

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: ACTD, LLC, d/b/a Green)
Mountain Surgery Center) Docket No. GMCB-010-15con
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ORDER ON REQUESTS TO AMEND SCHEDULING ORDER

On March 21, 2019, following a pre-hearing conference, the Board issued a Scheduling Order in connection with a hearing that will take place in the above-referenced matter on April 17, 2019. Later that same day, the Vermont Association of Hospitals and Health Systems (VAHHS) and Northwestern Medical Center (NMC), interested parties to the underlying Certificate of Need (CON) proceedings, requested that the Scheduling Order be amended to grant them two additional days to inform the Board whether they intend to present testimony at the hearing. On March 26, 2019 Green Mountain Surgery Center (GMSC) filed an opposition to VAHHS and NMC’s request. GMSC also requested that the Scheduling Order be amended to limit VAHHS and NMC’s involvement in the hearing. Finally, GMSC advised the Board that it no longer wishes to brief the issue of whether there has been a material or nonmaterial change in the scope of the project and intends to rely on the information and arguments it has previously submitted. On March 27, 2019, VAHHS and NMC responded to GMSC’s filing.

GMSC’s request to limit VAHHS and NMC’s involvement in the hearing to providing public comment is denied. The February 14, 2019 letter cited by GMSC in support of its request is a notice of hearing. While the letter stated that the Board would notify interested parties of the hearing and that public comment would be accepted at the hearing, it did not purport to limit interested parties to public comment. The CON statutes and rules are not detailed with respect to post-CON process and procedures. However, as interested parties, VAHHS and NMC have demonstrated that they will be substantially and directly affected by the project and, if they have information that will assist the Board in its deliberations, they should have an opportunity to provide that information. That said, the subjects upon which VAHHS and NMC may have relevant evidence appear to be limited. This Hearing Officer therefore expects that any presentation from VAHHS or NMC on April 17, 2019 will be limited in scope and duration.

VAHHS and NMC’s request for a two-day extension to identify witnesses is granted. As VAHHS and NMC noted, GMSC has until April 8, 2019 to submit additional materials and it is reasonable for the Interested Parties to have two days to review any such materials before determining whether they intend to present testimony. The Scheduling Order will be amended to require GMSC to identify its witnesses by April 8, 2019 and to require the Interested Parties to do the same by April 10, 2019. If GMSC needs to supplement its witness list to rebut expected testimony from VAHHS or NMC, it may seek to do so at a later date.

GMSC states that, at the hearing, it will present the information that the Board requested in its February 14, 2019 letter. This information includes whether there is a need for the additional services not described in the CON application. In their response, VAHHS and NMC assert that the issue of whether the additional surgical specialties are within the scope of the CON is a legal question that can be determined by the Board outside of the hearing proceedings; they also state that they intend to submit a brief on this issue following completion of GMSC's submission of evidence or argument on the topic. Given the timing issues involved here and given that GMSC intends to present evidence of need at the April 17, 2019 hearing, the Board will dispense with the bifurcated hearing process outlined in the Scheduling Order. The Scheduling Order will be amended to allow GMSC and the Interested Parties to submit written post-hearing arguments; the Hearing Officer's expectation is that VAHHS and NMC will address the issue of scope in their post-hearing arguments.

Dated: April 1, 2019 at Montpelier, Vermont

s/ Michael Barber

General Counsel and Hearing Officer

Green Mountain Care Board

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