

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of Northwestern Medical)
Center, Renovation/Construction of)
Emergency Department)
_____)

GMCB-003-19con

**ORDER GRANTING AMICUS CURIAE STATUS
TO DISABILITY RIGHTS VERMONT**

Disability Rights Vermont (DRVT) has requested to intervene in this certificate of need (CON) proceeding as an interested party or, in the alternative, as an amicus curiae. For the reasons set forth below, we grant DRVT’s request for amicus curiae status, but not its request for interested party status.

The Board will grant “interested party” status to persons or organizations representing the interests of persons who demonstrate that they will be substantially and directly affected by the new health care project under review. GMCB Rule 4.000, § 4.406. A “substantial and direct impact” includes a direct financial or other business interest in a proposed health care project but excludes a general interest in a project as a function of being in the subject service area or otherwise being generally concerned with the health care system. *Id.* The Board may allow persons or organizations to be admitted to the CON process in an amicus curiae capacity upon finding that the person or organization will be able to render material assistance to the Board by providing nonduplicative evidence that is relevant to the Board’s determination. *Id.*

Northwestern Medical Center (NMC) applied to the Board on June 27, 2019 for a CON to renovate and expand its emergency department. NMC states in its application that the project was motivated in part by a need to provide an appropriate physical environment to care for patients in its emergency department who are suicidal or experiencing other serious mental

health issues. Application, 4. NMC asserts that the project meets this need through the creation of a flexible space with four lockable rooms, two dedicated private Safe Holding Rooms and two convertible private Safe Holdings Rooms, all four of which would be located in section of the emergency department that can also be locked. Response to Q007 (Dec. 23, 2019), 2. NMC states that this space could be adapted to the acuity of patients and that it is intended to comply with the FGI guidelines for emergency departments as well as federal regulations regarding the use of restraints and seclusion. *Id.*

We grant DRVT's request for amicus curiae status because we find that DRVT can render material assistance to the Board by providing nonduplicative evidence that is relevant to the Board's determination. DRVT is an independent, private, non-profit agency that is responsible for protecting and advocating on behalf of individuals with disabilities. DRVT serves as the State's Mental Health Care Ombudsman pursuant to 18 V.S.A. § 7259. Based on its interaction with people in need of mental health services, including people "boarding" in emergency departments awaiting inpatient psychiatric placement, DRVT can provide evidence regarding the needs of such patients to interact with family, peer specialists, and advocates, as well as the physical space(s) that may be required for such interactions. Such information may relate to whether the proposed project will support equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate. 18 V.S.A. § 9437(9). Furthermore, DRVT can assist the Board in understanding the legal requirements for and limitations on the use of seclusion in Vermont and how those legal requirements and limitations relate to the proposed project.

While we grant DRVT’s request for amicus curiae status, we do not approve its request for interested party status because DRVT has not demonstrated that it will be substantially and directly affected by the project. DRVT asserts that, after the project is complete, it will likely have to expend time and resources investigating and litigating instances where NMC has “locked up people with disabilities in violation of state law” or “prevented people with disabilities from having reasonable access to areas outside their examination room.” DRVT does not quantify its potential expenditure of time and resources. However, assuming there is a substantial interest, financial or otherwise, DRVT has not demonstrated that the interest is directly connected to the proposed project. The proposed project involves an expenditure of funds to renovate NMC’s emergency department and, as part of that renovation, to create a flexible space to care for individuals experiencing a mental health crisis. The interests DRVT has identified, however, flow from NMC’s potential use of this space in a legally impermissible manner (i.e., its unlawful use of seclusion or its restriction of patients to their rooms without required legal process).

Based on the above, we grant DRVT amicus curiae status in this proceeding. DRVT shall be copied on all materials in the record and materials submitted by DRVT shall be admitted into the record and copied to all parties.

s/ Kevin Mullin, Chair)
)
s/ Jessica Holmes)
)
s/ Robin Lunge)
)
s/ Maureen Usifer)
)
s/ Tom Pelham)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: January 23, 2020
Attest: /s/ Jean Stetter, Administrative Services Director