

Donna Jerry Health Policy Analyst Green Mountain Care Board 89 Main Street, Third Floor Montpelier, Vermont 05620

July 31, 2015

RE:

Green Mountain Surgery Center Docket No. GMCB-O 1 0- I 5con

Dear Donna:

Enclosed please find Northwestern Medical Center's Motion to Intervene as an interested party in the above referenced matter.

Sincerely

Jill Berry Bowen

Chief Executive Officer

CC: J

Judith Henkin, Esq.

Jonathan Billings, NMC Vice President of Planning & Community Relations

Anne Cramer, Esq.

Lila Richardson, The Office of the Health Care Advocate

Eileen Elliott, Esq.

STATE OF VERMONT GREEN MOUNTAIN CARE BOARD

In re: Green Mountain Surgery Center)	
)	Docket No. GMCB-010-15con

NORTHWESTERN MEDICAL CENTER'S MOTION TO INTERVENE AS AN INTERESTED PARTY

Northwestern Medical Center ("NMC") by and through its attorneys, Primmer Piper Eggleston & Cramer PC, hereby requests that the Green Mountain Care Board (GMCB) grant NMC interested party status in the proceeding related to the application filed by ACTD, LLC d/b/a Green Mountain Surgery Center ("GMSC") for a Certificate of Need to establish an ambulatory surgical center in Colchester, Vermont. The basis for this motion is set forth below:

- NMC is a non-profit community hospital located in St. Albans, Vermont that provides
 multi-specialty surgical services among other medical care, to people in northwestern
 Vermont, particularly in Franklin, Chittenden, and Grand Isle counties.
- GMSC is a for-profit business that seeks a CON to construct and operate a multispecialty ambulatory surgery center in Colchester, Vermont. The proposed surgery center would be located about 20 miles south of NMC.
- 3. 18 V.S.A. § 9440(c)(7) provides that 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." NMC will be substantially and directly affected by the proposed surgery center, as demonstrated by the following:
 - a. The establishment of Vermont's only other ambulatory surgical center, the Vermont Eye Surgery and Laser Center, LLC (VESLC), significantly impacted NMC. On a yearly basis, close to 400 patients have been taken out of our community to have their surgery performed at VESLC. This poses a burden for patients who now have to travel for care and threatens the financial stability of similar services offered by NMC. As an interested party, NMC will provide addition information on this.
 - b. GMSC projects that it will have 6,043 cases by its fourth year of operation in the areas of gastroenterology, obstetrics and gynecology, orthopedics, pain management and general surgery. (See, CON Application dated July 2015, Table

- 6, page 28.) GMSC estimates that this transfer in patients will result in over \$7 million in revenue. Assuming that a significant number of those surgical cases would otherwise be cared for at NMC, such a shift in demand and revenue will have a significant detrimental impact on NMC's ability to provide those surgical services by eroding the narrow operating margin of NMC.
- c. NMC has had and currently has excess capacity in its operating rooms which is not recognized in the CON Application submitted by GMSC.
- 4. 18 V.S.A. § 9437(2)(B) states that the GMCB shall grant a Certificate of Need application if the Board finds that "the cost of the project is reasonable, because...the project will not result in an increased cost of medical care." In making this determination, the GMCB will "consider and weigh relevant factors, including: (i) the financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures and charges." NMC, as an intervening party, can provide evidence of the detrimental financial impact on its services, operating room utilization, expenditures and charges that approval of the GMSC application will have.
- 5. 18 V.S.A. § 9437(3) states that, in considering whether to grant a Certificate of Need application, the GMCB should consider whether there is "an identifiable, existing, or reasonably anticipated need for the proposed project." Additionally, the policy and purpose of the Certificate of Need law is to "require that all new health care projects be offered or developed in a manner which avoids unnecessary duplication." 18 V.S.A. § 9431. GMSC would unnecessarily duplicate existing facilities, equipment, and services presently provided by NMC and other non-profit hospitals in the area. NMC already provides gastroenterology, obstetrics and gynecology, orthopedics, pain management and general surgery services, and has additional capacity to provide these services. As an intervening party, NMC can assist the GMCB in assessing whether there is a need for the proposed GMSC project by providing information regarding the services already offered by NMC and the current utilization of NMC's capacity.
- 6. 18 V.S.A. § 9437(6) provides that, in determining whether to grant a Certificate of Need, the GMCB should assess whether "the project will serve the public good." NMC invests substantial resources and effort in serving every member of its community who needs assistance, in advancing health reform initiatives in Vermont, and in adhering to state and federal regulations pertaining to hospitals, including the payment of an annual

hospital assessment to support the State's medical assistance programs. NMC has long participated in the Vermont Blueprint for Health. It is an Accountable Care Organization (ACO) participant with both OneCare Vermont and also through Community Health Accountable Care. As an ACO participant, the Hospital takes part in shared savings programs piloted by Medicare, Medicaid and for Vermont beneficiaries receiving insurance through the Vermont Insurance Exchange. As an interested party, NMC would provide evidence regarding the substantial and direct negative impact an unregulated ambulatory surgery center could have on the finances of NMC, its ability to participate in health reform related efforts and the community's ability to access services.

7. Intervening in the present proceeding as an interested party will allow NMC to participate fully in the process and will permit NMC to introduce evidence, in the record, that will inform the GMCB's decision-making process. If the GMSC is permitted to become the first non-hospital based multi-specialty ambulatory surgery center in Vermont, NMC will sustain a substantial, negative financial impact and the community could be negatively impacted by higher costs and restricted access.

For all of these reasons, Northwestern Medical Center hereby requests that the GMCB grant this Motion to Intervene as an Interested Party in the GMSC's application for a Certificate of Need.

Dated in St. Albans, Vermont this 3 day of July, 2015.

By:

Jill Berry Bowen, R.N., CEO Northwestern Medical Center, Inc.

133 Pairfield Street St. Albans, VT 05478 802-524-1054

jbowen@nmcinc.org

cc: Primmer Piper Eggleston & Cramer PC