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NATIONAL GROUP CALLS SURGICAL CENTER OPPOSITION 'ANTI-COMPETITIVE'

MAY. 4, 2017, 7:57 PM BY ERIN MANSFIELD 2 COMMENTS

A national group that has worked with the Federal Trade Commission to stop hospital mergers that would create monopolies says opposition to a proposed independent surgical center may be “anti-competitive.”

The Association of Independent Doctors, [which just started a Vermont chapter](#), has weighed in on the controversial case involving the proposed Green Mountain Surgery Center as part of the Green Mountain Care Board’s [public comment process](#).

Investors have been seeking permission from the regulatory board [for nearly two years](#) to open a six-room surgical center in Colchester. The process to obtain a permit called a certificate of need is designed to stop duplication of health care infrastructure.

Judy Henkin, general counsel for the Green Mountain Care Board, said she could not comment on whether the board has concerns about competition because the surgical center case is pending.

The Vermont Association of Hospitals and Health Systems is intervening to oppose the project, as is Northwestern Medical Center in St. Albans. [They have said](#) the project would cause them to lose revenue from profitable services; they say those profits are needed to offset the cost of things like running emergency rooms.

Marni Jameson, the executive director of the Association of Independent Doctors, wrote on Monday, the final day for public comment, that she had consulted contacts at the Federal Trade Commission who agree the opposition to the surgical center “appears to be anti-competitive.”

On Wednesday morning, the Green Mountain Care Board’s website, which includes most public documents on the certificate of need, had a copy of the letter as part of all the public comments received.

The public comments appeared to have been removed by Wednesday evening.

Henkin said Thursday afternoon she didn’t know why, but that she would look into the situation. The [comments](#) were posted again later Thursday.

In her letter, Jameson described her past collaboration with the FTC. "I have shared this situation with my contacts at the Federal Trade Commission, an agency I have worked with several times over the past few years to successfully fight health-care consolidations in other states that would form monopolies and harm consumers," Jameson wrote.

"The FTC along with the Office of Policy Planning agree that this situation also appears to be anti-competitive, and joins me in encouraging you to decide in favor of increased competition," she wrote. The policy planning office is part of the FTC.

Jameson said in an interview that she has a longstanding relationship with the FTC and is speaking on its behalf but could not connect VTDigger with her contacts.

"Furthermore," she wrote to the Green Mountain Care Board, "the officer I spoke to suggested I cite for you recent arguments the FTC and Department of Justice presented in Alaska regarding its CON law, regulations that in general have proven to be a mixed blessing."

Those [arguments](#), written in April, said laws "can restrict entry and expansion, limit consumer choice, and stifle innovation" and "can be exploited by incumbent firms to thwart or delay entry by new competitors ... harming free markets and consumers."

The Federal Trade Commission's [website says](#) that "anticompetitive practices include activities like price fixing, group boycotts, and exclusionary exclusive dealing contracts or trade association rules, and are generally grouped into two types: agreements between competitors, also referred to as horizontal conduct; (and) monopolization, also referred to as single firm conduct."

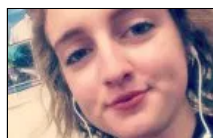
In [Act 48](#) of 2011, the Legislature gave the Green Mountain Care Board the power to create and regulate health care entities. The law instructed the board to practice oversight to ensure compliance with antitrust laws.

"To the extent required to avoid federal antitrust violations, the board shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of the payment reform pilot projects," the law says. "The board shall ensure that the process and implementation include sufficient state supervision over these entities to comply with federal ... antitrust provisions."

Jameson said this of her reason for sending the letter: "I did not know whether the Green Mountain Care Board would see the consumer value of adding the surgical center, and I felt it was necessary to put the heat on them so they would."

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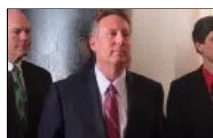
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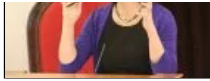
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Erin Mansfield covers health care and business for VTDigger. From 2013 to 2015, she wrote for the Rutland Herald and Times Argus. [Read more](#)

EMAIL: EMANSFIELD@VTDIGGER.ORG

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Ron Jacobs • 8 hours ago

As far as I'm concerned, there should be no competition between hospitals for profit because there should be no profit in medicine. While profit-seeking monopolies are bad, it seems to me that when medical provides are fighting to see who can keep costs lower in order to make profits that the patients will suffer the most. The solution to this supposed problem is not in encouraging competition for profit seeking hospitals, but to end profit in the medical provider field.

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James Rude → Ron Jacobs • 5 hours ago

Ron, the term "profit" is a definition in the tax code. Non-profit's do earn "profits"...it's just that they don't call them that because they do not have a "for-profit" status or shareholders. I don't care if where I get my care is a "non profit" or "for profit"...I care about access, quality, competence and cost.

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