

March 26, 2019

By Electronic Mail and First Class Mail

Michael Barber, Esq.
General Counsel and Hearing Officer
Green Mountain Care Board
144 State Street
Montpelier, VT 05602

RE: Docket No. GMCB-010-15con – Green Mountain Surgery Center Request to Amend Scheduling Order

Dear Mr. Barber:

My client ACTD LLC d/b/a Green Mountain Surgery Center (“ACTD”) respectfully requests amendments to the March 21, 2019 Scheduling Order in the above-referenced matter. The primary intent of the hearing, as stated in the Green Mountain Care Board’s (“Board”) pre-hearing letter of February 14, 2019, is “to review Green Mountain Surgery Center’s (GMSC) compliance with CON conditions that must be met prior to commencing operation, and to consider [GMSC’s] request for a change to Condition B. 21.” The pre-hearing letter also stated that there would be time for Public Comment at the hearing, and the Interested Parties would be notified, but did not indicate that there would be any time allocated for taking testimony from the Interested Parties at the hearing.

As such, ACTD respectfully requests that the Board amend the Scheduling Order to allow Vermont Association of Hospitals and Health Systems (“VAHHS”) and Northwestern Medical Center (“NMC”) to provide commentary during the Public Comment portion of the hearing. The current Scheduling Order, with nearly as much time allocated to the Interested Parties as ACTD requested to present its compliance with conditions, is more in keeping with a hearing agenda for consideration of an initial CON application (a process which ACTD has already been through from 2015 to 2017) and not with a post-CON hearing that was scheduled to review the applicant’s compliance with CON conditions which must be met prior to commencing operation. ACTD also asks the Board to allow ACTD time to respond to any commentary from VAHHS and NMC.

ACTD objects to VAHHS’s and NMC’s request for an extension to April 10, 2019 to identify any witnesses or information they intend to rely on at the hearing. The issues that ACTD will address at the hearing were all identified several weeks ago in the Board’s pre-hearing letter of February 14, 2019. Per the Scheduling Order, and the Board’s additional request for information dated March 22, 2019, ACTD is required to submit all pertinent information and documents on or before April 8, 2019. If VAHHS and NMC wish provide any documents or submit any information in advance of the hearing, they should also be required to do so by April 8, 2019.

Finally, ACTD no longer wishes to submit an additional legal brief regarding whether there have been any “material” or “nonmaterial” changes to the project, but rather respectfully refers the

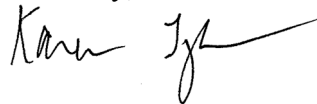
Board to information and argument previously submitted with respect to this issue in response to the Board's requests for information over the past six months.¹ ACTD was issued a CON to operate a multi-specialty ambulatory surgery center. The CON that was issued did not contain any restrictions on or specification of the individual specialties for which the CON was granted, and the Board's determination that the project met the "need" and other applicable CON criteria was not on a specialty-specific basis. ACTD apologizes for any confusion caused when it incorrectly identified the addition of new minority owners, and their concurrent plans to offer ophthalmology and plastic surgery services, as a "nonmaterial" change to the project in its letter to the Board dated September 14, 2018. ACTD notified the Board of its plans in the interest of transparency with respect to the project's evolution and has been thorough and diligent in responding to the Board's subsequent requests for information. However, as stated during our pre-hearing conference, ACTD believes there has in fact been no "nonmaterial" or "material" change to the project. ACTD has been building its business accordingly – hiring employees, making capital investments, leasing equipment, planning events, preparing for CMS certification, and doing all of the other things that are required to open a small business in Vermont, in accordance with the CON as issued.

Although the provision of ophthalmology and plastic surgery services at the GMSC is not a material or nonmaterial change in the project as approved, ACTD has responded to the Board's multiple requests for information regarding this plan over the past six months, and will present the additional information requested in the pre-hearing letter of February 14, 2019 at the April 17, 2019 hearing.

ACTD looks forward to updating the Board on its progress with CON condition compliance on April 17, 2019. ACTD has been working hard over the past several months building its business in order to provide low cost, high quality healthcare to Vermonters. ACTD hopes that the April 17, 2019 event can focus on these positive developments, as well as its diligent work to comply with the conditions of the CON.

Thank you for your consideration of these requests.

Sincerely,



Karen Tyler, Esq.
For the Firm

cc: Donna Jerry, Senior Health Policy Analyst
Anne E. Cramer, Esq.
Julia Shaw, Esq.
Kaili Kuiper, Esq.

¹ See ACTD Response to Request for Information dated 10/01/2018 (November 19, 2018) at 1-2, 11; ACTD Response to Request for Information dated 01/17/2019 (January 31, 2019) at 1-2.