

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Acquisition of Burlington Labs)
_____)

Docket No. GMCB-014-16con

APPLICANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. Burlington Labs Acquisition, LLC (the “Applicant”) proposes to purchase the assets of Burlington Labs (“Burlington Labs”), and continue operations of this diagnostic testing facility headquartered in Burlington, Vermont. Burlington Labs serves patients suffering with opiate and other substance addictions as well as supports patients in treatment for chronic pain. (TR___).
2. Burlington Labs serves a critical need in Vermont’s efforts to combat substance abuse, especially opiate addiction. Burlington Labs employs 183 people in six states (of whom 137 are in Vermont), and operates walk-in patient service centers in Barre, Bennington, Burlington, Middlebury, Morrisville, Rutland, St. Albans and Springfield. (TR___).
3. Between January 2016 and August 20, 2016, Burlington Labs supported 2,347 patients by performing 40,941 drug tests (comprising 14,169 drug screen runs, 28,330 drug confirmations, 26,772 in-house confirmations and 1,558 reference lab confirmations).
4. The health centers served by Burlington Labs include the Howard Center, Gifford Health Care in Randolph, Twin River and Barre, Lund Family Center, to name just a few. (See attached report). In addition, Burlington Labs offers on-site collection services to treatment centers, sober houses and medical offices. As the critical provider of drug testing services in the state, Burlington Labs provides essential health resources to support patients through recovery and to prevent downstream adverse outcomes from addiction.
5. As described in greater detail below, Burlington Labs is in financial difficulty and has negotiated a letter of intent with the Applicant for the purchase of assets of Burlington Labs in order to rescue the business. The Applicant would continue to conduct the business as currently conducted, with improvements in the areas of leadership, financial management and legal compliance which are spelled out below.
6. The Applicant will be led by a Board of Directors that includes three former senior executives of IDX Systems Corporation, James H. Crook Jr. (“Mr. Crook”), Christopher Powell and John Kane. It is expected that a representative of University of Vermont Health Network (“UVMHN”), Todd Keating, will also serve on the board along with Burlington Labs founder Michael Casarico. The senior management team of the Applicant will be led by Christopher Powell, as the company’s Chief Executive Officer. (Letter of Intent and Request for Emergency Review; Exhibit A).

7. The Applicant expects to be capitalized with \$4,500,000 of equity at the time of its purchase of the Burlington Labs assets.
8. The Board of Directors and senior management team of Applicant are seasoned business professionals with a great depth of experience in operating large and complicated businesses. Members of the board and management team of the Applicant have extensive background and experience in healthcare compliance. In particular, the Applicant plans to retain a qualified compliance officer and implementing a best practices compliance program to assure compliance with applicable billing and coding requirements. (TR ____).
9. The Applicant plans, initially, to conduct the same business as currently conducted by Burlington Labs, serving the same population and using the same physical locations. (Letter of Intent to Purchase). The Applicant will assume nearly all pre-existing obligations of Burlington Lab, which includes a new lease of lab space in Williston. A location in White River Junction was planned by Burlington Labs for late 2016. This location will not open if the proposed transaction is not approved. (TR ____).
10. The Applicant intends to hire substantially all 183 employees of Burlington Labs. (TR____). There may be reductions in the workforce in order to put the business on more solid financial footing going forward. (TR____).
11. The Applicant has no plans to engage in any new construction or to create any new services. (TR____).
12. The Applicant intends to maintain the services currently provided by Burlington Labs, but has no current plans to expand the services. (TR____).
13. Burlington Labs is currently negotiating a settlement agreement with the Vermont Attorney General's office to resolve allegations relating to overstatement of Medicaid claim amounts by Burlington Labs. (TR____). The settlement agreement has not been signed but reflects the agreement in principle of the parties. (TR ____).
14. Under the current draft settlement agreement, Burlington Labs would pay approximately \$6,500,000 in damages to the State of Vermont, of which approximately \$2,300,000 must be paid to the United States Government in repayment of the Medicaid match. (TR____).
15. Since late March 2016, Vermont Medicaid has withheld approximately 50% of all payments that would have otherwise been paid to Burlington Labs, exacerbating Burlington Lab's cash flow problems. (TR____).
16. Burlington Labs is currently in default under its senior bank loan with KeyBank NA, and, because of this, Burlington Labs has had no access to bank financing. Burlington Labs is currently indebted to KeyBank under a \$2 million demand note and a \$2,894,600 SBA-guaranteed term loan. The total and outstanding indebtedness to KeyBank is \$4,894,600 plus accrued interest. (TR____).
17. Due to the reduction of revenue from Vermont Medicaid, the inability of Burlington Labs to access its line of credit, and other factors, Burlington Labs is not able to meet its

financial obligations. Burlington Labs is in default under numerous contracts and has trade debt of approximately \$3,700,000, much of which is overdue. (TR___).

18. Beginning in late June 2016, an investor group (the “Investor Group”) led by the former CEO of IDX Systems Corporation, Mr. Crook, has provided assistance to Burlington Labs in the form of loans. On June 30, 2016, Mr. Crook made a secured loan to Burlington Labs in the amount of \$800,000 in order to enable Burlington Labs to meet its payroll obligations and pay its most critical suppliers and vendors. Since that date, Mr. Crook has advanced an additional \$585,000, nearly all of which has been spent. (TR___).
19. Mr. Crook requested that the UVMHN take a role in this project as a minority participant in the Investor Group. UVMHN has agreed to become involved in this project because it believes that Burlington Lab’s opiate testing services are vital to the communities that UVMHN serves. UVMHN’s vision and mission align with the Applicant’s commitments to continue Burlington Lab’s recovery-oriented values, and UVMHN sees this project as an important component of UVMHN’s population health management initiatives in Vermont. (TR___).
20. Burlington Labs currently lacks sufficient cash to meet its ongoing payroll and trade debt obligations. The monthly expenses of Burlington Labs currently exceed monthly revenue by approximately \$400,000. Without the continued support of Mr. Crook and the Investor Group, Burlington Labs has no option but to cease operations. (TR___).
21. If granted the CON, upon completion of the purchase, the Applicant will guarantee payment of the approximately \$6,500,000 settlement amount due to the State of Vermont, refinance the defaulted \$4,894,600 KeyBank loan, and assume the trade obligations of approximately \$3,700,000. (TR___).
22. Unless Applicant can close on the purchase of Burlington Labs in the next 30 days, the prospective investors whose equity investment is required to fund the purchase will abandon the project. (TR___). Any delay will materially affect the Applicant’s ability to acquire the assets and operate the business, and the likely outcome will be that Burlington Labs ceases to conduct business.
23. If the Applicant is not able to complete the purchase of Burlington Labs, the obligations mentioned above will go unpaid, the State of Vermont will owe the federal government approximately \$1.3 million, the SBA will owe KeyBank 75% of the \$2,894,600 term loan, all trade debt will be unpaid, and approximately 180 jobs will be lost. (TR___).

Conclusions of Law

As an introductory matter, we conclude that the Applicant has demonstrated that it meets the criteria set out in Rule 4.303 (b) for an emergency Certificate of Need. The Applicant has demonstrated that Burlington Labs serves a critical role in Vermont’s health care infrastructure, and that the cessation of its services would have a detrimental effect on the overall health of the Vermont population.

The Applicant further demonstrated that very little could have been done to anticipate that Burlington Labs would find itself in such exigent circumstances. Under these circumstances, the Applicant has acted as quickly as it prudently could to create a plan for preserving the services provided by Burlington Labs. Without emergency action to grant the Certificate of Need, the transaction cannot move forward, and vital health resources will likely be lost.

I.

Under the first statutory criterion the Applicant must show that its application is consistent with the health resource allocation plan. (HRAP). The HRAP, last published in 2009 identifies needs in Vermont's health care system, resources to address those needs and priorities for addressing them on a statewide bases. See. 18 V.S.A. § 9347(1).

In satisfaction of HRAP standard 1.3, the Applicant has demonstrated that there are insufficient laboratory services in the state of Vermont (as demonstrated by Burlington Labs' planned expansion to White River Junction) currently. Without the assets of Burlington Labs effectively deployed, the alcohol and drug treatment and recovery community will lose ground in its ability to provide effective substance abuse treatment and recovery. Therefore, there are insufficient neighboring health care facilities to provide the services currently provided by Burlington Labs and a collaborative approach would not be feasible or appropriate.

As required by Standard 1.4, the Applicant has demonstrated that Burlington Labs does provide a high volume service: Burlington Labs served 2,347 patients, processed 14,169 drug screen runs, 28,330 drug confirmations, 26,772 in-house confirmations and 1,558 reference lab confirmations. The Applicant has every intention of maintaining this volume, and responding as appropriate to the Vermont population's needs for either fewer or additional services.

The Applicant's leadership team has deep experience in healthcare data management. Finding ¶ 4. The Applicant has demonstrated an understanding that data collection and monitoring are critical to providing effective care. The Applicant has satisfied the Board that these data collection and monitoring efforts will be aligned with related efforts, including those at the Department of Alcohol and Drug abuse Programs ("ADAP"), in satisfaction of Standard 1.6.

The Applicant has demonstrated that the services it provides are part of an evidence-based approach to substance abuse treatment and accountability in recovery. The Letters of Support demonstrate that providers throughout the state rely on Burlington Labs' services to support their clients' treatment goals. We find that the Applicant has satisfied Standard 1.7.

Finally, to address Standard 4.5, the Applicant has submitted ADAP's Goals and Strategic Plan 2012-2017. The Applicant provided to the Board evidence that its services integrate mental health and substance abuse into the greater health care landscape in Vermont, and that it provides critical services highlighted in the ADAP Strategic Plan.

Having satisfied each of the CON Standards relevant to this application, the Applicant has met the first criterion.

II.

Under the second statutory criterion, the applicant must show that the cost of the project is reasonable, that it can sustain the financial burden that may result from the project, that the costs of care will not unduly increase, and that less expensive alternatives are not feasible or appropriate. 18 V.S.A. § 9437(2).

Although we have undertaken review of this project on an expedited basis, the Applicant has provided to us documentation describing both the manner in which it will be capitalized, and its operating cost projections going forward for two years. Under rigorous questioning, the Applicant has satisfied the Board that the Applicant has the cash reserves necessary to sustain the financial burdens associated with the acquisition of Burlington Labs' assets. Additionally, the Applicant has explained its plan to renegotiate debts that currently burden Burlington Labs and to incorporate new efficiencies into its operations. These plans, as explained in the operating cost projections, demonstrate the Applicant will not unduly increase the cost of care. Furthermore, no feasible less expensive alternatives are available or appropriate. The Applicant has satisfied the second criterion.

III.

Under the third criterion, the Applicant must show that there is a need for this project. 18 V.S.A. § 9437(3). The Applicant has met this criterion. Currently, Burlington Labs is one of very few diagnostic testing services providing drug and alcohol screenings unrelated to employment that is headquartered in Vermont. As demonstrated above, 2347 patients used Burlington Labs' services in the first 8 months of 2016. According to the ADAP's July 2015 Data Brief, 5229 individuals were treated in the Vermont Substance Abuse Treatment system in 2014 for opioids alone. Therefore, we conclude that the Applicant's purchase of Burlington Labs' assets in order to continue providing these services is necessary. The Applicant has satisfied the third statutory criterion.

IV.

Under the fourth criterion, the Applicant must demonstrate that the quality of health care will improve as a result of this project, or that the project will provide greater access to care for Vermonters. 18 V.S.A. § 9437(4).

The Applicant has demonstrated its ability to marshal significant resources and expertise in health care and related fields, and has provided to the Board its recommendations for improving the quality of care provided by Burlington Labs. As noted in the Findings at ¶ 8, the Applicant will continue with Burlington Labs' plan to open a facility in White River Junction which will allow additional access to the services it provides. As noted above, and in the letters of support, the demand for substance abuse recovery supports is growing every year in Vermont, and the services Burlington Labs provides critical to enabling more Vermonters to effectively recover from substance abuse and addiction. We find that the Applicant has satisfied the fourth criterion.

V.

The fifth criterion is not applicable to this project, because it addresses the manner in which the project might affect other services provided by the Applicant. 18 V.S.A. § 9437(5). In this instance, the Applicant does not provide any other services. If we grant this CON, its sole goal will be to continue to provide the services currently being provided by Burlington Labs.

VI.

The sixth criterion requires an applicant to show that the project will serve the public good. 18 V.S.A. § 9437(6). Although our review of this project has been compressed to fit within the emergency procedures described above, the Applicant and its supporters have provided extensive and convincing evidence that the project is critical to Vermont's continued efforts to combat addiction and support Vermonters in recovery. Our previous conclusions that the project will not unduly increase the costs of care, that the quality of care will improve and that there is current and ongoing need for this project, support our conclusion that the Applicant has satisfied the sixth criterion.

VII.

The statute requires the Applicant to address the availability of transportation for each facility and to conform with our health information technology plan. 18 V.S.A. § 9437(7)& (8). We conclude that the eighth criterion is not applicable here, because the application is not for the purchase or lease of new health care information technology.

The Applicant has demonstrated that its plans include a careful consideration of the manner in which its clients will access its services. First, all of Burlington Labs current and planned locations are conveniently located in areas that are accessible by car, foot and public transportation. Furthermore, as described in Finding ¶ 2, Burlington Labs runs an on-site testing program that allows clients to submit samples at their physician's offices, sober houses or other recovery centers. The Applicant has affirmed its plans to continue with this program.

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