

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

IN RE:)
)
PROPOSED AMBULATORY SURGERY) **GMCB-010-15CON**
CENTER)

**POST-HEARING MEMORANDUM IN OPPOSITION TO THE GREEN MOUNTAIN
SURGERY CENTER CERTIFICATE OF NEED APPLICATION
ON BEHALF OF
NORTHWESTERN MEDICAL CENTER**

Northwestern Medical Center (“NMC”) submits the following supplemental post-hearing memorandum in opposition to the application filed by ACTD, LLC d/b/a Green Mountain Surgery Center (“GMSC” or the “Applicant”) for a Certificate of Need (“CON”). The objective of this Memorandum is to highlight for the Board the testimony and evidence that demonstrates that the Applicant has failed to fulfill its statutory obligation under 18 V.S.A. §9437 to prove that there is a need for the GMSC and that the costs of the project are reasonable. NMC, as a member of the Vermont Association of Hospitals and Health Systems (“VAHHS”), also joins in the post-hearing memorandum submitted by VAHHS.

1. There is No “Identifiable, Existing or Reasonably Anticipated Need” for the Green Mountain Surgery Center

Patients in our community have access to quality surgical care, and NMC has significant available outpatient surgical capacity to handle patient needs long into the future. Our five operating rooms are used at about 50% of available capacity and our two endoscopy suites and four procedure rooms are operating at 13% of available capacity. *Vermont Association of Hospitals and Health Systems Data Request Response*, pages 19-24 (May 6, 2016). Even so, NMC is innovating to improve efficiency and to shorten turn-around times for its surgeries,

thereby making more capacity available. Dr. Greg Brophrey, a surgeon at NMC, testified about his first-hand experience with the improved efficiency at NMC and the importance of having highly trained staff for those emergency cases that the hospital stands ready to care for. *Transcript of April 13, 2017 Hearing*, page 112-114 (April 13, 2017). NMC is offering operating and procedure room services that are available 24/7 for urgent and emergency care, but also are as efficient as national ambulatory surgical center services, which the Applicant has not disputed. These changes have resulted in an estimated \$400,000 in savings in eye surgery alone. *Id.* at 109. Nor did the Applicant provide any evidence that the GMSC will be more efficient than the services offered through NMC's operating and procedure room pilot program. The services the GMSC proposes to provide are not unique; Vermonters currently have access to these efficient, cost-saving and high quality outpatient surgeries.

ACTD, LLC has testified that, based on national data, the quality of care at an ambulatory surgery center is comparable to the quality of hospital outpatient departments. *Id.* at 18. NMC has far surpassed these national quality metrics with no infections last quarter and an infection rate of 0.42% for the previous year. *Id.* at 109 and *Interested Party Presentation in the Green Mountain Surgery Center Certificate of Need Hearing*, slide 5 (April 11, 2017). Further, NMC's patient satisfaction score is 94%, slightly higher than the national 92% rate cited by the Applicant for ambulatory surgical centers. *See Transcript of April 13, 2017 Hearing*, at 109 and *The Green Mountain Surgery Center Certificate of Need Application*, page 1-2, FN 7 (July 2, 2015). For these reasons, the Applicant has failed to demonstrate that there is any "identifiable, existing or reasonably anticipated need" for the GMSC.

2. The Costs of the Green Mountain Surgery Center are Not Reasonable

a. The GMSC Will Have a Negative Impact on “Services, Expenditures and Charges”

The Green Mountain Surgery Center will have a significant impact on NMC’s “services, expenditures and charges.” 18 V.S.A. § 9437(2)(B)(ii). Moving patient care to the proposed ambulatory surgical center will siphon resources, both revenue and experienced staff, away from the essential community services provided by NMC. At the same time, NMC will continue to provide care for patients with more complex needs and those too sick to make a trip to Colchester.

Past experience demonstrates that the GMSC will impact the payer mix for those surgeons providing services at both the GMSC and NMC. NMC estimates that 250 eye surgeries and procedure cases that would have been treated at NMC annually have been transferred to the Vermont Eye Surgery and Laser Center (the “Eye Surgery Center”) since it opened in 2008.¹ *Transcript of April 19, 2017 Hearing*, page 6 (April 19, 2017). In fiscal year 2016, 95% of the patients treated at NMC by Dr. Thomas Dowhan, who provides eye surgery services at NMC and the Eye Surgery Center and is part owner of the Eye Surgery Center, were governmentally insured. *Id.* at 7. The majority of his commercially insured patients were treated at the Eye Surgery Center. *Id.*

NMC’s past experience with Dr. Dowhan noted above, and the Applicant’s unwillingness to require participating surgeons to accept Medicaid patients, demonstrate that the practice of directing commercially insured patients to an independent, physician owned ambulatory surgical center while performing most government funded surgeries at the nearby hospitals is likely to

¹ NMC derived this estimation from comparing the number of surgeries and procedures Dr. Dowhan performed at NMC before the VESLC opened to the number of surgeries and procedures he has performed since the opening. Because the VESLC is not obligated to report to the State, more direct data is not available.

continue. However, now the impact of this diversion of resources is likely to be greater because the GMSC would be multi-specialty and at least three NMC surgeons are represented as willing to provide services across multiple surgical specialties at the GMSC. *Applicant's Responses to Request for Additional Information, Q001*, Confidential Response to Question 4 (January 22, 2016). Since there is no projected increase in utilization or demand for surgical services, the surgical services provided at the GMSC by these surgeons will be coming from NMC.

The GMSC will also have a negative impact on NMC's ability to train and retain staff. Dr. Brophrey testified under oath that, as surgeries are moved to the ambulatory surgical center, staff at hospitals receive less exposure to these procedures and less experience with performing them. *Transcript of April 13, 2017 Hearing*, at 114. Currently, because of consistent and frequent experience with performing eye surgeries at NMC, the operating and procedure room staff are able to anticipate the needs of the surgeons, to assist in the performance of complex surgeries, and to address complications as they arise. *Id.* This experience and ability is essential for when an emergency arises or when cases come into the hospital outside of regular business hours. For example, last summer, a four-year old patient whose eye had been scratched by a cat, arrived at the NMC emergency room. Because of the knowledge and experience of the staff, the girl has suffered no ill-effects from that injury or the complex surgery that was needed to repair it. *Interested Party Presentation in the Green Mountain Surgery Center Certificate of Need Hearing*, slide 6 (April 11, 2017).

The GMSC will also impact NMC's ability to retain talented staff. The GMSC plans to be open a limited 250 days a year for seven hours a day. *See Applicant's Responses to Request for Additional Information, Q001*, Question 1, Table 2, page 2 (December 23, 2015). NMC cannot offer its staff this same limited and regular schedule. The hospital must remain open and

able to provide care for patients, including those who cannot access after-hours care at the GMSC, on nights and weekends.² Talented staff will likely be attracted by the limited and regular schedules offered by the GMSC, which will negatively impact NMC's ability to retain staff.

b. ACTD, LLC Has Not Shown that the Impact of the GMSC is Outweighed by "the Benefit of the Project to the Public"

ACTD, LLC has failed to demonstrate that Vermonters will realize benefits from the proposed ambulatory surgical center that will outweigh the significant impact of the GMSC on NMC. There were no witnesses with clinical experience operating within the Vermont health care system testifying on behalf of ACTD, LLC. Nor did any surgeon who will use the proposed ambulatory surgical center or who has had a negative experience using the available hospital facilities testify under oath.³

Moreover, there is no evidence that the Green Mountain Surgery Center will lower the costs of health care in Vermont. When asked by Board Member Robin Lunge to provide specific data to support the alleged costs savings, the Applicant again presented generalized national Medicare data. *Applicant's Response to Board Member Lunge's Request for Supplemental Information* (4/24/17). It did not provide the Medicaid and Medicare rates for the most common procedures that the GMSC anticipates performing, as was requested by the Board. *Transcript of April 13, 2017 Hearing*, at 53. ACTD, LLC's other saving projections are also based on national data. Medicaid savings are assumed to be the same as Medicare savings and commercial rates and projected savings are based on a decade-old study of metropolitan markets outside of

² The Applicant has stated it will ensure that the physicians performing surgery at the GMSC have an after-hours on-call policy for answering patient questions, but it has not guaranteed that it will be available to provide care for patients outside of its regular seven hour work day or on weekends nor has it offered to require participating surgeons to be available to provide after-hours care. See *The Green Mountain Surgery Center Certificate of Need Application*, at 53.

³ The Board must not consider public comment "for the truth of the matters asserted unless they are submitted under oath." Green Mountain Care Board Rule 4.407(6).

Vermont. *Applicant's Response to Board Member Lunge's Request for Supplemental Information (4/24/17) and Transcript of April 13, 2017 Hearing*, at 56-57. The Applicant has asked the Board and the public to extrapolate from this generalized data that the Green Mountain Surgery Center will provide 40-50% savings for all procedures across all payers. *Applicant's Response to Board Member Lunge's Request for Supplemental Information (4/24/17)*.

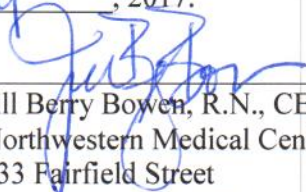
When compared to actual, Vermont reimbursement data, however, ACTD, LLC's revenue projections indicate that the GMSC reimbursement rates will be 80% of NMC's rates for all payers. See *The Green Mountain Surgery Center Certificate of Need Application*, at 29, Table 8. If the Medicare and Medicaid rates will be 56% of the hospital rates, at the highest, commercial insurance reimbursement will need to be significantly higher than NMC's reimbursement to achieve the revenue levels cited by the Applicant. *Applicant's Response to Board Member Lunge's Request for Supplemental Information (4/24/17)*. Given this discrepancy and the lack of data, there is no support for the claim that the GMSC will benefit Vermonters by reducing health care costs. Absent demonstrable benefits to the public, the cost of the Green Mountain Surgery Center is unreasonable given its impact on NMC.

3. Conclusion

The Applicant is required to meet all seven criteria provided in 18 V.S.A. § 9437. ACTD, LLC has failed to demonstrate that the GMSC meets at least two of these criteria: that there is an "identifiable, existing or reasonably anticipated need" and that the cost of the GMSC is reasonable in light of the impact it will have on NMC and the lack of benefit to the public. For these reasons, and the reasons outlined in the Post-Hearing submission of VAHHS, ACTD, LLC's application for a CON must be denied.

Dated in St. Albans, Vermont this 2 day of May, 2017.

By:



Jill Berry Bowen, R.N., CEO
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CENTER)

VERIFICATION UNDER OATH

Jill Berry Bowen, being duly sworn, states on oath as follows:

1. My name is Jill Berry Bowen. I am the Chief Executive Officer of Northwestern Medical Center. I have reviewed the Post-Hearing Memorandum in Opposition to the Green Mountain Surgery Center Certificate of Need Application on Behalf of Northwestern Medical Center (the "Submission"), submitted herewith.
2. Based on my personal knowledge and after diligent inquiry, I attest that the information contained in the Submission is true, accurate and complete, does not contain any untrue statement of a material fact, and does not omit to state a material fact.
3. My personal knowledge of the truth, accuracy and completeness of the information contained in the Submission is based upon either my actual knowledge of the subject information or upon information reasonably believed by me to be true and reliable and provided to me by the individuals identified below in paragraph 4. Each of these individuals has also certified that the information they have provided is true, accurate and complete, does not contain any untrue statement of a material fact and does not omit to state a material fact.
4. The following individuals have provided information or documents to me in connection with the Submission and each individual has certified, based either upon his or her actual knowledge of the subject information or, where specifically identified in such certification, based on information reasonably believed by the individual to be reliable, that the information or documents provided are true, accurate and complete, do not contain any untrue statement of a material fact, and do not omit to state a material fact:

Jonathan Billings, *Vice President, Planning and Community Relations,*
Northwestern Medical Center

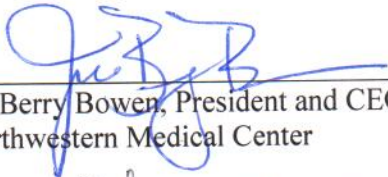
Christopher Hickey, *Senior Vice President and Chief Financial Officer,*
Northwestern Medical Center

Jane Catton, *Senior Vice President, Chief Operating Officer and Chief Nursing Officer,*
Northwestern Medical Center

Dr. Greg Brophy, *Ophthalmologist, Northwestern Medical Center*

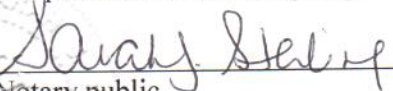
5. In the event that the information contained in the Submission becomes untrue, inaccurate or incomplete in any material respect, I acknowledge my obligation to notify the Green Mountain Care Board and to supplement the Submission as soon as I know, or reasonably should know, that the information or document has become untrue, inaccurate or incomplete in any material respect.

Dated this 2 day of May, 2017.



Jill Berry Bowen, President and CEO
Northwestern Medical Center

On May 2nd, 2017, Jill Berry Bowen appeared before me and swore to the truth, accuracy and completeness of the foregoing.



Notary public

My commission expires: 2/10/2019

