

WOOLMINGTON, CAMPBELL, BERNAL & BENT, P.C  
ATTORNEYS AT LAW

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Patrick J. Bernal, Esq.  
\*Also Admitted in New York  
Patrick@greenmtlaw.com  
802.362.2560

November 22, 2016

By Electronic Delivery and US Mail

Donna Jerry, Health Policy Analyst  
Green Mountain Care Board  
89 Main Street  
Montpelier, VT 05620

Re: Green Mountain Urgent Care, PLLC – Request for “No Jurisdiction” Determination

Dear Donna:

As you know, this office represents the interests of Thomas Sterling and Janel Kittredge, principals of Green Mountain Urgent Care. Green Mountain Urgent Care appreciates the opportunity it had to meet with your Board and submits this letter to provide more information about Green Mountain Urgent Care. Please consider this letter as our request for a determination that the Green Mountain Care Board does not have CON jurisdiction over Green Mountain Urgent Care’s proposed facility, under 18 V.S.A. § 9435(a).

Green Mountain Urgent Care is a physician owned and operated private practice of medicine which accepts patients on a walk-in or as-needed basis. It will offer a wide array of primary care services but will *only* offer services that are routinely offered in primary care physician offices and *only* those services that any physician office in Vermont could offer without obtaining a CON.<sup>1</sup> One of the things that distinguishes Green Mountain Urgent Care from many Vermont physician offices is that Green Mountain Urgent Care will maintain longer office hours, including evenings, weekends and holidays, than the typical primary care physician office. Green Mountain Urgent Care *will not* offer services above and beyond what is frequently available in an office setting from a Family Medicine or Internal Medicine physician.

We note that there are other “Urgent Care Centers” in Vermont, such as ClearChoiceMD, Champlain Medical Urgent Care in South Burlington, Stowe Urgent Care, Family and Occupational Health, and Concentra Urgent Care Centers in Burlington and Barre, to name just a few. We understand that the GMCB has not previously asserted CON jurisdiction over these physician offices (nor did the Department of Financial Regulation before it). We believe these other Urgent Care

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<sup>1</sup> At this time, Green Mountain Urgent Care has no intention of purchasing or using diagnostic or therapeutic equipment as more fully described in § 9434 (a)(4). If, in the future, it were to decide to purchase or otherwise acquire diagnostic or therapeutic equipment subject to CON review, it would apply for a CON.

ROBERT E. WOOLMINGTON EDGAR T. CAMPBELL PATRICK J. BERNAL MERRILL E. BENT  
JOHN D. STASNY

Centers were not subject to CON jurisdiction because they were excluded physician offices and opened their practices and began operations without obtaining a CON. We also understand that federally qualified health centers are not subject to CON jurisdiction upon establishment (we understand that they could be subject to CON jurisdiction if there were, e.g., to trigger the equipment threshold in §9434 (a)(4)).

We see a very important role for Urgent Care Centers in Vermont in that they allow patients with an urgent need to access care, who either don't have a PCP or whose PCP cannot schedule them in a convenient or timely way, avoid the much *higher* expense of an emergency room visit. Urgent Care Centers also promote several of the overarching health care reform goals articulated in Act 48, 2011 Sess. § 1a. Namely, they preserve primary care within the community; increase provider choices for consumers; reward consumers who pay attention to the cost of services by accessing services in a lower-cost, office setting rather than an emergency room setting; and help contain costs.

Timely access to primary care has been and will continue to be an issue in Vermont for the foreseeable future, but Urgent Care Centers increase the availability of primary care providers and offer lower-cost options to Vermonters who need urgent medical services. The GMCB should actively support Vermonters' access to Urgent Care Centers as a source of timely, less costly, cost-effective, quality primary health care.

With respect to Vermont's CON law, Green Mountain Urgent Care falls squarely into the "physician office" exclusion found in 18 V.S.A. § 9435 (a). That section states in relevant part:

*Excluded from this subchapter are offices of physicians, dentists, or other practitioners of the healing arts, meaning the physical places which are occupied by such providers on a regular basis in which such providers perform the range of diagnostic and treatment services usually performed by such providers on an outpatient basis unless they are subject to review under subdivision 9434 (a)(4) of this title.*

18 V.S.A. § 9435 (a) (emphasis supplied). Consistent with § 4.205 of the Board's CON rule, we offer the following additional information regarding the nature of Green Mountain Urgent Care (and any other "Urgent Care Center") to assist you in determining that these practices, regardless of their tradenames, are indeed physician offices and as such are not subject to CON jurisdiction.

(a) Billing Structures to be Used

All services will be billed in a manner that is consistent with the practices of all other privately owned physician practices. Claims will be submitted electronically to the extent possible and consistent with CMS 1500 nomenclature.

- Claims will be billed on CMS 1500 forms, just as other physician practices do;
- The Place of Service Code "POS" will be coded as "-11 Office" (unless instructed otherwise by carriers);
- There will NOT be a separate facility charge or facility fee. As physicians

operating in private practice, charges will include physician and practice expenses; and

- Green Mountain Urgent Care will submit physician participation agreements with Medicare, Medicaid, Medicaid Managed Care programs and major commercial carriers.

(b) Structure of Ownership

Green Mountain Urgent Care is wholly owned by two Vermont physicians Janel Kittredge and Thomas A. Sterling.

(c) Training and Specialties of the Staff

Green Mountain Urgent Care physicians will be residency trained in one or more of the following primary care disciplines:

- Family Medicine
- Internal Medicine
- Occupational Health
- Emergency Medicine
- General Pediatrics and/or Adolescent Medicine

Although some Green Mountain Urgent Care physicians may have more advanced training, the scope of the practice will be confined to urgent care services customarily delivered by a Primary Care Physician.

(d) Procedures to be Performed

The following procedures will be provided:

- Evaluation and management services (Office Visit – E&M Codes) for acute illnesses for new and established patients
- Routine immunizations and medication administration
- Fluid replacement therapy (rehydration)
- Suturing of minor lacerations
- Splinting
- Digital x-rays
- Electrocardiograms
- Spirometry
- CLIA Waived laboratory exams
- Nebulizer administration
- Smoking Cessation Counseling
- Screening programs for Hypertension, Diabetes, Sexually Transmitted Diseases including HIV and AIDS, Hypercholesterolemia, Obesity

(e) Patient Referral Patterns and Relation to Other Healthcare Institutions

Urgent care is the provision of episodic care to patients. As such, Green Mountain Urgent Care does not longitudinally follow patients and has the following protocols for patient referrals:

- Emergency Patients – patients who present with injuries or illnesses beyond the scope of the practice will be directed to the nearest Emergency Center for evaluation and treatment. If private transportation is not available or otherwise inappropriate, the local Rescue Squad or 911 will be summoned. When approved by the patient, Green Mountain Urgent Care will “push” a copy of the clinical record to the receiving Emergency Department. Green Mountain Urgent Care will meet with surrounding hospitals to obtain transfer agreements.
- Non-acute, Unattached Primary Care Patients – in each location, Green Mountain Urgent Care will maintain a list of local primary care physicians (including addresses and telephone numbers) who are accepting new patients. The list will be made available to all unattached patients with a firm recommendation they schedule a visit for follow up care.
- Non-acute, Attached Primary Care Patients – all attached patients will be referred back to their primary care for follow-up care. When approved by the patient, Green Mountain Urgent Care will “push” a copy of our clinical record to the Primary Care Physician.
- Specialty Care Referrals – When applicable, and permitted by insurance carriers, Green Mountain Urgent Care will make direct referrals to specialist physicians for definitive care, e.g. Orthopedics. Similar to the list of Primary Care Physicians, Green Mountain Urgent Care will establish relationships with specialty physicians and maintain contact information for its patients. Patients will also be offered a copy of their x-rays on a CD or to be electronically delivered the referral physician.

(f) Diagnostic and Other Equipment to be Purchased

The diagnostic and other equipment to be purchased by Green Mountain Urgent Care is relatively simple and consistent with what one might ordinarily find in a Primary Care Practice. This would include:

- Routine exam room items, e.g. bed, otoscope/ophthalmoscope wall unit, minor medical equipment (gauze, Band-Aids, etc.)
- Vital signs station equipment – scale, sphygmomanometer, thermometer,

- stadiometer
- Digital x-ray suite and PACS system
- Electrocardiogram
- Spirometer
- Minor surgical instruments
- Blood Chemistry Analyzer
- Splinting and immobilizing materials, e.g. knee immobilizer, slings, etc.

We note that the cost of none of the equipment to be employed at Green Mountain Urgent Care comes even close to being within the exception to the exclusion in 18 V.S.A. § 9435 (a) for equipment that meets the § 9434 (a)(4) threshold.

(g) Representation of the Facility to the Public

Green Mountain Urgent Care will use the words “Green Mountain Urgent Care” in representing itself to the general public and will avoid using the term Emergency. It will NOT infer any relationship or connection with any other concern or entity. In addition, it will not hold itself out as an available option for care during a true medical, surgical or psychiatric emergency.

(h) Frequency of Services Offered by Other Practitioners

Most, if not all, of the services are offered within our service area by other primary care providers. Few physician offices, however, undertake to offer the complete scope that will be available in a Green Mountain Urgent Care Center. In addition, we know of no primary physician office in the service area that offers open access to care 12 hour per day, 7 day per week.

We also note that, even if Green Mountain Urgent Care was somehow found not to be a physician office despite the overwhelming evidence to the contrary, none of the other non-hospital CON jurisdictional thresholds found in § 9434 (a) apply to or would be triggered by Green Mountain Urgent Care’s activities in Vermont.

Green Mountain Urgent Care looks forward to offering high quality, cost effective health services to Vermonters and to work collaboratively with Vermont health care providers. On behalf of Green Mountain Urgent Care, I look forward to your response. Please do not hesitate to contact me if you have any questions.

Sincerely,



Patrick J. Bernal, Esq.

Ms. Donna Jerry  
November 22, 2016  
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PJB/s

Cc: Dr. Thomas Sterling  
Dr. Janel Kittredge