

THE
University of Vermont
MEDICAL CENTER

Office of the General Counsel
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Via Email & U.S. Mail

December 17, 2021

Ms. Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
144 State Street
Montpelier, VT 05602-3601

***Re: Request for Relief from CON Conditions for Inpatient Bed Replacement Project,
Docket No. GMCB-021-14con***

Dear Donna:

I write pursuant to Board Rule 4.500(4) to request that the Green Mountain Care Board (“the GMCB” or “the Board”) grant relief from the implied and express conditions of the Inpatient Bed Replacement Project CON (“Miller Building CON”) that may hinder UVM Medical Center’s ability to respond quickly to meet surging demand for inpatient care at Vermont’s only Academic Medical Center. Specifically, we ask for relief from the Miller Building CON conditions requiring UVM Medical Center to (i) reduce its inpatient bed count; (ii) no longer use Shepardson 3 North for patient care; and (iii) report on the occupancy of Shepardson 3 North and McClure 5. If the Board grants the requested relief, UVM Medical Center will have more flexibility to make modest investments to utilize existing space, but it will still be required to return to the GMCB for approval of any inpatient capacity project that requires a CON, thereby preserving the Board’s full statutory review authority.

As the Board is aware, in the years following the opening of the Miller Building, UVM Medical Center has seen an increase, rather than a decrease, in the need for inpatient care. We expect that demand to continue into the foreseeable future and seek the flexibility to respond to it within the limits that will still be imposed by our bed license and Vermont’s CON requirements.

At the time the Miller Building CON application was filed and granted, both UVM Medical Center and the GMCB anticipated that the need for inpatient hospital care, and therefore the need for new inpatient hospital beds, would decline due to a number of factors. As a result, in our September 29, 2014 CON application (the “Application”), UVM Medical Center stated that, after occupying the Miller Building, it would initially maintain and eventually reduce its number of staffed beds. *See*

e.g., Application at 12-13 41. We also expected that the Project would eliminate the need for continued use of Shepardson 3 North for patient care. *See id.* at 22, App. 3.

In reliance on the information set forth in the Application, the Board included these assertions as Findings of Fact numbers 21 and 24 in its Statement of Decision and Order (July 1, 2015), noting that “[t]he vacated space in Shepardson 3 and 4 North will be used for non-patient care and administrative needs,” and “[t]he Project will not increase the number of inpatient beds. The approximate number of existing staffed beds (447) will be maintained initially, and the number of physical beds will decrease from 509 to 496.” Condition B.6.d. of the Amended CON also requires UVM Medical Center to report on the occupancy rates of Shepardson 3 North and McClure 5, as UVM Medical Center communicated to the Board that the use of both units would be time-limited. *See e.g.*, Request for Approval of Non-Material Change (Feb. 13, 2020) and Implementation Report 21 (Feb. 2, 2021).

Thus, by virtue of including in its Application both the assertion that we would reduce inpatient beds and that Shepardson 3 North would no longer be used for patient care (which each became a Finding of Fact), and communicating that the use of McClure 5 (and continued use of Shepardson 3 North) would be time-limited, UVM Medical Center has been obligated to “strictly conform” with these implied and express conditions as set forth in the original and Amended CONs, absent separate permissions from the Board.

As the Board is aware, the expected decrease for demand for inpatient care at UVM Medical Center did not materialize. To the contrary, demand for inpatient care at UVM Medical Center has been at unprecedented high levels for the past two years. In order to meet the needs of our patients, UVM Medical Center has increased its inpatient bed count four times since the issuance of the Miller Building CON: first, in February 2020 to open 32 additional medicine beds on McClure 5; second, in October 2020 to continue the use of 16 beds on Shepardson 3 North after the unanticipated closure of the Fanny Allen Inpatient Rehab Unit that same month; third, in July 2021 to open 15 additional medicine beds to address census issues; and finally in December 2021 to permit the addition of five ICU beds in response to a statewide shortage. These changes have required us to notify the Board and, in three instances, ask the Board to consider a Request for Approval of a Non-Material Change to the Miller Building CON pursuant to 18 V.S.A. § 9434(12) and Board Rule 4.600.

We are grateful that the Board quickly granted each of those requests based on the supporting data and analysis demonstrating that the additional beds were required to meet the urgent needs of our patients. However, each of these requests required an investment of substantial time and operational resources by both UVM Medical Center and GMCB staff and members, even though none of them triggered CON review by virtue of either their capital cost or a need to expand capacity above that allowed by our hospital bed license.

The surge of patients requiring inpatient level of care at UVM Medical Center shows no signs of abating. Indeed, the last three months have been among the most difficult of the last two years. UVM Medical Center is currently limiting elective surgeries in order to preserve inpatient space; even with these controls in place, we are declining or delaying more inpatient transfers from other hospitals. As a result, we expect we will need to continue to respond quickly and flexibly – often in ways we cannot precisely anticipate – to meet our mission of caring for our community. We also expect that inpatient volumes will necessitate the use of Shepardson 3 North for patient care, even if our Inpatient Rehabilitation patients return to our Fanny Allen campus.

In order to allow us to quickly and flexibly meet our patients' needs we ask for relief from the Miller Building CON conditions requiring UVM Medical Center to (i) reduce its inpatient bed count; (ii) no longer use Shepardson 3 North for patient care; and (iii) report on the occupancy of Shepardson 3 North and McClure 5. We will, of course, apply for a CON if will need to either (a) add to our bed count license or (b) make a capital investment in inpatient care that triggers CON review. We are only seeking relief from the need to request permission for any variance from these specific implied and express conditions of the Miller Building CON.

Fortunately, the Board has the authority to provide relief. Rule 4.500(4), states that “[i]n the event the Board imposes conditions on a CON, an applicant may seek relief from a condition by filing a written request to the Board. For all these reasons, we respectfully request that the Board grant relief as requested above.

Very truly yours,



Amanda S. Angell, Esq.
Assistant General Counsel

Enclosure

cc: Disability Rights Vermont
Office of the Health Care Advocate
VFNHP

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

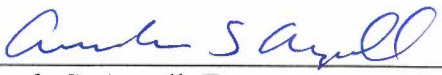
In re: Request for Relief from CON Conditions for Inpatient Bed Replacement Project
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Verification

Amanda S. Angell, Esq., being duly sworn, states on oath as follows:

- (1) My name is Amanda S. Angell, Esq. I am the Assistant General Counsel of The University of Vermont Health Network Inc. In that capacity I have reviewed the foregoing Request for Relief from CON Conditions for Inpatient Bed Replacement Project dated December 17, 2021.
- (2) Based on my personal knowledge, after diligent inquiry, the information contained in the report is true, accurate and complete, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statement made therein not misleading, except as specifically noted herein.
- (3) My personal knowledge of the truth, accuracy and completeness of the information contained in the report is based upon information reasonably believed by me to be reliable and provided to me by the individuals identified below who have certified that the information they have provided is true, accurate and complete, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statement made therein not misleading.
- (4) I have evaluated, within the twelve months preceding the date of this affidavit, the policies and procedures by which information has been provided by the certifying individuals identified below, and I have determined that such policies and procedures are effective in ensuring that all information submitted or used by UVM Medical Center in connection with the Certificate of Need program is true, accurate, and complete. I have disclosed to the Board of Trustees all significant deficiencies of which I have personal knowledge after diligent inquiry in such policies and procedures, and I have disclosed to the Board of Trustees any misrepresentation of facts, whether or not material, that involves management or any other employee participating in providing information submitted or used by UVM Medical Center in connection with the Certificate of Need program.
- (5) The following certifying individual has provided information or documents to me in connection with the report, based on his actual knowledge of the subject information or, where specifically identified in such certification, based on information reasonably believed by the certifying individual to be reliable, that the information and documents that have been provided are true, accurate and complete, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the statement made therein not misleading:
 - (a) Stephen M. Leffler, MD

(6) In the event that the information contained in the report becomes untrue, inaccurate or incomplete in any material respect, I acknowledge my obligation to promptly notify the Green Mountain Care Board, and to supplement the report as soon as I know, or reasonably should know, that the information or document has become untrue, inaccurate or incomplete in any material respect.



Amanda S. Angell, Esq.

On December 17, 2021, Amanda S. Angell, Esq., appeared before me and swore to the truth, accuracy and completeness of the foregoing.



Notary Public

My commission expires 1-31-2023