

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Vermont Department of Mental Health     )  
      Construction of Secure Residential        )  
      Treatment Program                         )     Docket No. GMCB-002-21con  
\_\_\_\_\_)

**ORDER GRANTING AMICUS CURIAE STATUS  
TO DISABILITY RIGHTS VERMONT, INC.**

Disability Rights Vermont, Inc. (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. § 4.406(3). The Board will deny requests that fail to sufficiently explain why interested party status should be granted. §4.406(4). Persons or organizations may 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.*

The Vermont Department of Mental Health (DMH) submitted a Letter of Intent (LOI) on February 5, 2021, to develop a new Secure Residential Treatment Program in Essex as a successor to the temporarily sited state-run Middlesex Therapeutic Community Residence (MTCR). DMH asserts that the secure residential program will operate as a state-wide resource for adults meeting assessed need and eligibility. LOI, 2. Average stay for residents is projected to be 18-24 months and the facility will include spaces for offices, treatment, and meetings, along with indoor and outdoor recreation space, dining facilities, and single occupancy bedrooms. *Id.*

We grant DRVT's request for amicus curiae status in this matter 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. *See Order Granting Amicus Curiae Status to Disability Rights Vermont*, Docket No. GMCB-003-19con, January 23, 2020 at 2. Based on its interaction with people in need of mental health services, DRVT can provide evidence regarding the needs of such patients to interact with family, peer specialists and advocates, as well as the physical spaces that may be required for such interactions. *See id.* 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).

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 beyond its general concern with the health care system as it pertains to

mental health and its advocacy for patients within that system.<sup>1</sup> Although DRVT has quantified the time and costs it has expended working with residents at MTCR, it is not clear that those costs are substantial. However, assuming there is a substantial interest, DRVT has not demonstrated that the interest is directly connected to the proposed project. Its interest is rather in working with individuals with disabilities, wherever they may be located and does not overcome the standard set in Rule § 4.406(3) (“being generally concerned with the health care system shall not be sufficient.”). *See* Order Granting Amicus Curiae Status to Disability Rights Vermont, Inc., Docket No. GMCB-021-14, May 15, 2015 at 2 (“DRVT’s commitment more closely resembles a valuable general concern with the health care system as a whole, and how that system serves DRVT’s clients and other persons—such a commitment is not sufficient to serve as the basis for interested party status”).

DRVT points to the authority granted to it in 42 U.S.C § 10805 to access and monitor secure treatment facilities as support for its request for interested party status. Indeed, the federal statute confirms DRVT’s special role protecting and advocating for Vermont residents with mental illness. However, the statute grants access to facilities to support the protection of, and caring for, individuals with mental illness, and not specifically for involvement in construction or renovation of healthcare facilities. *See, e.g.*, 42 U.S.C § 10805(a)(1)(granting authority to investigate and pursue remedies for abuse and neglect of individuals with mental illness) and § 10805(a)(6)(A) (granting authority to establish an advisory council to advise the system on policies and priorities).

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<sup>1</sup> As of the date of its request, DRVT’s status with the Secretary of State had been terminated, which would preclude it from bringing proceedings in the state. The Board does not rest its decision on this status, however, because it can be quickly remedied.

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.

**SO ORDERED.**

Dated: March 11, 2021 at Montpelier, Vermont.

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

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