

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Southwestern Vermont Medical Center     )  
      Creation of Inpatient Mental Health        )  
      Unit for Adolescents                         )     Docket No. GMCB-014-23con  
\_\_\_\_\_)

**ORDER GRANTING AMICUS CURIAE STATUS  
TO DISABILITY RIGHTS VERMONT, INC.**

Disability Rights Vermont, Inc. (DRVT) has requested to intervene in this Certificate of Need (CON) proceeding as an interested party (IP). For the reasons set forth below, DRVT’s request for IP status is denied, but DRVT is designated an *amicus curiae* for the proceeding.

In this docket, Southwestern Vermont Medical Center (SVMC) seeks a CON to create an inpatient mental health unit for adolescents aged 12-17 on SVMC’s Bennington Campus. The project includes facility renovations and the implementation of the new service. Application (Feb. 8, 2024), 10. The project’s capital cost is approximately \$9.5 million, and the annual operating expenses will be over \$6 million. *Id.* This Order does not consider the merits of the pending CON application.

The Board will grant IP status 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); GMCB Rule 4.000, § 4.406(3). A “substantial and direct impact” includes, but is not limited to, a direct financial or other business interest in a proposed health care project. GMCB Rule 4.000, § 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 is not sufficient. *Id.* A successful requestor must also provide a detailed statement of interest in the CON proceeding and “illustrate how relevant Certificate of Need criteria, including applicable health care policy goals, relate to the request to intervene.” GMCB Rule 4.000, § 4.406(2). The Board will deny requests that fail to sufficiently explain why interested party status should be granted. GMCB Rule 4.000, §4.406(4). Persons or organizations may be admitted to the

CON process in an *amicus curiae* capacity upon finding that the person or organization will be able to render material assistance to the Board by providing nonduplicative evidence that is relevant to the Board's determination. GMCB Rule 4.000, § 4.406(6).

DRVT is designated by the Governor as Vermont's Mental Health Care Ombudsman. It is also the State's federally funded Protection and Advocacy (P&A) agency and is responsible for investigating and remedying abuse, neglect, and serious rights violations that impact individuals with disabilities. DRVT Request at 1. In both capacities, DRVT monitors the care and treatment of individuals in Vermont's segregated psychiatric facilities, which would include SVMC's proposed adolescent inpatient mental health unit. *Id.*

DRVT's request, however, does not show that it qualifies for interested party status. *See* 18 V.S.A. § 9440(c)(7) and GMCB Rule 4.000, § 4.406. DRVT asserts a "direct and substantial" financial and business interest in the proceeding because as both the P&A agency and Mental Health Care Ombudsman, it would have to expend funds on monitoring the care and treatment of individuals at the proposed SVMC project. As determined in previous CON proceedings, DRVT's important responsibilities do not rise to the level of a "substantial and direct" effect as described in the rules. *See* GMCB Rule 4.000, § 4.406(3). DRVT's obligation more closely resembles a valuable general concern with Vermont's mental health care system as a whole and how that system serves DRVT's clients and other persons; such a commitment is not sufficient to serve as the basis for IP status. *See In re: Vermont Department of Mental Health Construction of Secure Residential Treatment Program*, Docket No. GMCB-002-21con, Order Granting Amicus Curiae Status to Disability Rights Vermont, Inc. (March 11, 2021), 2-4; *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 Disability Rights Vermont, Inc. (May 15, 2015), 2.

Nevertheless, DRVT has a unique ability to represent the interests of people with mental health disabilities. We grant DRVT *amicus curiae* status in this matter because we find that DRVT can render material assistance to the Board by providing nonduplicative evidence relevant to the Board's determination. Based on its advocacy work, DRVT can provide evidence regarding the appropriate settings for the State's current adolescent mental health patients. Such information may relate to whether there is a need for the proposed project; 18 V.S.A. § 9437(3); and whether

the proposed project will support equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated holistic system of care, as appropriate. 18 V.S.A. § 9437(9).

Based on the above, we grant DRVT *amicus curiae* status in this proceeding. DRVT shall be copied on all materials in the record and materials submitted by DRVT shall be admitted into the record and copied to all parties.

**SO ORDERED.**

Dated: April 11, 2024, at Montpelier, Vermont.

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<u>s/ Owen Foster, Chair</u>	)	
	)	
<u>s/ Robin Lunge</u>	)	GREEN MOUNTAIN
	)	CARE BOARD OF
	)	VERMONT
<u>s/ David Murman</u>	)	
	)	
<u>s/ Thom Walsh</u>	)	

*\*Board Member Holmes did not participate in this decision.*

Filed: April 11, 2024

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

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