

Green Mountain Care Board
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October 20, 2016

DELIVERED VIA ELECTRONIC MAIL

Eileen Elliott, Esq.
Dunkiel Saunders
91 College Street, PO Box 545
Burlington, VT 05402-0545

Re: Docket No. GMCB-010-15con; ACTD, LLC's confidentiality request

Dear Attorney Elliott,

This letter is a response to ACTD, LLC's (ACTD's, or Applicant's) request, dated October 5, 2016, to provide confidential responses to Questions 16 and 17(a) issued by the Green Mountain Care Board on August 25, 2016. ACTD argues that the information requested consists of personal documents, personal financial information, and trade secrets that are exempt from public disclosure under 1 V.S.A. § 317(c)(7) and (c)(9). In a letter dated October 10, 2016, the intervening parties, the Vermont Association of Hospitals and Health Systems (VAHHS) and Northwestern Medical Center (NMC), opposed the requested confidential treatment. ACTD issued a second letter on October 12, 2016, and the hearing officer, undersigned, convened a telephone conference with the parties' attorneys and the Board's General Counsel on October 20, 2016.

The Board will not grant the requested blanket confidentiality for the information at issue. As a preliminary observation, the requested information is not personal information regarding a public employee as contemplated in 1 V.S.A. § 317(c) and as addressed in case law cited by the Applicant. The requested information is limited to the investors' initial capital investments in the Applicant, and does not include a request for personal financial documents like tax returns or comprehensive personal financial statements from which an individual's overall financial standing or net worth could be estimated and which are protected by other exceptions itemized in § 317. The Board routinely collects the type of information requested from applicants for Certificates of Need, as it speaks to the financial stability and public benefit of proposed health care expenditures in Vermont. In particular, questions whether physician investments in the project would or could affect the way in which referrals are given or how medical care is dispensed are questions of the highest public importance. Additionally, the requested information is relevant to how the proposed surgery center will be governed as a business venture, and may indicate a need for further inquiry by the Board.

The Applicant raises the concern that the individual investors will be potentially vulnerable to retaliation, either in their position as employees of the intervening parties or as independent physicians who have business relationships with the intervening parties. Accordingly, the Board will grant a limited confidentiality to the requested information by redacting the names of individual investors and identifying them anonymously by letter ("Investor A, Investor



B...”) prior to releasing the information to the intervening parties and the public. While this withholds some relevant information, it does not materially prejudice the parties’ ability to assess the impact of the proposed project on other health care entities or its public benefit.

Sincerely,



Noel Hudson, Esq.
Hearing Officer
Director of Health Policy
Green Mountain Care Board

CC: Anne Cramer, Esq., counsel to VAHSS and NHS
Judith Henkin, Esq., General Counsel, GMCB
Lila Richardson, Esq., Office of the Health Care Advocate
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