

January 27, 2017

DELIVERED ELECTRONICALLY AND BY FIRST CLASS MAIL

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

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

Dear Donna:

On January 25, 2017, the Vermont Association of Hospitals and Health Systems (“VAHHS”) and Northwestern Medical Center (“NMC”) informed the Green Mountain Care Board (“the Board”) that they intend to submit last minute information<sup>1</sup> in this proceeding, and asked the Board to postpone the “application closed date” until at least thirty days after Green Mountain Surgery Center (“GMSC” or “Applicant”) responds to the Board’s currently outstanding questions. On January 26, 2017, Hearing Officer Hudson denied this request, but noted that interested parties may submit information during the twenty-six days of the initial ninety-day application review period that will remain once the Applicant responds to the Board Questions 007.

The Applicant hereby requests a reasonable amount of time, before the Board closes the record, to review and respond to any information VAHHS and NMC may submit. If VAHHS and NMC submit this information during the final days of the initial ninety-day review period, the Applicant asks the Board to exercise its statutory discretion to extend the review period to the extent necessary to allow the Applicant a reasonable opportunity to respond. *See*, 18 V.S.A. § 9440(4) (“The Board may extend the 90-day application review period for an additional 60 days, or for a period of time in excess of 150 days with the consent of the applicant.”).

The Board’s rules governing this proceeding do not address this scenario. But they do provide that when the Board allows an interested party to submit information to the record *after* the application closed date, it must give the applicant ten days in which to submit a written response. Board Rule 4.403(2). This rule presumably derives from the premise that the applicant, which has the burden of proof, should therefore have “the last word” before the record is closed, and it would not make sense to apply it only when interested parties submit additional information *after* the application closed date.

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<sup>1</sup> VAHHS and NMC have had ample time and opportunity to submit information to the Board during the past eighteen months, but have thus far chosen to provide very limited information only in response to the Board’s Request for Data issued April 5, 2016. These parties were granted intervention on August 13, 2015. GMSC filed its application on July 2, 2015, and had responded to the Board’s Questions 001-005 as of August 24, 2016. GMSC’s response to Questions 006, filed January 25, 2016, mainly cites information previously provided, and Questions 007 focus exclusively on the proposed Electronic Medical Record system.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Eileen Elliott". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Eileen Elliott, Esq.

Dunkiel Saunders Elliott Raubvogel & Hand, PLLC

cc: Noel Hudson Esq., Hearing Officer, Green Mountain Care Board  
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

