

December 23, 2015

By Electronic and First Class Mail

Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
89 Main Street, 3rd Floor, City Center
Montpelier, VT 05602

Re: Green Mountain Surgery Center
Docket No. GMCB-010-15con

Dear Donna:

On behalf of the proposed Green Mountain Surgery Center, we respectfully disagree that the interested parties need the past two years of private physicians' confidential business data to properly participate in this CON proceeding. In their joint letter dated December 21, 2015, the Vermont Association of Hospitals and Health Systems ("VAHHS") and Northwestern Medical Center ("NMC") assert that they should have access to two past years of data from 16 privately employed physicians showing the number of procedures and surgeries they performed and the locations they used. The interested parties state they need this information to be able to evaluate the impact of and need for the Ambulatory Surgery Center ("ASC").

The data provided in the Application at Table 5 (page 27) shows the projected cases by physician upon which the Green Mountain Surgery Center is basing its utilization projections for the first four years of operations. In its response to question 5 of the Green Mountain Care Board's request for additional information, which asks about a secondary service area, the Green Mountain Surgery Center is providing additional non-confidential data from these 16 physicians regarding where they currently perform surgeries/procedures and where they expect to do their surgeries/procedures in the future. In other words, the information already provided by the Applicant is ample for the hospitals to assess the ASC's potential impact on their operations. It is unnecessary for the hospitals to also have access to past proprietary data to determine the future impact of the Green Mountain Surgery Center.

The confidentiality of this type of data is precisely the reason these records are not public documents. It is proprietary information that would allow the hospitals to easily figure out which of the handful of independent physicians in the area support moving some of their surgeries/procedures to the proposed ASC. The disclosure of this information could be extremely damaging to the physicians because these hospitals currently control all block time for performing surgeries and are in a position to make it very difficult for these competing physicians to practice if their identities become known.

Furthermore, the Applicant submits its projections to the Green Mountain Care Board under oath, and if the assumptions underlying those projections prove to be inaccurate or unverifiable, the Green Mountain Care Board is authorized to require additional information and take appropriate action. There is no need for the hospitals to dig through private physicians' past business records to determine the background to the applicant's projections, particularly when the records are proprietary and give the hospitals a competitive advantage over the physicians.

Also, the interested parties had the opportunity to pose questions of their own, which they did. See Letters dated September 4, 2015 from Lauren Layman on behalf of VAHHS and September 3, 2015 from Jill Berry Bowen of NMC. Neither interested party sought the past two years of physician data upon which the projections in Table 5 are based. Yet, now they claim they need the data to evaluate whether the Green Mountain Surgery Center meets the CON criteria.

The information responsive to question 4 is not public, but exempt from the public records act as either personal documents (1 V.S.A. § 317(c)(7)) or confidential business records (1 V.S.A. § 317(c)(9)) for the reasons explained in its original request dated December 11, 2015.

Thank you for your consideration.

Sincerely,



Eileen Elliott

cc: Judy Henkin, Health Policy Director
Michael Donofrio, Esq., GMCB
Lauren Layman, Esq., Vermont Association of Health and Hospital Systems
Anne Cramer, Esq., Vermont Association of Health and Hospital Systems
Jill Berry Bowman, RN, Northwestern Medical Center
Jonathan Billings, Northwestern Medical Center
Julia Shaw, Office of the Healthcare Advocate
Lila Richardson, Esq., Office of the Healthcare Advocate
Kaili Kuiper, Esq., Office of the Healthcare Advocate