

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

EMERGENCY MEETING ON BURLINGTON LABS

Meeting held before the Green Mountain Care Board, at the Capitol Plaza, 100 State Street, Montpelier, Vermont, on August 24, 2016, beginning at 3 p.m.

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6 BY: THOMAS H. MOODY, ESQUIRE

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10 Brattleboro, VT 05301  
11 BY: ELIZABETH R. WOHL, ESQUIRE

12 Also present:  
13 Jim Crook  
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1 CHAIRMAN GOBEILLE: Good afternoon.  
2 I'll call this meeting of the Green Mountain Care  
3 Board back to order. The last item on our agenda is  
4 a meeting to hear a request for an emergency CON. I  
5 want to preface this a little bit for the room, for  
6 the viewers, and for the folks at the other table.

7 This is not a CON hearing. This is a  
8 meeting to determine whether or not a potential CON  
9 should be handled through the emergency criteria that  
10 are outlined in statute and that are provided for in  
11 our rule. And so that is what we are here to do  
12 today. There will be no decision made on a CON that  
13 you would normally think of where we come out with an  
14 order. That's not what we are here for.

15 I would like to welcome our guests. If  
16 you could say who you are, who you represent, and  
17 your favorite flavor of Ben & Jerry's ice cream that  
18 be helpful.

19 MS. WOHL: Thank you, Chairman  
20 Gobeille. My name is Elizabeth Wohl. I'm with the  
21 law firm of Downs, Rachlin & Martin. My partner Tom  
22 Moody is here with me as well and we represent the  
23 applicant, the potential applicant, Burlington Labs  
24 Acquisition, LLC. And Mr. Crook?

25 MR. CROOK: James Crook.

1 MS. WOHL: Jim Crook is here as well as  
2 a representative of that entity. My favorite flavor  
3 of Ben & Jerry's ice cream no longer exists, and it  
4 was Wavy Gravy.

5 CHAIRMAN GOBEILLE: Well played. Tom,  
6 yours?

7 MR. MOODY: Chunky Monkey.

8 CHAIRMAN GOBEILLE: All right, we're  
9 brothers. Jim?

10 MR. CROOK: I don't eat ice cream. You  
11 can't get to look like this without eating ice cream.

12 CHAIRMAN GOBEILLE: All right. Well  
13 now that we are at the right blood pressure level,  
14 what I would like to do is turn it over to the  
15 attorneys that are here to present, and possibly Jim  
16 yourself, and hear what you have to say. And then  
17 the Board will ask questions and kind of take it from  
18 there.

19 MS. WOHL: Great. Thank you so much.  
20 I would like to start by thanking you and the Board  
21 and your staff for working with us to make this a  
22 priority. As you can tell from our letter and from  
23 the materials that we provided since, we feel that  
24 this is a project that needs to move forward on an  
25 expedited basis, really an emergency basis under your

1 rules, under Rule 4.303. And I feel that we have  
2 laid out a pretty detailed and thorough explanation  
3 of that. But we are more than happy to answer  
4 additional questions.

5 What we would really like to hear from  
6 you today is any questions that you have or that you  
7 need answered to, one, determine the nature of the  
8 emergency, and then two, to determine further process  
9 to move toward a Certificate of Need.

10 And with that, I would really like to  
11 hear your questions and let my colleagues who can  
12 speak more about the whole transaction speak.

13 CHAIRMAN GOBEILLE: Sure. I think that  
14 we should start just basically from what are you up  
15 to? You know, like what are you doing? Why are you  
16 doing it? It's in the letter, but I think just a  
17 plain language explanation might be helpful if you  
18 want to do that.

19 MS. WOHL: Absolutely. Do you want to  
20 take that?

21 MR. CROOK: Sure. My name is Jim  
22 Crook. I've lived in Vermont 37 years. I know some  
23 of you. I've spent most of my time in Vermont at a  
24 company called IDX Systems Corporation which we sold  
25 in 2006. I spent 25 years there.

1                   Since then I have been sort of a serial  
2 investor, mostly in health care companies that are  
3 small, and we help them -- nourish them and help them  
4 to get larger and do more good for the health care  
5 system.

6                   This situation, Burlington Labs, came  
7 to my attention in late March when a friend called me  
8 and said there is a financial distress going on  
9 inside of Burlington Labs, and they need money to  
10 meet payroll. And they were looking for a half a  
11 million dollars at the time. I told the party that  
12 brought it to me that I'm not a banker. That's not  
13 my thing, but I'm happy to listen to the story and  
14 determine if there is some other way that I could  
15 help.

16                   I heard the story. And I concluded  
17 very quickly what the company really needed -- I  
18 concluded two things. One, is they built a very  
19 impressive business from scratch. They served  
20 significant need in this state in terms of handling  
21 or addressing the needs of patients that have opiate  
22 addiction. And three, the business would never be  
23 able to be all that it could be if it didn't have a  
24 change in leadership and governance. And I told my  
25 friend who brought it to me that that was the case,

1 and if the business was interested in that path, then  
2 I might be interested, but not being a banker, I  
3 wasn't anyone that was going to loan money to the  
4 business.

5 So didn't hear anything. And about  
6 eight weeks went by to the end of May and Michael  
7 Casarico called me and asked me for some time. We  
8 spent time on the telephone. I was able to move a  
9 little bit shorter with him on the conversation that  
10 I had already received a download two months before  
11 about what the business was all about. And I  
12 communicated to him at the time that if he was  
13 willing to -- that I was not interested in providing  
14 short-term financing. But if he was willing to  
15 change the leadership of the CEO and the CFO position  
16 in the company and accept a different level of  
17 governance at the board level, then we might have  
18 some game. And we might be willing to go through due  
19 diligence.

20 The other stipulation I had is the  
21 investments I make -- the only time I make an  
22 investment is when I have a CEO sort of on the bench  
23 that can come in, one of my guys or gals. Usually  
24 it's ex-IDX people. So we went through a very short  
25 process where I checked with a fellow named Chris



1 Powell. Chris is someone that I spent almost 30  
2 years with, 20 at IDX and 10 afterwards. He was  
3 coming out of a privately backed arrangement, a  
4 company called Precise. Precise was sold last  
5 summer, and he was ready. So we went back to Michael  
6 and Jodi and said we are willing to go through the  
7 process of due diligence.

8 At that point as we get into the early  
9 part of June it became very evident that there were  
10 three things about this that were very, very  
11 attractive. Number one, was the social epidemic  
12 which was opiate abuse, and to be able to do  
13 something that matters. It's what I spent my entire  
14 career trying to do. That was important. Two, there  
15 were 180 jobs in this company that were at risk if we  
16 didn't step in and do something to help this business  
17 out, 140 of them in Burlington, Vermont.

18 My children all grew up in Vermont.  
19 I've lived in Vermont for 37 years. If I could do  
20 something to help save those 140 Burlington jobs and  
21 180 jobs overall, that's also a plus. And three, it  
22 was going to be hard. And we sort of like hard  
23 things. And those three things were -- I didn't  
24 expect it to be this hard by the way. This is --  
25 this whole process here we are going through is a

1 little bit of a twist. I don't even want to classify  
2 it as hard necessarily, but didn't expect this  
3 element. But we are very, very appreciative of you  
4 stuffing us into a very busy schedule to listen to  
5 this tale, and to make a ruling on what we are trying  
6 to do. Those three elements, the ability to help a  
7 social problem, the ability to save jobs, and the  
8 ability to bring to bear what we are good at and what  
9 we know, with the right resources to save a very  
10 important asset in the state became really, really  
11 exciting to us.

12 We went through the month of June, as  
13 we told Michael and Jodi we were going to spend the  
14 month of June doing due diligence and determining on  
15 June 30 whether we were going to green light the  
16 situation. And we got through the month. We spent  
17 time meeting with Key Bank. We spent time meeting  
18 with UVM Health Network. We spent time meeting with  
19 any other -- UVM was not a creditor at the time nor  
20 is now. But we spent time meeting with every party  
21 we could to make sure we had a clear picture not only  
22 of what the state of the business was in today, but  
23 what we thought we could do with the business to  
24 serve more patients statewide, region wide and  
25 nationwide potentially.

1                   And we came to a conclusion at the end  
2 of the month, based upon each sort of domino that  
3 fell, I mean UVMHN was enthusiastic about this. Key  
4 Bank was enthusiastic about us getting involved.  
5 There was another creditor at the time that we have  
6 since taken out of the picture that was enthusiastic  
7 about us getting involved. And at every turn it just  
8 kept saying we can fix this. We can do this.

9                   So in the middle part of June we  
10 formulated a term sheet for Michael and Jodi to  
11 acquire the majority of the company. I represent the  
12 lead in the investor group. I'm the backstop in the  
13 investor group. One of the things that I have as a  
14 hallmark of the deals that I do I don't do a deal  
15 unless I'm willing to put all the money in myself.  
16 And the reason for that is that it's a marker that  
17 tells me whether this is really, really something  
18 worthwhile. I never do anything myself because I  
19 have too many voids in my capabilities. I always  
20 need partners. Associating ourselves with UVMHN in  
21 this situation our perspectives are aligned on the  
22 importance of this company and what it does.  
23 Aligning ourselves, myself with Chris Powell, Jack  
24 Kane will also be a board member. Jack was the CFO  
25 at IDX with me as CEO. We worked 25 years together.

1 We have joint ownership in a number of companies.  
2 Now we sort of finish each other's sentences. The  
3 last time I was in a group like this was in Wall  
4 Street with him. It was a similar situation. We've  
5 done a lot of that.

6 So we have assembled the team, and we  
7 are ready to go. We have committed almost 10 million  
8 dollars of cash invested in the business. We are  
9 ready to invest, and in debt that we have assembled,  
10 and we are ready to proceed. And we believe that we  
11 can make this asset what it was always intended to  
12 be.

13 The flip side of this, unfortunately,  
14 is we communicated with Michael and Jodi early, is  
15 that if this didn't work out, this business was  
16 likely to fail. One other element that's important  
17 to note in the late part of May, Burlington Labs  
18 hired Dorman and Fawcett. Dorman and Fawcett is a  
19 workout firm, that was very important to me to have  
20 them involved, because if for some reason June 30th  
21 came, and we didn't fund this, I wanted to be able to  
22 sleep at night. I didn't want this to be on my  
23 nickel, if you will, as to whether this business was  
24 going to fail or not.

25 So Dorman and Fawcett has been involved

1 since the early part of June. They have been helping  
2 us get a full picture of what the economic situation  
3 looks like in the company. As of last week they are  
4 the chief recovery officer for this business. They  
5 are employed by Burlington Labs, not by Jim Crook.  
6 We are being very careful not to overstep where we  
7 are right now.

8 What's in front of us with the CON,  
9 sort of depending upon length of time that it takes  
10 to work ourselves through this, it makes our  
11 challenge a little greater. And it's the reason we  
12 needed to put the chief recovery officer in place.  
13 Because some of the changes that need to be made to  
14 make sure the business is spending money properly and  
15 is around to be all it can be need to start now.

16 CHAIRMAN GOBEILLE: And so the question  
17 that comes to my mind is the last CON that we pretty  
18 much approved took about nine months to handle.  
19 Others have taken less; some have taken more. What  
20 would happen to this company if it took nine months,  
21 you know, six to nine months? You know, pick a  
22 number to do this.

23 MR. CROOK: Yeah. I don't mean this to  
24 be callous or off the cuff. You won't see me again.  
25 I don't have the resources, and I'm not willing to

1 put the resources in to this project beyond, as we  
2 have said in the application, 30 days. And we fully  
3 respect what you've got to go through to sort this  
4 out for the benefit of the population, people of the  
5 State of Vermont and the people. But 30 days is too  
6 long also.

7 Because what's happening now, and it's  
8 accelerated in the last two days with the press that  
9 we have received over this, this is no longer a  
10 private affair. I'm generally a fairly low profile  
11 guy. That's changing right now in this situation,  
12 which is fine, because the benefit of the good of  
13 what we are going to do is that significant. Happy  
14 to do it. But what's happening is that there is a  
15 great deal of anxiety out there in the population  
16 that consists of creditors, the Attorney General's  
17 office in the state, landlords, vendors, treatment  
18 centers and most importantly, patients. As you can  
19 imagine, this patient population we serve or we will  
20 serve, if this is successful, is a tenuous one, and  
21 any interruption in the flow of the good work that  
22 Burlington Labs has been doing can have effects that  
23 we don't want to deal with. So it's a long-winded  
24 answer, Al, to your question, but the answer is that  
25 I will not go beyond 30 days before we pull the plug

1 on this and move on.

2 And what's most important, and again I  
3 mean this in the respectful way that it's intended,  
4 we really appreciate you making time. We know how  
5 busy this budget season is for you. We know what we  
6 are up to right now in trying to get an approval for  
7 an emergency CON placement. But anything you can do  
8 as quickly as possible will help our cause.

9 CHAIRMAN GOBEILLE: Okay. Is there  
10 anything that the two attorneys would like to add?  
11 That was a great explanation. Are we good? I'll  
12 open it up to the Board for questions or comments.

13 MR. HOGAN: Just would you in just a  
14 few words conclude on why this is an emergency?

15 MR. CROOK: This is an emergency  
16 because the patients that are dependent upon our lab  
17 work, need the lab work done in a quality fashion, we  
18 provide it, to get themselves off of their addiction  
19 to heroin in most cases. If this business isn't in  
20 play, they don't have a lot of other alternatives.  
21 And those folks that have hit the bottom and want to  
22 climb out of it, it's going to be more difficult  
23 without Burlington Labs in play.

24 MR. HOGAN: Thank you.

25 CHAIRMAN GOBEILLE: Allan.

1 DR. RAMSAY: Mr. Crook, can you -- I'm  
2 trying to get the time tables clear in my head here.  
3 Could you remind me again about when did you first  
4 speak to Mr. Casarico?

5 MR. CROOK: End of May.

6 DR. RAMSAY: May. Okay. And your  
7 attractiveness is laudable. I mean we all know -- we  
8 hear all -- we know more about the opiate crisis and  
9 how it's affected everything in our state. And we  
10 know about jobs. The third thing you said it was  
11 going to be hard. That's what attracted you to this,  
12 and probably what attracted me to some of the things  
13 I do.

14 But when will change actually -- again  
15 part of the timetable -- you just mentioned 30 days.  
16 You said there had to be a change in leadership and  
17 governance. When do you anticipate that change  
18 actually being implemented at Burlington Labs?

19 MR. CROOK: This answer is going to  
20 work against my urgency, but I've got to give it to  
21 you. With Dorman and Fawcett in the CRO role now,  
22 it's happening right now. My anxiety, and I trust  
23 these Dorman and Fawcett guys, they are the real  
24 deal. They are spending my money, and it's my  
25 personal money at this point in time. I trust them



1 with it, Dr. Ramsay. What I'm anxious about is  
2 getting Chris and the CFO that we have waiting in the  
3 wings to join the company so that we can take this  
4 business on the accelerated ride it should be on to  
5 the benefit of the patients.

6 To answer your question, in the next 90  
7 days you'll see -- we will see significant change in  
8 that. This business is bleeding, it needs to stop  
9 bleeding, and it needs to strategically align itself  
10 with what's best for the benefit of the patients that  
11 it serves. We know how to do that.

12 DR. RAMSAY: You have leadership in the  
13 wings. You said you don't know how quickly they can  
14 be integrated into the recovery process. But you  
15 actually have identified those resources?

16 MR. CROOK: We have the leadership  
17 people assembled and ready to go. We have Chris  
18 Powell is waiting. His intention was to start August  
19 29. That was the plan we were on before we -- it was  
20 brought to our attention we needed to go to the CON  
21 process. He's ready to go.

22 The CFO is ready to go, and the board  
23 members of which are -- I will chair the board. Jack  
24 Kane will be the chairman of the audit and finance  
25 committee. Chris Powell who is the CEO will be on

1 the board. Todd Keating will be on the board as a  
2 representative of minority investor. And Michael  
3 Casarico, the founder of the business, will be on the  
4 board.

5 We are ready to go -- we will go  
6 tomorrow if you want to accelerate your process.

7 DR. RAMSAY: Since the process began  
8 with you, have any other alternative investors,  
9 venture capital, any other opportunities arisen for  
10 Burlington Labs that you know of?

11 MR. CROOK: There were three  
12 alternatives Burlington Labs had when I got involved.  
13 And the answer is no. I think that we are now deep  
14 enough into the process, and with the funding we  
15 provided to hold this business up, it would be very  
16 difficult -- not that we would lock anybody up.

17 My main objective here is to save this  
18 company, whether I'm involved with the saving or not  
19 is not what's driving me. How much money I'm going  
20 to make is not what's driving me. I'm not going to  
21 do anything that we don't have an outcome that we  
22 think can continue to fuel the business to be  
23 successful. So don't get me wrong. This is not a  
24 philanthropic pursuit. But it would be very hard for  
25 anyone to step into this business right now and do

1 what we are doing. We are very, very, very pregnant  
2 with this company.

3 CHAIRMAN GOBEILLE: Ladies?

4 MS. RAMBUR: Just a couple of --

5 CHAIRMAN GOBEILLE: Either.

6 MS. RAMBUR: Just a couple of  
7 questions. My experience with Burlington Labs has  
8 been primarily as a clinician knowing other  
9 clinicians who I've used these services. So I have  
10 just two questions.

11 One is when you became aware that a  
12 Certificate of Need would be required. And then, Mr.  
13 Chairman, I'm wondering if it would be helpful to  
14 outline the parameters by which an emergency  
15 Certificate of Need can be considered. I think that  
16 would be helpful for the public and the Board to  
17 hear.

18 MR. CROOK: The first question I'll  
19 take maybe -- and Mr. Commissioner maybe take the  
20 second one. The first one is about two weeks ago,  
21 and we have forged a very, very strong paper  
22 partnership with our friends at UVM Health Care  
23 Network, and they brought it to our attention. And  
24 it was -- I don't know whether it was Spencer Knapp  
25 or their outside counsel, but my first reaction was,

1 oh, an obstacle. Perfect. That's all we need. But  
2 I'm very thankful they brought it up because at some  
3 point in time this was going to raise its head, and  
4 we were going to have to deal with it, and I'm glad  
5 we are doing it now.

6 CHAIRMAN GOBEILLE: Judy, do you want  
7 to outline --

8 MS. HENKIN: Sure. I'll just give you  
9 the references in statute in our rule. I'm sure the  
10 lawyers up there have read it many times at this  
11 point. But the statute is under a Certificate of  
12 Need Statute 9440, Section E, allows for the Board to  
13 -- the Board shall adopt rules governing procedure  
14 for expeditious processing of applications, going on,  
15 for health care facility or HMO. The relevant part:  
16 Is there any circumstance beyond the control of the  
17 applicant where the Board finds that the  
18 circumstances require action in less time than  
19 normally required for review. If the nature of the  
20 emergency requires it, an application may be reviewed  
21 by the Board without notice and opportunity for  
22 public hearing or intervention by any party.

23 And we did promulgate a rule on that,  
24 and the rule is part of our CON rule. It's Rule 4.0.  
25 You can read it on our Web site. It's section 4.303.

1 And it does set forth that the Board upon a finding  
2 that the issuance of an emergency CON is appropriate,  
3 the Board notifies the applicant of the process  
4 that's going to be applicable to the application, and  
5 in the Board's discretion the process shall include  
6 as much process as provided under this rule as can be  
7 accommodated under the specific circumstances. And  
8 if the nature of the emergency requires it, it can be  
9 reviewed without notice and opportunity for a public  
10 hearing or intervention by another party. So that's  
11 the governing statute --

12 MS. RAMBUR: Thank you.

13 MS. HENKIN: -- in the rule.

14 CHAIRMAN GOBEILLE: Jessica.

15 MS. HOLMES: Thank you. Can you just  
16 clarify a little bit further this role of Dorman and  
17 Fawcett, chief recovery officer, exactly -- elaborate  
18 on that role, what they are doing.

19 MR. CROOK: When they got involved in  
20 early June -- gladly. When they got involved in  
21 early June as I mentioned it was important that they  
22 were involved in the business in case we did not --  
23 the term I used was green light at the end of June.  
24 At the end of June -- we have not signed agreements  
25 to buy this company still. At the end of June we

1           agreed to do what I was unwilling to do in March,  
2           that's provide interim capital almost as a bank. I'm  
3           not a banker. But once I realized that Michael and  
4           Jodi were willing to accept new leadership in the  
5           business and governance of it, and once the other  
6           pieces came together, it became apparent that this  
7           was an opportunity that we could help. So Dorman and  
8           Fawcett was involved in early June, and they were  
9           sort of acting as a -- not a big brother, but they  
10          were acting as an overseer of making sure that the  
11          cash flow primarily was managed as well as possible.

12                        It was dealing with the vendors,  
13          dealing with the trade payables, and making sure that  
14          people were not going to leave in terms of -- if we  
15          had a vendor that provided a reagent that was  
16          critical for us to continue to do business, but  
17          receivables were over 90 days with them or over 120  
18          days, if we didn't get that reagent from that party,  
19          we were in trouble. I say we, it's not we yet, but  
20          Burlington Labs was in trouble.

21                        So Dorman and Fawcett has a particular  
22          skill in making sure that those relationships don't  
23          jump off the track. That was the initial play. When  
24          the CON learning came to me, I'll first person this,  
25          it became apparent that we weren't going to close on

1 August 29. And we needed Dorman and Fawcett to step  
2 in in a chief recovery role. They are running the  
3 business, Stephen Barraclough is running this  
4 business. And I'm sure he's thrilled to be dealing  
5 with all the PR that's going on right now, but that's  
6 an element he didn't expect either. But he's running  
7 the business, great confidence in Stephen and Terry  
8 Dorman in running the business. But that's who they  
9 are right now.

10 They will continue to run the business  
11 until we close on this project. And after that, they  
12 will be involved for a period of time as well.  
13 Because the institutional knowledge that they have  
14 built up and the plans that they are executing, there  
15 is a necessary hang over that is needed before Chris  
16 and the rest of his team really take the reins.

17 MR. HOGAN: Is there a bank involved  
18 here?

19 MR. CROOK: Key Bank.

20 MR. HOGAN: Is there any danger of  
21 moving for Chapter 7?

22 MR. CROOK: This business?

23 MR. HOGAN: Yeah.

24 MR. CROOK: Yes.

25 MR. HOGAN: All right. That's

1 important.

2 MR. CROOK: Either an 11 or 7. I'm not  
3 thankfully conversant in what they are. This  
4 business is going down if we don't provide this  
5 funding and if we don't stay in there. And we are --  
6 I say that not to overly dramatize it. It is the  
7 reality. But the people that have built the  
8 business, done a lot of good work, and we are looking  
9 to give them wings.

10 CHAIRMAN GOBEILLE: And I would like to  
11 add something to Judy's reading of the CON, and that  
12 is my interpretation of it and my thoughts on it.  
13 Because when this came up the question was what does  
14 the Green Mountain Care Board do with a statute that  
15 basically allows for no public anything. What we  
16 chose to do was have this meeting, to have this in  
17 public, to allow all of the documents to be  
18 transparent. You know, so while there is a statute  
19 and a rule that allows for an emergency process, that  
20 was intended for a commissioner, where a commissioner  
21 would decide in an office, and then things would be  
22 decided in that same office.

23 And if you think about the state  
24 hospital, if you think about Irene, that is the way  
25 matters were handled. This is an attempt by the



1 Board to do virtually the impossible, to have a  
2 private meeting in public, to look like we have any  
3 idea what we are talking about while we hear it for  
4 the first time, to look like we have done our due  
5 diligence when we are hearing something for the first  
6 time and reviewing material for the first time.  
7 That's why it's important that regardless of if we  
8 give an emergency CON today, status, or not, there is  
9 no CON granted. That process is yet to be determined  
10 if it's an emergency, and it's in statute and rule if  
11 it is not an emergency.

12 But that's why this is such an  
13 interesting point. The Board has chose to do this in  
14 public. Okay. And I just want everyone to  
15 understand that.

16 Jessica, did you have more to your  
17 questioning? I didn't mean to -- I wanted to clarify  
18 that at that time.

19 MS. HOLMES: No, that's terrific. I  
20 just guess -- I just want -- if you could say once  
21 again this business is closing if you do not step in.

22 MR. CROOK: That's my opinion.

23 MS. HOLMES: That is your opinion.  
24 What happens to the patients?

25 MR. CROOK: What happens to the

1 patients? I don't want to think about it. I can't  
2 answer the question. I think everybody knows what  
3 happens to the patients, they get less care than they  
4 are getting now, and the likelihood of them  
5 rehabilitating is much lower. And that is what we  
6 are here for.

7 MS. HOLMES: Okay.

8 MS. WOHL: If I -- may I just jump in  
9 for a second?

10 CHAIRMAN GOBEILLE: Absolutely.

11 MS. WOHL: We just provided to you this  
12 afternoon letters of support from some of the  
13 Burlington Labs partners, and I want to make sure  
14 that you know that you have them and that you have  
15 the opportunity to read them. But I think that that  
16 -- those -- the context of those letters is part of  
17 the answer to the question.

18 We have submitted information that  
19 Burlington Labs has served more than 2,000 patients  
20 just in the first 2/3 of this year. They are a big  
21 player in this part of providing health care, and  
22 that's one of the reasons why we think it's so  
23 important that you have the information that you need  
24 and that you take the time you need to consider this.  
25 And we certainly are grateful that you are taking the

1 time to do it and to do it in public.

2 There is nothing I think -- although  
3 Mr. Crook likes to fly under the radar, there is no  
4 -- there are no secrets here. There are just a time  
5 constraint.

6 CHAIRMAN GOBEILLE: Right. I think  
7 that's come across loud and clear. Just for the  
8 record, there is a letter from the Turning Point  
9 Center of Addison County, Turning Point Center of  
10 Central Vermont, Spectrum Youth and Family Services,  
11 United Way Chittenden County and St. Albans, and the  
12 Howard Center.

13 And realize that this has really just  
14 been available to people for about 24 hours in the  
15 public domain and my mind. And so that that's just  
16 to say that this is on the record, we would -- most  
17 of our things allow for both verbal public comment  
18 and written. This falls under that normal operating  
19 procedure.

20 Allan, did you have a question?

21 DR. RAMSAY: Yeah. I just wanted to be  
22 clear about Mr. Crook, you, Mr. Powell, and Mr. Kane,  
23 what relationship you actually have to UVM Health  
24 Network, you know, other than being a patient, I mean  
25 board activities, any financial relationships, do you

1 have any?

2 MR. CROOK: Great question. Chris, no  
3 relationship. Jack, no relationship. I sit on Rick  
4 Moran's -- the UMEA, University Medical Education  
5 Association.

6 DR. RAMSAY: I know that one.

7 MR. CROOK: I sit on Rick's board, but  
8 none other -- no other relationship.

9 MS. RAMBUR: I just have a clarifying  
10 point. That's an advisory board; correct?

11 MR. CROOK: It is an advisory board. I  
12 have no -- I have no -- I'm not paid. I have no  
13 economic interest. I don't own part of UVM Health  
14 Network. So no. Nothing.

15 CHAIRMAN GOBEILLE: Con, did you have  
16 something?

17 MR. HOGAN: Well yeah. It's a comment.  
18 I just haven't been through something like this. I  
19 just want to get the decision to these people as  
20 quickly as we can.

21 CHAIRMAN GOBEILLE: Okay. So are there  
22 other questions from the Board at this time?

23 MS. RAMBUR: I guess the only other  
24 question I have, and I'm not sure it's to you or to  
25 whom it's to, but these services are apparently not

1 available easily elsewhere is my understanding.

2 MR. CROOK: There is another -- there  
3 is another provider in Rhode Island. They are a  
4 smaller provider. As we did our due diligence on the  
5 competitive landscape, we don't believe -- we believe  
6 we have an edge in terms of the way we observe the  
7 collection of the sample, that's critical. We  
8 believe the quality control that comes from that is  
9 something that will save state's money. We are not  
10 asking for any new money from the state. We are not  
11 coming in here and saying, gee, we are going to raise  
12 our prices. We bill Medicaid for the most part.  
13 It's controlled.

14 The point about saving money is that if  
15 the lab work isn't done properly, and if the patient  
16 in anyway is able to game it, ultimately it costs the  
17 taxpayer money because the result isn't achieved or  
18 more lab work needs to be done. We think the  
19 Burlington Labs business has a significant  
20 competitive advantage there, and we look forward to  
21 allowing greater benefit to the Vermont population  
22 and beyond as a result of it. Does that answer your  
23 question?

24 MS. RAMBUR: Yes. Yes. Thank you.

25 CHAIRMAN GOBEILLE: Other comments or

1 questions?

2 DR. RAMSAY: So there is a commercial  
3 market here as well. I know it's dominates --  
4 dominated by Medicaid, but there are certainly  
5 insured people. We have the Affordable Care Act that  
6 have substance or opiate abuse that use Burlington  
7 Labs. And but you're now on the record as saying you  
8 have no -- you don't have any plans for increasing  
9 prices to any of the people who utilize Burlington  
10 Labs; is that correct?

11 MR. CROOK: You know, I think I did  
12 just say that. It was probably irresponsible for me  
13 to say it. My point, Dr. Ramsay, was to let you know  
14 that we are not coming to the state to look for more  
15 money.

16 DR. RAMSAY: Okay. We always  
17 appreciate that.

18 CHAIRMAN GOBEILLE: Other questions or  
19 comments from the Board at this time? All right.  
20 I'll open it up for public comment or questions. If  
21 anyone has any, I would ask that they go through me,  
22 and then I will try to get you an answer.

23 Yes. Just identify yourself.

24 MS. KUIPER: I'm Kaili Kuiper. I'm  
25 from the Office of Health Care Advocate. The letter

1 of intent described one of the main issues with this  
2 company was Medicaid fraud and a huge payment that  
3 they have to make to the state and the federal  
4 government for the Medicaid fraud. I was wondering  
5 if the application will address how that's -- how the  
6 management structure is being changed, how they are  
7 changing the way --

8 CHAIRMAN GOBEILLE: So what I would say  
9 is that regardless of whether this is an emergency  
10 CON, or a regular CON, there is no way that the Board  
11 would allow that not to be addressed either in the  
12 money side or the operational side that led to the  
13 money side. And so that would be part of the process  
14 either way. But you know, that's an issue with the  
15 company. And in the letter that was sent to us, they  
16 attempt to address it, but you know, typically in a  
17 CON decision we address our thoughts on that issue as  
18 well.

19 Is there anything you would like to  
20 add?

21 MR. CROOK: The only thing Commissioner  
22 -- Mr. Commissioner, is that there was a billing  
23 challenge that this company faced. We have worked  
24 through with the Attorney General a settlement that's  
25 almost ready to be executed based upon us getting to

1 the next stage.

2 Words are, you know, the press may  
3 attach themselves to that word. I don't believe  
4 that's the case. That's just my opinion, it really  
5 doesn't matter. The important thing here is to make  
6 sure we are all on the same page with what the story  
7 is. The story is that Burlington Labs, if it's  
8 funded, whatever that billing challenge is, will pay  
9 state and federal government back every dollar, so  
10 this isn't a story about that act. That's an element  
11 of it. It's part of what put them in the cash flow  
12 situation they are in.

13 The real story here is how do we save  
14 the asset or do we save the asset. But the Medicaid  
15 billing issue was real, it was a mixup from my  
16 standpoint. We are trying to get beyond it. We will  
17 get beyond it. And most importantly every dollar  
18 will be paid back.

19 CHAIRMAN GOBEILLE: Did that answer  
20 your question?

21 MS. KUIPER: No. I would be interested  
22 in a lot more detail on how the problem occurred.  
23 And --

24 MR. CROOK: Well the detail is pretty  
25 simple. In 2014, in the fall of 2014, CMS which is



1 Medicare-Medicaid determined that they were going to  
2 move from ICD 9 to ICD 10. At the time Vermont  
3 didn't have a reimbursement rate published for this  
4 work.

5 Burlington Labs continued to bill with  
6 I don't know what level of authority from the State  
7 of Vermont and overbilled for a period of time. The  
8 state came back in April of '16 and said, hey, this  
9 is an issue -- or February of '16. Sometime in '16.  
10 The money needs to be paid back. The business didn't  
11 have the money which is what put them primarily into  
12 the cash flow crunch that we are in now.

13 CHAIRMAN GOBEILLE: What I would also  
14 say is that's what a CON process is for. That's what  
15 our decision would be about whether it's an emergency  
16 or not.

17 The other point I would make is that  
18 this is for that company. Burlington Labs isn't in  
19 front of us today. In other words, if Burlington  
20 Labs was trying to do something, we may ask them  
21 about that. But that's between the AG's office and  
22 the Burlington Labs.

23 I mean in other words we are not -- we  
24 haven't been working on that. So that's just my  
25 answer to you.

1 MS. KUIPER: Okay.

2 MR. CROOK: One other thing, Mr.  
3 Commissioner, please. We spent between Jack and  
4 Chris and myself, I'm not sure I'll do the math  
5 right, we have over a hundred years of reimbursement  
6 health care revenue cycle experience. It's really  
7 the only thing I know in all the other business I'm  
8 involved with. I understand this. That will have a  
9 tremendous focus from a compliance standpoint inside  
10 the company.

11 That coupled with our partner, UVM  
12 Health Network, where we can lean and sort out how to  
13 get the expertise they have in this area is something  
14 that's front and center for us. Very, very, very  
15 important.

16 CHAIRMAN GOBEILLE: Thank you. Other  
17 comments or questions? Yes, ma'am.

18 MS. WALSH: Molly Walsh with Seven  
19 Days. Hi. You're saying this is a billing error.  
20 But the AG's investigation is not complete. If  
21 criminal charges were to come and be filed against  
22 leadership of the company, how would that affect your  
23 plans to buy the company, and how would that affect  
24 the emergency CON?

25 CHAIRMAN GOBEILLE: Yeah. So what --

1 I'm going to answer the question because, as I said,  
2 all questions go through me. Jim, at some point you  
3 can hold your own press conference, but not today.

4 MR. CROOK: I hope not to.

5 CHAIRMAN GOBEILLE: Okay. But the  
6 point is that today's matter is whether there should  
7 be an emergency CON. Not are we diving into what the  
8 AG is doing or what is the issue with Burlington  
9 Labs. That's not the issue that's trying to be  
10 settled today. So I don't think we want to dig into  
11 something that the Board doesn't have enough  
12 information on to answer your question, because, you  
13 know, it's our meeting.

14 Like I said, you can have your own  
15 press conference.

16 MR. MIDURA: Kyle Midura with CAX.

17 CHAIRMAN GOBEILLE: Hey gang, the way  
18 we do it whether you're the press or a member of the  
19 public, you ask to be called on, and I will get you  
20 an answer. Kyle.

21 MR. MIDURA: Kyle Midura, WCAX. I  
22 mention the press is part of the public.

23 CHAIRMAN GOBEILLE: I included you.

24 MR. MIDURA: I know. I just didn't  
25 want to feel separated out. I think part of the

1 public interest is that the person who was CEO as  
2 this alleged fraud went down is going to be on the  
3 board under this plan. And that's why we have  
4 questions on it.

5 CHAIRMAN GOBEILLE: Yeah. I think  
6 that's a matter that we would have to dig into. When  
7 we do a CON whether it's an emergency or not, you  
8 take a look at Genesis, you take a look at anything  
9 we have done. We ask, Donna, how many questions did  
10 we ask with Genesis?

11 MS. JERRY: Four or five rounds.

12 CHAIRMAN GOBEILLE: Of how many? A  
13 hundred in total?

14 MS. JERRY: Probably a hundred.

15 CHAIRMAN GOBEILLE: That's typically  
16 the process when we do a CON whether it's an  
17 emergency or not, we will ask a lot of questions.  
18 And we still have to satisfy the criteria that are in  
19 the statute. But that's not what we are trying to do  
20 today. We are not investigating -- we don't have the  
21 AG here to tell us what they have been doing or a  
22 decision on that. That's not where we are at. We  
23 can't give you an outcome of that today, Kyle.

24 MR. MIDURA: No, I'm just saying that's  
25 why the question.

1 CHAIRMAN GOBEILLE: I totally think  
2 it's a legitimate concern. I'm not trying to say  
3 it's not. It's not something that we are here to  
4 dive into.

5 Other comments or questions? Mr.  
6 Whitaker, how are you?

7 MR. WHITAKER: I'm good. I just want  
8 to call to your attention that it's reminding me of a  
9 parallel of the Fed in 2007. Basically this is a --  
10 being represented as a too-big-to-fail business. And  
11 you're potentially putting a thumb on the scale for  
12 an emerging competitor.

13 Now it appears to me from what I'm  
14 hearing that in the future all these costs and  
15 penalties and fines, et cetera, are all going to be  
16 built into the rates that this entity charges whereas  
17 they wouldn't be if a competitor were to emerge. So  
18 in effect, you're going to tilt the scales by  
19 granting an emergency Certificate of Need prior to  
20 the full process being done.

21 I also understand that there may be a  
22 conflict in regards to the same attorney at Downs,  
23 Rachlin & Martin representing Burlington Labs while  
24 another attorney at Downs, Rachlin & Martin is  
25 representing Burlington Labs, LLC, or Labs -- what's

1 the name of the new one?

2 MR. MOODY: I could speak to that. So  
3 I'm Tom Moody. I'm a director at Downs, Rachlin &  
4 Martin, a business lawyer. And he's referring to  
5 Tristram Coffin who represents Michael and Jodi  
6 Casarico personally. That representation predated  
7 Mr. Crook's involvement in the transaction. We  
8 looked at that as a conflict question, and we  
9 determined that there wasn't a reason for him not to  
10 -- to discontinue that representation of them on a  
11 personal level, and because the transaction is really  
12 independent of that -- any action that would be taken  
13 against them.

14 CHAIRMAN GOBEILLE: Thank you. Other  
15 comments or questions? All right. Seeing none, oh  
16 sorry. Lila?

17 MS. RICHARDSON: Yeah. I just had a --  
18 Lila Richardson. I also work with the Office of the  
19 Health Care Advocate. I just had a clarification  
20 about what has been submitted so far. Because we saw  
21 a letter of intent, but we haven't seen an actual CON  
22 application. Has one been submitted? It seems it's  
23 hard for the Board to act on something that hasn't  
24 been submitted yet.

25 CHAIRMAN GOBEILLE: I can't hear you.

1 MS. RICHARDSON: It would seem that the  
2 Board would have to have the full CON application  
3 before taking any action.

4 CHAIRMAN GOBEILLE: Well I think there  
5 were confusing actions here, meaning I think the  
6 question here today is should this be handled as an  
7 emergency CON or not. We need a CON application to  
8 decide the CON. Correct. But the question today is,  
9 are we willing to do it under an emergency CON  
10 process.

11 I don't think the applicant would  
12 submit a CON if it is -- I'm not speaking on your  
13 behalf, but from what I've heard today there is no  
14 reason to submit a CON if it's going to take nine  
15 months. Their question is can it be handled as an  
16 emergency, and if so, then I'm assuming that we will  
17 work through this. If it can't, then I'm assuming  
18 that then it's a moot point. Is that fair, Lila?

19 MS. RICHARDSON: The letter had just  
20 referenced filing an actual application very quickly.  
21 So that was my question.

22 CHAIRMAN GOBEILLE: Judy will go  
23 through what we had on that.

24 MS. HENKIN: Just today while we were  
25 in hospital budget hearings we did receive some

1 things. They haven't been posted yet. We received  
2 letters of support, proposed findings of fact and  
3 conclusions of law. They will be posted. They just  
4 came in today, and they are dated the 24th, so that's  
5 -- just hasn't been done yet. But we literally just  
6 printed these at lunchtime and were handed some of it  
7 as they came in.

8 MS. RICHARDSON: I understand the  
9 documents are coming in very quickly.

10 MS. HENKIN: We did not receive an  
11 application yet.

12 MS. WOHL: May I add just a little bit  
13 to what you have said?

14 CHAIRMAN GOBEILLE: Sure.

15 MS. WOHL: The rule does allow, if the  
16 Board chooses to grant an emergency CON process, it  
17 then allows the Board to define what process that is.

18 CHAIRMAN GOBEILLE: That's right.

19 MS. WOHL: As you pointed out, it can  
20 include no process and no public hearing at all.  
21 That's not what we are looking for. But we are  
22 looking for some guidance as to what are the  
23 documents that you need. Is it an application? And  
24 if it is an application, in what form?

25 Which of the HRAP criteria does the



1 Board believe are relevant to this project, because  
2 as I'm sure Ms. Richardson knows, there is often  
3 conversation that goes on with Board staff about  
4 which criteria to address in the typical CON  
5 procedure. That's all been compressed so far. And  
6 we hope that we continue to be compressed, but we  
7 don't want certainly to shortcut your review.

8 CHAIRMAN GOBEILLE: Are there other  
9 comments or questions from the public?

10 MR. WHITAKER: Mr. Chair, I didn't get  
11 a chance to finish. I got interrupted.

12 CHAIRMAN GOBEILLE: Sorry.

13 MR. WHITAKER: Courteously informed by  
14 the --

15 CHAIRMAN GOBEILLE: Sure.

16 MR. WHITNEY: -- counsel. It appears  
17 that -- I mean I hate to use the analogy you've got a  
18 gun to your head, that in effect this business or the  
19 offer to purchase this business to the tune of 10  
20 million dollars or whatever is going to go away. But  
21 it also appears that you're being asked to not only  
22 grant an emergency Certificate of Need while the  
23 process goes, but give assurance that you're not  
24 going to take it away. Because it sounds like this  
25 10 million dollars is going to walk if you don't give

1           them reassurance that they are going to get their  
2           Certificate of Need however many months down the  
3           line.

4                         CHAIRMAN GOBEILLE:  No.  That's not  
5           what I'm hearing.  And I just want to clarify.  What  
6           I'm hearing them say is, and I guess this is what I  
7           was trying to say to Lila.  If we grant an emergency  
8           CON status today, we then define the process, and we  
9           have to work through the criteria of a CON which is  
10          still a CON.  The point being it would have to be  
11          done quick enough so that the company could be  
12          purchased before the company collapses.  And so the  
13          point is, no, it can't take months is what they are  
14          saying.  But it can be done expeditiously, but it can  
15          still meet the standards.

16                        And I also want to answer a question  
17          that you asked earlier which was about rate.  I think  
18          the question of how do you finance a company, and  
19          then how do you pay for it out of the rates that you  
20          charge.  If this was a company that was 95 percent  
21          commercial, and I think this is what Board member  
22          Ramsay was asking, if it was 95 percent commercial,  
23          then they may be looking for a commercial rate  
24          increase.  But because this is paid primarily by  
25          Medicaid and Medicaid is a one-way negotiator,

1 meaning they tell you what they are going to pay you,  
2 unfortunately the company will have no ability to  
3 negotiate that rate. It just doesn't -- if Medicaid  
4 -- if Medicaid negotiated rates, all 14 hospitals  
5 would not have submitted a zero percent rate increase  
6 this year.

7 So I think that -- but again, that's  
8 something the Board would look at in its due  
9 diligence of a CON. Not of an emergency CON  
10 decision.

11 MR. WHITAKER: Because I understand  
12 that Shaws and other, you know, employers who aren't  
13 billing Medicaid used this same company for drug  
14 tests to vet employees.

15 CHAIRMAN GOBEILLE: Right. In the  
16 minority of their business. And your point is well  
17 taken, and in fact, the CON criteria asks those  
18 questions.

19 MR. WHITAKER: Thank you.

20 MS. RAMBUR: So Mr. Chair, just to make  
21 a point of clarity, it seems to me still that there  
22 is at least some confusion. What we are talking  
23 about today is should this be able to be considered  
24 in a more expeditious manner as what's called an  
25 emergency rather than going in line tucked behind how

1 many things are in place. That's all we are doing  
2 today is deciding if this could be done more  
3 expeditiously in terms of its review, and the review  
4 still has to happen.

5 CHAIRMAN GOBEILLE: Right. And also to  
6 be clear, and this is the Kyle Midura's question,  
7 this does nothing to step in between the AG and the  
8 current management of the company. If there is a  
9 settlement, you know, that's not, you know, it's not  
10 fraud unless the judge says so. You know, and if  
11 that's not what happens, that's not what happens.  
12 But that has nothing to do with the Green Mountain  
13 Care Board to be clear. That is literally between  
14 the AG and the present company.

15 What happens with the new company, you  
16 know, it's a new day when you buy it. And that's a  
17 whole 'nother thing. So --

18 MS. HENKIN: Did anyone come here from  
19 the AG's office? I know I had a call yesterday from  
20 Jason Turner. He said someone might be here, but he  
21 couldn't be.

22 CHAIRMAN GOBEILLE: Is there anyone  
23 here from the AG's office who at this moment doesn't  
24 want to say that? Allan.

25 DR. RAMSAY: And just being here

1 assumes, in my mind, that the entities involved,  
2 Burlington Lab, Burlington Lab, LLC, Dorman and  
3 Kaufmann (sic), the investors, will respond in a very  
4 timely and expedient way to any of the potential  
5 concerns we have if we do indeed go to the CON  
6 process. That's assumed. Right?

7 CHAIRMAN GOBEILLE: Absolutely. I mean  
8 because we have seen this where we ask questions and  
9 people don't get back to us for six months.

10 DR. RAMSAY: Right.

11 CHAIRMAN GOBEILLE: And then that  
12 hospital blames us for not passing their CON.  
13 Copley.

14 DR. RAMSAY: Been there, done that.

15 CHAIRMAN GOBEILLE: It's tough to be on  
16 the Board. So other comments or questions? All  
17 right. Seeing none, it's up to the Board at this  
18 point what you want to do.

19 MR. HOGAN: I'll say what I said  
20 before. I want to move as quickly as we can to get  
21 to the point where we can make a decision.

22 CHAIRMAN GOBEILLE: Is that a motion?

23 MR. HOGAN: That's a motion.

24 CHAIRMAN GOBEILLE: You're going to  
25 have to clarify that for Judy.

1 MR. HOGAN: What else do you need?

2 MS. HENKIN: Do you move that this  
3 should proceed as an emergency Certificate of Need?

4 MR. HOGAN: Yes. You said it better  
5 than I could.

6 MS. HENKIN: You said it more angrily.

7 MS. RAMBUR: Certificate of Need  
8 consideration. If it's a Certificate of Need  
9 consideration, I will second the motion.

10 CHAIRMAN GOBEILLE: So that's a  
11 friendly amendment. Do you accept that?

12 MR. HOGAN: (Nodding)

13 CHAIRMAN GOBEILLE: That was a yes.

14 MR. HOGAN: Yes.

15 CHAIRMAN GOBEILLE: So we are in  
16 consideration of CON. So we have a motion. We have  
17 a second. Is there any discussion from the Board?  
18 All those in favor?

19 BOARD MEMBERS: Aye.

20 CHAIRMAN GOBEILLE: Any opposed? Any  
21 abstaining?

22 (No response)

23 CHAIRMAN GOBEILLE: Okay. We are now  
24 into emergency CON land. What we will do is we will  
25 meet, and we will let you know exactly the process,

1 and we will get that to you post haste. Is that  
2 fair?

3 MS. WOHL: Perfect.

4 CHAIRMAN GOBEILLE: And I guarantee you  
5 that it will be a lot of what you've heard from the  
6 public in this room. So it was time well spent and  
7 nothing was wasted so --

8 MS. RAMBUR: Mr. Chair, does that -- it  
9 goes to them, but is that posted publicly as well in  
10 terms of what's asked in a timely --

11 CHAIRMAN GOBEILLE: It's up to the  
12 Board when it decides the process.

13 MS. RAMBUR: Okay.

14 CHAIRMAN GOBEILLE: Okay. So anything  
15 else from the Board? Anything else from the  
16 applicant?

17 MR. CROOK: Thank you.

18 MR. MOODY: Thank you very much.

19 CHAIRMAN GOBEILLE: Thank you. Is  
20 there a motion to adjourn?

21 MS. RAMBUR: So moved.

22 MS. HOLMES: Second.

23 CHAIRMAN GOBEILLE: All those in favor?

24 BOARD MEMBERS: Aye.

25 CHAIRMAN GOBEILLE: All right. Thank

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you.

(Whereupon, the proceeding was  
adjourned at 3:51 p.m.)



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I, Kim U. Sears, do hereby certify that I recorded by stenographic means the hearing re: Emergency CON meeting, at the Capitol Plaza, 100 State Street, Montpelier, Vermont, on August 24, 2016, beginning at 3 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 48 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 30th day of August, 2016.

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