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*[Eric.Miller@UVMHealth.org](mailto:Eric.Miller@UVMHealth.org)*

*Via Regular Mail & E-mail*

January 6, 2020

Michael Barber, General Counsel  
State of Vermont  
Green Mountain Care Board  
89 Main Street  
Montpelier, Vermont 05620

Re: Docket No. GMCB-001-17con, Proposed Replacement of Electronic Health Record

Dear Mike,

I write to seek clarification of Project Condition # 9 to the Green Mountain Care Board's (the "Board") January 5, 2018 Certificate of Need in the above-captioned matter, which states, "[T]he applicant shall not make any incentive payments or pay bonuses in connection with the project to any UVMMC or UVM Health Network employee." In light of the previously expressed intentions of the Board Chair and UVMMC, described below, we understand Condition # 9 to prohibit UVMMC from paying incentives or bonuses in connection with regulatory approval of the Epic project — a prohibition that is well designed to protect the integrity of the regulatory process. We do not, however, understand Condition # 9 to prohibit the payment of incentives or bonuses in connection with implementation of the Epic project — a prohibition which would prevent UVMMC from rewarding its employees for their work in successfully operationalizing a difficult initiative that promises enormous benefits to our patients. We ask the Board to clarify that Condition # 9 will be applied consistent with this understanding.

In August 2017, while the Epic CON application was pending before the Board, a media outlet inaccurately reported that the UVMMC executive team had received a bonus for securing regulatory approval for the Miller Building inpatient bed project. In response to that report, Chairman Mullin wrote Dr. Brumsted, stating, "I find the practice of linking CON approval to executive compensation troubling." Dr. Brumsted responded by making clear that UVMMC did not link executive pay to the receipt of regulatory approval for the Miller Building; rather, UVMMC's 2014 variable pay plan included an incentive for *filing* the Miller Building CON application by the close of that fiscal year, without respect to whether that application was approved or not.

With this exchange firmly in mind, during the remainder of the Epic CON proceeding, the Board and UVMMC repeatedly expressed their shared belief that a CON applicant should not link incentive pay or bonuses to regulatory approval of a project. The result of this dialogue was Condition # 9, which employs language that is significantly broader than necessary to address the concern that motivated it and which, absent clarification, would have negative consequences that we believe were unintended by the Board.

Most importantly, Condition # 9 could be read to prevent the UVM Health Network from rewarding hospital employees for going above and beyond the call of duty — and far beyond their normal working hours — to successfully implement Epic across the Network. Hundreds of UVMMC and other Network hospital employees worked tirelessly for weeks on end in order to ensure a successful Epic “go-live” on November 8, 2019; since then, many other employees have given up their evenings and weekends to stabilize the new EHR system; and in the months to come, many more will work to optimize the system from both patient care and revenue cycle perspectives. Each of these efforts is crucial to the Network’s ability to serve its patients and to its financial sustainability. UVMMC should be free to reward and incentivize all of this good work.

In order to ensure that Condition # 9 accomplishes its intended purpose to prohibit the payment of incentives or bonuses in connection with regulatory approval of the Epic project, while still allowing UVMMC to reward and incentivize its employees to successfully implement this major organizational initiative, we ask that you clarify that Condition # 9 will be applied by the Board as follows: “[T]he applicant shall not make any incentive payments or pay bonuses in connection with regulatory approval of the project to any UVMMC or UVM Health Network employee.”

Thank you for considering this request, and please let me know if you have any questions.

Very truly yours,

The University of Vermont Health Network, Inc.

A handwritten signature in blue ink, appearing to read "Eric S. Miller".

Eric S. Miller, Esq.  
Senior Vice President and General Counsel

cc. Michael Fisher, Chief Health Care Advocate