

THE
University of Vermont
MEDICAL CENTER

By Electronic Mail & U.S. Mail

April 3, 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 comments on AFT-VT’s (the “Union”) March 27, 2023 response to the Green Mountain Care Board’s (the “Board”) requests for additional information concerning the Union’s request for interested party or amicus curiae status in the Board proceedings concerning UVM Medical Center’s Certificate of Need (“CON”) application for development of an outpatient surgery center (“OSC”).

The Union has not established a direct interest in the proposed OSC project in relation to the CON criteria as required to support interested party status. *See* 18 VSA 9440(c)(7), Board Rule 4.406(2), (3) (defining the standard for approval of interested party status). The Union exists to negotiate its members’ terms and conditions of employment, using the tools and various forms of bargaining power available to the Union under governing labor relations law. The Union’s response to the Board’s requests for additional information reinforces the fact that its only direct interest in this proceeding relates not to the CON criteria, but to its members’ terms and conditions of employment. Although the Union states that its interest in the public good supports its interested party status, it has not articulated any specific rationale for this assertion. In fact, the Union’s stated interest in whether the proposed project will serve the public good or Vermont’s health care policy goals is indirect, generalized, and strictly derivative of the Union’s primary interest in its members’ compensation and other terms of employment.

The Union’s initial request for party status and its response to the Board’s requests for additional information cite the same concerns with the hospital’s staffing levels and the use of non-Union temporary employees. The collective bargaining process is the appropriate, indeed mandatory, forum for UVM Medical Center and the Union to address these concerns as they impact the

Union's interests in its members' terms and conditions of employment. The applicable collective bargaining agreement requires this engagement, providing that UVM Medical Center must:

bargain all effects of the impact of potential sales, mergers, acquisitions, consolidations, **future facilities**, expansion, and employer initiatives through PPOs or HMOs **on bargaining unit employees**. . . . Failure to complete discussions prior to implementation shall not prohibit the Hospital from implementation. However, the [Union] shall have the right to negotiate all effects retroactive to the implementation.

Agreement Between The University of Vermont Medical Center and Vermont Federation of Nurses and Health Professionals, AFT Vermont, AFL-CIO Local 5221, Article 44 – Planning for the Future (July 9, 2022 – July 9, 2024)(emphasis added).

The Union and UVM Medical Center will work collaboratively to address the Union's direct interests pertaining to the proposed project through the collective bargaining process, but the Union has not established a right to re-litigate, or separately litigate, its positions in collective bargaining via the CON proceedings, and it would be inappropriate for the Board to enable the Union to do this. The Union's generalized and derivative interests in relation to the CON criteria and Vermont's health care policy goals do not support the Union's party status in the Board's CON proceedings under the standards set out in the governing statute and Board's rules. *See* 18 VSA 9440(c)(7), Board Rule 4.406.

As UVM Medical Center has previously stated, while the Union is not an interested party in the CON proceedings, the Board could permit the Union to participate 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).

Please let us know if you have any questions or need additional information.

Sincerely,



Eric Miller
SVP and General Counsel
The University of Vermont Health Network