

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of ACTD, LLC,)
Green Mountain Surgery Center) GMCB-010-15con
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ORDER AMENDING CERTIFICATE OF NEED

On July 10, 2017, this Board issued a Certificate of Need (CON) in the above-captioned matter to ACTD, LLC d/b/a Green Mountain Surgery Center (GMSC). On October 10, 2021, the Board received a letter from Amy Cooper, CEO of GMSC, requesting partial relief from Condition B.21 of the CON. In the letter, GMSC requests permission not to post any information required in Condition B.21 on its website. For the reasons set forth below, we deny the request for partial relief, but address GMSC’s concerns by modifying the posting requirement.

The condition in question reads as follows:

21. In addition to information specified under Section A.1, above, the applicant shall quarterly update, compile for inclusion in its next-due implementation report, and post to its website within forty-five (45) days of the close of each quarter, the following information for each provider:
- a. A breakdown of the types of procedures/surgeries he or she performed at the ASC;
 - b. A breakdown of the procedures/surgeries he or she performed at the ASC, by payer mix.
 - c. A breakdown of the procedures/surgeries he or she performed at local hospitals (specify the hospital) by payer mix.
 - d. The number of patients he or she determined were inappropriate for care at the ASC, and the reason for each determination.

Condition B.21 has been amended once before, to allow GMSC to report the information on its website aggregated by specialty. *In re: Application of ACTD, LLC, Green Mountain Surgery Center, Statement of Decision re: Certificate of Need*, Docket No. GMCB-010-15 (June 4, 2019), 24.

In its October 10, 2021 request, GMSC reports that its surgeons continue to find Condition B.21 problematic. Certain specialties, even when aggregated, show numbers for only one practice, or even one surgeon. The obligation to post the numbers on the GMSC website results in occasions where data reflecting an individual surgeon’s entire practice is publicly available. GMSC further explains, without elaboration, that its surgeons find the obligation to post the data on the GMSC website “unfair to solo and small practices and are concerned about its potential impact on privacy, medicolegal and credentialing issues.” GMSC Letter (October 10, 2021), 1.

In response, the Interested Parties (IPs), Vermont Association of Hospitals and Health Systems and Northwestern Medical Center, oppose the requested change to Condition B.21; they state that they are aware of no reasons supporting the requested change and argue in favor of the public continuing to have access to this information. IPs Letter (October 27, 2021), 1.

GMSC does not request modifications to its confidential reporting of case volumes by physician by payer to the Board, only for the specialty-level reports published on its website. As GMSC acknowledges, the collected data is pertinent to the Board’s oversight of GMSC’s effect on case volumes. Moreover, the Board has previously discussed the importance of receiving the specified information at the provider level to monitor compliance with Condition 3 (prohibiting physicians practicing at GMSC from considering source of payment or ability to pay when determining whether to perform a surgery at GMSC). *In re: Application of ACTD, LLC, Green Mountain Surgery Center, Statement of Decision re: Certificate of Need*, Docket No. GMCB-010-15 (June 4, 2019), 24.

Given that the reporting to the Board will remain unchanged, the merit of GMSC’s request rests on the benefits and drawbacks of publishing this information publicly on its website. We continue to see value in the numbers contained in GMSC’s posted reports for Vermonters who seek data to support their choice of practitioners and facilities. Information such as case volumes may provide important input to influence patient decisions. Nevertheless, posting numbers at the specialty level may reveal the entirety of an individual provider’s practice in certain surgical areas. As such, with this decision, we continue to require the information to be posted, but amend the requirement to exempt the posting of data for specialties with only one provider. This approach will better reconcile the competing values of informing the public and protecting provider-specific details.

Beginning with the next reporting period, GMSC shall continue to provide information by specialty level on its website. However, in the event there is only one provider for any given specialty, the report may note “small numbers prevent us from providing this information,” or words to that effect. All other reporting and posting obligations remain unchanged.

Conclusion

Based on the above, GMSC’s motion is denied, but the requirement to post to its website shall be amended to exempt the posting of data for specialties with only one provider.

Dated: November 23, 2021 at Montpelier, Vermont

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| s/ <u> Jessica Holmes </u>) | GREEN MOUNTAIN CARE BOARD OF VERMONT |
| s/ <u> Robin Lunge </u>) | |
| s/ <u> Thomas Pelham </u>) | |

Mullin, dissenting.

I respectfully disagree with my colleagues that the posting of this information continues to serve any meaningful purpose to Vermonters and would have granted GMSC's request.

Dated: November 23, 2021 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)

Filed: November 23, 2021

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address: donna.jerry@vermont.gov).