

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Application of the University of Vermont )  
Medical Center for a Conceptual CON )  
For Planning and Design of an Outpatient ) GMCB-015-21con  
Surgery Center )  
\_\_\_\_\_)

**ORDER DENYING VFNHP'S REQUEST TO INTERVENE OR  
FOR AMICUS CURIAE STATUS**

On July 16, 2021, the University of Vermont Medical Center (UVMCM) applied for a Conceptual Development Phase Certificate of Need (Conceptual CON) that would allow it to spend up to \$4.96 million to plan for the development of an outpatient surgery center. UVMCM also requested expedited review of its application under GRCB Rule 4.000, § 4.304.1(d), which provides for expedited review of Conceptual CON applications. The Board granted UVMCM's request for expedited review on July 28, 2021. The Board closed the application on September 3, 2021. On September 15, 2021, the Vermont Federation of Nurses and Health Professionals (VFNHP) submitted a request to intervene in the proceedings as an interested party or, in the alternative, for amicus curiae status. On September 15, 2021, UVMCM filed an opposition to VFNHP's request.

Interested party status shall be granted 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. 18 V.S.A. § 9440(c)(7). A substantial and direct impact includes, but is not limited to, a direct financial or other business interest in the proposed project. GRCB Rule 4.000, § 4.406.3. A request for interested party status should (a) provide a detailed statement of the requestor's interest *in the CON proceeding*; (b) illustrate how relevant CON criteria, including applicable health policy goals, relate to the request to intervene; and (c) explain how the requestor's interests relate to *the specific application under review*. GRCB Rule 4.000, § 4.406.2 (emphasis added). Failure to sufficiently explain why interested party status should be granted will result in a denial of the request. GRCB Rule 4.000, § 4.406.4.

VFNHP represents more than 2,400 nurses, technicians, and technologists who work at UVMCM. VFNHP states that it is concerned with the application principally because UVMCM is proposing to add operating room workers and patients at a time when it has been unable and unwilling to ensure adequate safe staffing for existing operations. VFNHP asserts that the new facility will exacerbate the ongoing difficulties experienced by its members in providing safe medical care amidst worker shortages. VFNHP states that because its members work in UVMCM's existing facilities and will work in the proposed outpatient surgery center (if approved), its members have a direct and material interest in the project.

VFNHP may be able to demonstrate that its members will be directly and substantially impacted by UVMCM's development of an outpatient surgery center. However, that application is not yet before us. The application currently under consideration by the Board would only

authorize UVMMC to plan for such a facility. VFNHP has failed to sufficiently describe its interest in this phase of the project and explain how its interests relate to the specific application under review. We therefore deny VFNHP’s request to intervene as an interested party.

We also deny VFNHP’s request to participate in the proceedings in an amicus curiae capacity. The Board may allow persons or organizations to be admitted to the CON process in an amicus curiae capacity upon a finding that the person or organization will be able to render material assistance to the Board by providing nonduplicative evidence relevant to the CON application decision. GMCB Rule 4.000, § 4.406.6. While VFNHP’s concerns regarding adequate staffing will be relevant to our review of an application for a new facility, the criteria for a Conceptual CON are quite limited; the Board will grant a Conceptual CON if it finds that (a) the cost of the proposed planning activities is reasonable and the applicant can afford such cost and (b) the project appears to meet an identifiable, existing, or reasonably anticipated need which is appropriate for the applicant to provide.<sup>1</sup> GVCB Rule 4.000, § 4.206.4 VFNHP has failed to explain how the evidence it can provide will materially assist the Board in evaluating UVMMC’s proposal against these criteria.

In its opposition, UVMMC states that it is “critically concerned with maintaining the staffing necessary to provide safe and high quality patient care and to reduce its reliance on travelers.” UVMMC also asserts that its activities under the Conceptual CON “will focus in part on a staffing plan” that will be detailed in the application. We will hold UVMMC to this commitment. We will also require that UVMMC consult with VFNHP prior to finalizing its staffing plan.

For the reasons described above, we deny VFNHP’s request to intervene or, in the alternative, for amicus curiae status. VFNHP may refile its request after UVMMC has filed an application and specific plan to develop an outpatient surgery center.

Dated: September 20, 2021 at Montpelier, Vermont.

s/ <u>Kevin Mullin, Chair</u> )	GREEN MOUNTAIN CARE BOARD OF VERMONT
) )	
s/ <u>Jessica Holmes</u> )	
) )	
s/ <u>Robin Lunge</u> )	
) )	
s/ <u>Tom Pelham</u> )	
) )	
s/ <u>Maureen Usifer</u> )	
) )	

Filed: September 20, 2021

Attest: Jean Stetter, Administrative Services Director

<sup>1</sup> There is a third criterion for projects that include or comprise the purchase or lease of health care information technology.