

THE
University of Vermont
MEDICAL CENTER

By Electronic Mail & U.S. Mail

March 13, 2023

Ms. Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
144 State Street
Montpelier, VT 05602
Donna.Jerry@vermont.gov

Re: Docket No. GMCB-004-23con, Development of Outpatient Surgery Center on Tilley Drive, Project Cost: \$129,640,703.

Dear Ms. Jerry:

The University of Vermont Medical Center Inc. (“UVM Medical Center”) hereby responds to AFT Vermont’s (the “Union”) March 3, 2023 request for interested party or amicus curiae status in the Green Mountain Care Board (the “Board”) proceedings concerning UVM Medical Center’s Certificate of Need (“CON”) application for development of an outpatient surgery center (“OSC”).

UVM Medical Center welcomes and values its employees’ input regarding the development of this and other hospital facilities. As noted in the CON application, UVM Medical Center has already solicited and incorporated extensive input from its staff in the facility design process, including nurses and other professionals represented by AFT Vermont, and it will continue to do so. The resulting facility design reflects that input, and helps ensure that the OSC will be a safe and efficient workplace for clinicians and staff.

UVM Medical Center therefore supports the Union’s participation in this docket as an amicus curiae to the extent it will “render material assistance to the Board by providing nonduplicative evidence relevant to” the Board’s decision in this matter. *See* Board Rule 4.406(6) (defining the standard for approval of amicus curiae status).

The Board should not, however, grant the Union’s request for interested party status, as the Union has not established sufficient grounds for interested party status pursuant to the CON statute, the Board’s own rules, and past precedent. An applicant for interested party status must demonstrate that it “will be substantially and directly affected by the new health care project under review.” 18 VSA 9440(c)(7); Board Rule 4.406(3). “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 shall not be sufficient.” Board Rule 4.406(3). An applicant for interested party status must also “illustrate how

relevant Certificate of Need criteria, including applicable health care policy goals, relate to the request to intervene.” Board Rule 4.406(2).

The Union has failed to make such a showing here. The Union’s claim that the proposed OSC project may impact its members’ working conditions if the project results in understaffing or increased utilization of temporary nurse travelers, and its purported interest in ensuring that UVM Medical Center’s recent expenditures on operating room maintenance at the Fanny Allen campus are not “undermined,” do not support a grant of interested party status in the CON proceeding. In 2015, the Union made a nearly identical request in proceedings regarding UVM Medical Center’s Miller Building project, citing concerns about members’ working conditions, potential understaffing, and the project’s financial impact on UVM Medical Center. This Board rejected that request for interested party status as inconsistent with the governing statute and rule, and granted the Union amicus curiae status instead, finding that the Union’s concerns about “generalized financial and employment risk” were “too generalized, and . . . not sufficiently relate[d] to the ‘relevant Certificate of Need criteria, including applicable health care policy goals.’” In re: University of Vermont Medical Center Replacement of Inpatient Beds Certificate of Need Application, Docket No. GMCB-021-14con, Order Granting Amicus Curiae Status to the Vermont Federation of Nurses & Health Professionals, Local 5221 (February 5, 2015). For the same reasons, amicus curiae status is the Union’s only appropriate formal role in this proceeding as well.

Finally, although UVMMC does not agree with the accuracy of many of the assertions underlying the Union’s request, we do not believe it would be appropriate or productive to address them here. The current collective bargaining agreement between UVMMC and the Union explicitly defines the parties’ obligations to work collaboratively to address concerns regarding new facilities (further demonstrating why it is inappropriate for the Union to be seeking interested party status in an effort to litigate those same concerns before the Board), and UVMMC will continue to abide by its obligations under that agreement. To the extent the concerns raised by the Union may be generally relevant to the CON application, we will be happy to address them further during the course of the Board proceeding.

For the foregoing reasons, the Board should decline to grant the Union interested party status, but could grant it amicus curiae status. Please let us know if you have any questions or need additional information.

Sincerely,



Eric Miller
Senior Vice President and General Counsel
The University of Vermont Health Network

cc. AFT Vermont (via email)
Office of the Health Care Advocate (via email)