

Green Mountain Care Board
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Kevin Mullin, Chair
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DELIVERED ELECTRONICALLY

June 15, 2017

Eileen Elliott, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street PO Box 545
Burlington, VT 05402-0545

Re: Docket No. GMCB-010-15con, Proposed Ambulatory Surgery Center.

Dear Ms. Elliott:

The Board has reviewed the applicant's June 2, 2017 request for additional time for the newly appointed Board members to pose questions, in-person, to the applicant. The Board has also reviewed the responses to your request from the Office of the Health Care Advocate and the Vermont Association of Hospitals and Health Systems.

As briefly explained in the *Notice of Continuation of Proceeding*, issued on May 12, 2017, the law does not require that the Board allow for additional in-person questioning by its members who were not present at hearing, and not otherwise disqualified from participation. Rather, such members can vote "without offending the requirements of due process of law" after "reviewing a transcript of the testimony and other evidence or listening to a recording of the hearing and reviewing other evidence." *In re Rumsey*, 2012 VT 74, ¶ 22; *citing In re Lakotas*, 2007 VT 114, ¶¶ 7, 10-12; *In re Villeneuve*, 167 Vt. 450, 455 (1998); *Lewandoski v. Vt. State Colls.*, 142 Vt. 446, 452-53 (1983). Although there are some circumstances that preclude such post-hearing reviews on the record—for example, if the hearing recording is inaudible and there is no written transcript—here, the written record is complete and two days of hearing transcribed and recorded.

Consistent with the Board's goal of issuing a fully informed decision within the statutorily prescribed time period, *see* 18 V.S.A. § 9440(d)(3) (Board will issue decision within 120 days of application closing, unless not practicable), Chair Mullin and Member Usifer are now completing their review of all written materials in the record, the hearing transcript, and the hearing recording. Once completed, they will determine whether they have additional questions regarding the application and if so, no later than June 22, 2017, the Board will either provide those questions in writing or will schedule the matter for a public hearing limited to the discussion of the questions arising from their review.

Very truly yours,



Judy Henkin

General Counsel, Green Mountain Care Board

cc: Karen Tyler, Esq., Dunkiel Saunders, Elliott, Raubvogel & Hand
Drew Kervick, Esq., Dunkiel Saunders, Elliott, Raubvogel & Hand
Anne Cramer, Esq., Vermont Association of Hospitals and Health Systems
Laura Layman, Esq., Vermont Association of Hospitals and Health Systems
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