

October 12, 2016

DELIVERED ELECTRONICALLY AND BY FIRST CLASS MAIL

Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
89 Main Street, Third Floor City Center
Montpelier, VT 05620

**Re: Docket No. GMCB-010-15con, Proposed Ambulatory Surgical Center
Response to VAHHS and NMC Letter dated 10/10/2016 re GMSC Request for
Confidentiality dated 10/05/2016**

Dear Donna:

This is a reply to arguments made by the Vermont Association of Hospitals and Health Systems (“VAHHS”) and Northwestern Medical Center (“NMC”) in their joint letter dated October 10, 2016. The two interested parties filed their letter in response to the Applicant’s Request for Confidentiality dated October 5, 2016.

First, the identities of the investors in the Green Mountain Surgery Center is not public information at this time and is not made so by Medicare regulations. Medicare regulations do not speak to the CON process, which is governed by state law, and do not apply until after a CON has been awarded. Obviously, there is a huge difference in stating who the physician investors are once a CON has been awarded, as opposed to before. After a CON has been awarded, the physician investors need not be concerned about retaliation from a hospital at which they perform surgery because they will have the option to operate in the surgery center if the hospital retaliates. However, if their identities are disclosed during the CON application process and the CON is not granted, they could be subject to retaliatory discrimination by the entity that solely controls their ability to operate.

Retaliation is indeed a concern. The Applicant has provided the data the hospitals need to evaluate the impact of the proposed ASC, and the hospitals have no legitimate motive for wanting to know specifically who will invest.

As more fully stated in our Request for Confidentiality dated October 5, 2016, the identities of the investors in ACTD LLC, and their financial particulars is not public information and is protected by 1 V.S.A. § 317(c)(7) and (9) from disclosure to all members of the public, especially hospitals who are in a position to retaliate and raise no public interest in the information sufficient to outweigh the significant harm to the doctors’ livelihoods and reputations.

Sincerely,

A handwritten signature in black ink that reads "Eileen Elliott". The signature is written in a cursive style with a prominent loop at the end of the last name.

Eileen Elliott, Esq.

cc: Judy Henkin, Esq., General Counsel, Green Mountain Care Board
Lauren Layman, Esq., Vermont Association of Hospitals and Health Systems
Anne Cramer, Esq., Vermont Association of Hospitals and Health Systems
Jill Berry Bowen, CEO, Northwestern Medical Center
Jonathan Billings, V.P. of Planning & Community Relations, Northwestern Medical Center
Lila Richardson, Esq., Office of the Healthcare Advocate
Kaili Kuiper, Esq., Office of the Healthcare Advocate

