

THE
University of Vermont
MEDICAL CENTER

EXECUTIVE OFFICE

MAIN CAMPUS

Patrick 3
111 Colchester Avenue
Burlington, VT 05401

Via First Class Mail and Electronic Mail

April 24, 2017

Judy Henkin
General Counsel
Green Mountain Care Board
89 Main Street, Third Floor, City Center
Montpelier, VT 05620

Re: Green Mountain Surgery Center Certificate of Need Hearing

Dear Judy:

I wanted to follow-up on recent statements about UVM Medical Center that were made by Ms. Amy Cooper of ACTD LLC during the course of the Green Mountain Surgery Center Certificate of Need hearing on April 19. We learned about Ms. Cooper's statements from a recent *Vermont Digger* article,¹ and we subsequently watched the video of the hearing to better understand her testimony. Her testimony included several misstatements about UVM Medical Center that we wanted to clarify.

First, Ms. Cooper noted that UVM Medical Center's financial statements identify several for-profit corporations which "are not accounted for because of uncertain tax positions." Ms. Cooper then went on to identify the following entities as for-profit corporations being run by UVM Medical Center: UVM Medical Center Executive Services, 116 Realty, UVM Medical Center Health Ventures, and VMC Indemnity Company.

Ms. Cooper's characterization of these entities as for-profit corporations with "uncertain tax positions" is not accurate. UVM Medical Center Executive Services ("Executive Services") is a limited liability company that has the same tax-exempt status as its sole member, UVM Medical Center. Executive Services was created several years ago after Moses-Ludington Hospital in Ticonderoga, NY lost its CEO unexpectedly and asked UVM Medical Center to provide CEO services on a temporary basis. The arrangement was approved by the New York State Department of Health and a separate entity was used for purposes of compliance with NY regulatory requirements. Executive Services was last active in 2014.

116 Realty is a limited liability company that has the same tax-exempt status as UVM Medical Center, its sole member. This entity was created in 2012 by UVM Medical Center's real estate advisers as the entity through which we negotiated certain real estate arrangements on a confidential basis. Our real estate advisers believed we would be able to secure favorable terms

¹ *Surgical Center Investor Contests "Misleading" Testimony*, Vermont Digger, April 19, 2017.

by negotiating through this entity, without regard to UVM Medical Center's relative size in the community.

UVM Medical Center Health Ventures is a Vermont corporation that holds our investment interest in Burlington Labs. The Board approved this investment in its emergency CON proceeding last year.

VMC Indemnity Company is UVM Medical Center's captive insurance company. It provides professional liability insurance for all UVM Health Network hospitals and their employed providers, and it is not currently considered a taxable entity. Similar to other academic medical centers, we have been able to save substantial health care dollars by self-funding our professional liability insurance and avoiding the higher-cost premiums of commercial insurance.

Second, in her testimony Ms. Cooper stated that UVM Medical Center does not have "enough intake rooms to support keeping the endoscopy suites full" and because of this, UVM Medical Center's 71 percent utilization rate constitutes "full capacity." We are unclear what forms the basis for Ms. Cooper's conclusion that UVM Medical Center does not have enough intake rooms in its endoscopy suite. Chris Oliver, UVM Medical Center's Vice President of Clinical Services, testified on April 13 that we have ample preparatory space and numerous open times in Endoscopy, including every Monday and Wednesday from 7:30 – 12:00 and every other Tuesday and Thursday from 7:30 – 12:00.² We do not believe that Ms. Cooper's unsubstantiated statements about our "intake rooms" are sufficient to rebut the testimony of the UVM Medical Center vice president who oversees this service and has first-hand knowledge of our operations.

We wanted to take this opportunity to correct what we viewed as mischaracterizations by ACTD LLC's representative in her testimony this week. Please feel free to share this communication with the full Board, and we would be happy to provide any additional information that is needed.

Thank you for your attention to this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "JK Klein". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Steven J. Klein, Esq.
Director of Legal Affairs & Assistant General Counsel

² Transcript, Docket No. GMCB-010-15con, *In Re: A Certificate of Need Application Submitted by ACTD, LLC, To Develop an Ambulatory Surgery Center*, April 13, 2017, p. 77.