Memorial Healthcare, Worcester, Massachusetts, where he had most recently served as Senior Vice President of business development, helping to lead the merger of The University of Massachusetts Medical Center with Memorial Healthcare. Prior to that, Mr. Keating served as Treasurer and Chief Financial Officer at UMass Memorial Healthcare from 1998 to 2013. Before 1998, he held numerous business and finance positions at UMass Memorial Healthcare starting in 1993. He received a bachelor of arts degree from Tufts University and a master of business administration degree from Fuqua School of Business at Duke University.

Michael Casarico – Board Member-- Burlington Labs co-founder Michael Casarico comes from the front lines of addiction treatment. Michael has a background as a drug court coordinator and probation officer, and still holds his license as an alcohol and drug counselor (LADC). Together, Mr. Casarico and his wife Jodie, established, funded and managed a sober house in Burlington, Vermont. Michael is also personally in recovery. In 2006, while working as a probation officer, Michael came face to face with a particular need for fast, reliable drug testing. After one of Michael's clients tested positive for cocaine, the client was immediately thrown in jail for violation of parole, although he swore he wasn't using. Michael then sent the sample out for confirmation. When the results finally came back – a full two weeks later – they revealed the client was, in fact, substance-free. For two weeks, an innocent man had sat in jail, separated from his family, his job, and his recovery community. This story, and too many others like it, led Michael and Jodie to cash in their retirement investments and open Burlington Laboratories in the summer of 2006. The company's top-notch science and customer service teams deliver fast, reliable drug testing results that support thousands of brave men and women in treatment across the country.