

## HEALTH SERVICES PLANNING AND REVIEW



July 17, 2014  
9:30 a.m.  
Board Meeting

NH Hospital Association  
125 Airport Road, Concord, NH

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Absent:** Mr. Paul Spiess

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, Ms. Angel McFetridge, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:35 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### 1. Approve June 19, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius briefly stated that the Board meeting minutes from the June 19, 2014 Board meeting needed to be approved.

Ms. Fox then made a motion at this time to approve the June 19, 2014 Board meeting minutes. Mr. Bridgham seconded the motion and the Board meeting minutes were unanimously approved.

### 2. Deliberation and Determination – CON LTC 13-02, THI of New Hampshire at Derry, LLC – 109 Bed Nursing Home in Londonderry, NH

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the hearing on CON LTC 13-02 was continued in order for the Board to discuss the issue with the Attorney General (AG). She added that THI has also submitted a legal argument in support of its application pending before the Board – this was sent separately to the Board and the AG in advance of the AG meeting, and an additional copy was enclosed in the Board packet. She added that based upon the AG advice and the testimony heard and received on this application, the Board must publicly deliberate and determine whether to approve, approve with condition or deny this application. Ms. Carrier explained that, should the CON be

approved, HSPR staff recommends conditions that THI: (1) submit copies of its state operating license and QA plan for Traditions at Londonderry; and (2) submit copies of the final loan documents and terms prior to commencement of the proposed project.

Mr. Mark Fulchino, President and CEO, Ms. Melissa Warlow, Senior Vice President, Transactions and Regulatory Affairs, Fundamental Administrative Services, Attorney Andrew Eills, Legal Counsel and Ms. Susan Palmer Terry, Consultant came forward at this time. Attorney Eills referred to the letter dated June 27, 2014 that he submitted to the Board. He summarized the benefits of the project, stating that it was home centered care and used THI's your choice 365 program. He stated that Mr. Butler from the Londonderry Planning Board and Mr. O'Leary from Exeter Hospital provided public testimony in support of the project and that there was no opposition. He added that the need for the facility has been established.

Attorney Eills reviewed the highlights of the letter for the Board. He stated that Exeter's license expired in May 2013 but that Exeter had stopped operating any beds in September 2012. The right to operate the beds still remained in Nursing Home Region 8. He stated that it was clear in February 2013 that Exeter wasn't operating the beds and the right to operate the beds was transferred to THI via a Purchase and Sale agreement. Attorney Eills stated that at that time, THI was also given permission to submit a CON application and the Board knew the beds would be placed at a new facility and not at the Pleasant Valley site. He stated that there was no reason for Exeter to maintain the license and it would be impossible to file a CON application and have it approved by May 2013 (when the license expired). He noted that all of the parties relied on the December 2013 letter from the Bureau of Health Facilities Administration (BHFA) relative to the "hiatus" status of the beds. Attorney Eills stated that there is no violation of moratorium as the beds were not available to any other party.

Attorney Eills then spoke in regard to the transfer of the Pleasant Valley facility to Sava Senior Care. He explained that THI owned and operated Pleasant Valley for 11 years and the settlement of litigation occurred in December 2013. He stated that Pleasant Valley was transferred to an unrelated entity. He also stated that when the CON application was filed it was filed by THI of NH, LLC, which makes the applicant the same as the one that ran the Pleasant Valley facility with the same people and programs; nothing has changed. Attorney Eills added that this case is unique and will not set a precedent that will lead to any violation of the moratorium.

Board questions ensued on the matter. Mr. Bridgham stated that THI had been running Pleasant Valley and then there was a break; ownership was transferred and then THI ceased to be an operator in NH. Ms. Palmer Terry responded that everything in the CON application remains the same. THI will still have FAS and FCOS operating the facility. She stated that the legislature, by way of the statutory language, did not want unknown entrants but THI is not an unknown entrant. Mr. Fulchino added that THI operated Pleasant Valley for 11 years which provides significant history. Attorney Eills stated that when the CON application was filed and through most of completeness review THI operated Pleasant Valley and THI will operate the new facility the same way.

Ms. Fox stated that because THI has operated in NH it contends that it complies with the moratorium, but that the Board would likely reject an application from an unknown entity. Attorney Eills stated that the Board must look at the facts and circumstances, and stated that the Board knew there would be a new facility. He stated that THI operated a NH facility until January 2014. Ms. Fox asked if the settlement agreement was known when the CON application was filed. Mr. Fulchino stated that there was no intention to transfer Pleasant Valley; it was part of a large portfolio of facilities transferred. Chair Grabowski stated that there are no

concerns with the quality of the organization but that she is grappling with the definition of “existing facility” and THI is not currently operating a licensed facility. She then asked how many licensed facilities there would have been under the THI umbrella in New Hampshire. Attorney Eills stated that there would have been 2 with separate licenses. Chair Grabowski stated that BHFA has allowed the license to be held in hiatus, otherwise the license would have been terminated. Attorney Eills stated that she is correct but the purchase and sale agreement and the Board’s approval kept the right to the license active. Attorney Eills stated that THI was operating a facility through most of the review process. Ms. Warlow added that the right to transfer the beds was exclusive to THI.

There was no further discussion. The Board then deliberated on the matter. Mr. Bridgham stated that THI is relying on its history in NH and he does not find this argument persuasive. He added that it is not the history but who you are at the moment. He also added that it is an unfortunate incident but THI is no longer an existing operator in NH. Mr. Brannen stated that the moratorium is a way to control access to health care services and more people are retaining LTC insurance. He added that he is concerned with the existing moratorium and about doing something that counters the moratorium. Ms. Fox stated that she has no issue with the license being in hiatus status. Chair Grabowski stated that she agrees with the other Board members and has no issue with the license status, just with the moratorium.

Hearing no further discussion, Chair Grabowski accepted a motion from Mr. Bridgham to deny CON LTC 13-02 for THI of NH at Derry, LLC, a 109 Bed Nursing Home proposed in Londonderry, NH. Ms. Fox seconded the motion and all Board members voted in favor, unanimously denying this agenda item.

### **3. Board Update – Outstanding NSR conditions:**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. Ms. Carrier reviewed the list of outstanding NSR conditions. She explained that Exeter Hospital has fulfilled their condition and that HSPR staff sent out the updated lease requirements to ClearChoice and Convenient MD: ClearChoice submitted their information for the Keene, West Lebanon and Portsmouth locations. They are no longer on the list for these locations. Ms. Carrier explained that NSR 14-08 Seacoast Orthopedics has been in good contact and that they anticipated that they would be done the first week of July but has now informed the office that they will submit their information by the end of the month. Ms. Carrier explained that HSPR staff has received a letter from NH Open MRI stating that the purchase of the MRI equipment has yet to be completed but install should be completed by the end of the year and a bill of sale will be provided at that time. She added that due to the time that has passed on this proposal (4+ years), the Board may want to consider this NSR as expired and require the applicant to resubmit an application. Ms. Carrier stated that nothing has been received from Insight Premier Health and for NSR 13-32 for CMC staff expects the contract in August. She stated that the biggest concern now is NH Open MRI and Insight-Premier Health.

Mr. Todd Kummer, President of Minglewood which is the owner of NH Open MRI came forward at this time. Mr. Kummer stated that the market has been tough for outpatient imaging and obtaining financing has been difficult. He explained that another facility was opened in Vermont and now he is working on the financing for the NH facility. Mr. Brannen asked him to elaborate on the difficulties in outpatient imaging that he had mentioned. Mr. Kummer explained that the reimbursement rates are down 25% and patient deductibles are increasing. He stated that volumes are up 8 – 10% this year but reimbursements are down. Chair Grabowski asked the impact on NH Open MRI if the NSR was deemed expired. Mr. Kummer responded that the

Board's decision was based on the cost being below the threshold and the cost has actually decreased. Chair Grabowski asked if the NSR expiring would impact the ability to obtain financing. Mr. Kummer stated that it would not. Mr. Bridgham asked the anticipated timeframe for the project. Mr. Kummer explained that he hopes to have it complete by December. Mr. Bridgham asked if one year would be sufficient time to complete the project. Mr. Kummer responded that it would be. Ms. Fox stated that it should be less than a year and suggested a 9 month timeframe.

Mr. Bridgham made a motion at this time that if no invoice is received by March 2015 for NH Open MRI then the NSR will then be considered expired. Ms. Fox seconded the motion. All Board members voted unanimously to approve this motion.

Ms. Carrier stated that there has been no response from Insight Premier Health and requested guidance as to how to proceed. Ms. Fox then made a motion to send a certified letter asking for a response with a deadline of September 1, 2014 or the Board will withdraw its approval of the NSR. Mr. Brannen seconded the motion and all Board members voted unanimously; therefore the motion was approved.

#### **4. Determine Issuance of 8/1/14 Acute Care Bed RFA**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that this agenda item returns after some further discussion made at the Board's June 19, 2014 meeting. She explained that, at that meeting, the Board sought further information from Ms. Leslie Melby of the NH Hospital Association regarding 5-year "look back" data on occupancy rates for acute care hospitals. Ms. Carrier explained that this information was not received in time for the mailing of the Board packet and has been handed out today and that occupancy rates are low. She added that HSPR staff has also compiled a report on other CON states' acute care bed need formulas. She further explained that if the Board issues the RFA for acute care beds it can be restricted to existing hospitals or hospitals which have certain occupancy rates.

Mr. Bridgham stated that the Board cannot avoid issuing the RFA as no rule changes can be done by August 1, 2014. Ms. Fox thanked NHHA for providing the requested information.

Mr. Bridgham made a motion at this time to issue the August 1, 2014 Acute Care Bed RFA. Ms. Fox seconded the motion. All Board members voted unanimously to approve this agenda item.

Mr. Bridgham stated that the Board must look at this rule but hold off on establishing a separate subcommittee in light of the current rulemaking activity. Ms. Fox suggested enlisting other Board members to work on this rule. Mr. Bridgham suggested inviting commentary from other parties. Chair Grabowski stated that she agrees.

Chair Grabowski allowed for a 10 minute break at this time. She asked that people return to the meeting at 11:00 a.m.

**5. Approve Final Proposal He-Hea 100 Board Organization Rules**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. Ms. Carrier reminded the Board that the public hearing on this rule was held at the June 19, 2014 Board meeting. She explained that the final text of the rule has been established and the Board must now approve this final proposal of the rule as the next step in the rulemaking process. She further explained that once approved HSPR staff will forward the rule to the Joint Legislative Committee on Administrative Rules (JLCAR) for a hearing, which is anticipated to be held on August 21, 2014.

Hearing no discussion, Chair Grabowski recognized a motion from Ms. Fox to approve the final proposal of He-Hea 100, the Board's organization rules. Mr. Bridgham seconded the motion and all Board members voted in favor of the motion; thus, this agenda item was passed unanimously.

**6. Determine Issuance of 8/1/14 Acute Care Renovation RFA**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that In order to support a finding of need to issue this RFA, letters of intent must be received by acute care hospital providers indicating potential interest in initiating construction/renovation projects in excess of \$3,051,643. Following customary procedure, HSPR staff mailed a notice to all hospital administrators informing them of this process and the deadline for submission. In addition, a notice was sent to the HSPR electronic mailing list, and was also posted on eStudio. At this time letters of intent have been received from Lakes Region General Hospital of Laconia, NH and Elliot Hospital of Manchester, NH signaling a need for renovation projects. Based upon these letters of intent, HSPR staff recommends that the Board make a finding of need to issue this RFA effective August 1, 2014.

Mr. Bridgham made a motion to issue the 8/1/14 Acute Care Renovation RFA. Mr. Brannen seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**7. NSR 14-21, Southern NH Medical Center, Replacement of Fixed MRI Equipment, Nashua, NH - \$1,395,377.50**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the request from Southern NH Medical Center of Nashua NH, to replace one of its two fixed MRI units. He explained that the HSPR staff evaluation requested that the applicant supply information comparing the existing unit and the proposed replacement unit; and clarify whether there will be any change of operating hours anticipated with the operation of the new unit. He stated that HSPR staff also requested that SNHMC confirm that the new unit will be purchased and not leased; if purchased, HSPR staff recommends a condition to the NSR, if approved, that SNHMC provide a copy of the invoice for the unit prior to operation. If the timeframe for purchase and installation takes longer than 6 months, then staff requests that the applicant identify the appropriate timeframe in order for proper tracking of this NSR.

Mr. Richard Duguay came forward at this time. Mr. Duguay provided a summary of the information he submitted to the Board. Mr. Brannen asked for clarification on the hours of operation. Mr. Duguay responded that they are open six days a week. Ms. Fox asked if there will be any increase in utilization with the new unit. Mr. Duguay stated that the new technology

will allow for different coils for abdominal scans. Mr. Brannen asked if there are any price changes. Mr. Duguay responded that there are not. Mr. Bridgham asked if there will be helium refill costs and Mr. Duguay responded that there will be a reduction in costs as this will be a closed system.

Ms. Fox made a motion to approve NSR 14-21, Southern NH Medical Center for the replacement of fixed MRI equipment for a total cost of \$1,395,377.50. Mr. Brannen seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

**8. NSR 14-22, Lakes Region General Hospital, Mammography, Cardiology and Pre-Admission Testing Project, Laconia, NH - \$2,350,000 (\$325,000 Equipment)**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the request from Lakes Region General Hospital for a renovation project affecting mammography, cardiology and pre-admission testing space at the hospital and the related HSPR staff evaluation of this request. He explained that, while the project may be eligible for an NSR determination, additional information is required at this time. He stated that hospital representatives are available to discuss this agenda item with the Board.

At this time, Mr. Henry Lipman, Senior VP of Finance and Mr. Leo Goddu, VP of Ancillary and Facility Services came forward. Mr. Lipman provided and reviewed the construction contract. He stated that the depreciation is \$10 million, which is what they spend on capital expenditures per year. Mr. Goddu stated that the project will consolidate outpatient services into one area. Mr. Brannen asked if LRGH had explored offsite locations. Mr. Lipman stated that they do have mammography at the Laconia Clinic and at a practice location in Meredith but there is still a need to have these services in house. Mr. Bridgham asked for clarification on the location. Mr. Lipman stated that it will be near the main entrance and radiology department. Mr. Bridgham asked if the equipment cost of \$325,000 includes everything and Mr. Lipman responded that it does. Mr. Bridgham commented that some ratios were of some concern in the last application. Mr. Lipman stated that they were within HUD's requirements and all the financing is with HUD. Mr. Bridgham asked if there was any impact on cost, access and quality. Mr. Lipman responded that the budget has minimal increases and that the project will not have an impact on costs. Mr. Goddu stated that quality will improve with new mammography equipment.

Mr. Brannen made a motion to approve NSR 14-22 Lakes Region General Hospital for a Mammography, Cardiology and Pre Admission Testing Project in Laconia, NH. Mr. Bridgham seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**9. Dover Rehabilitation Center, Request to Submit CON Application for Refurbishment, RSA 151-C:4, III (a)**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier referred to the letter from Dover Rehabilitation Center for a request to submit a CON application for facility refurbishment under the exception allowed by RSA 151-C:4, III(a). She explained that such granting of permission from the Board would enable Dover to submit an application for full review and analysis by staff and the Board.

Ms. Susan Palmer Terry, Consultant and Mr. Daniel Estee, Administrator for Dover Rehabilitation Center came forward at this time. Ms. Palmer Terry gave a brief description of the proposed project. She stated that the project cost will be under \$4 million and will include an upgrade of the physical plant, consolidation of the rehab gyms, an increase in the number of private rooms, shower and bathroom upgrades, and improvements to the HVAC system. Mr. Bridgham stated that there are two reasons for submitting a CON and asked if this was because of life safety issues. Ms. Palmer Terry responded that it was not. Mr. Brannen asked if there were any other reasons beyond the moratorium to not allow this CON. Ms. Carrier stated that there are not. Mr. Brannen asked how many patients are seen at the facility. Mr. Estee explained that there are 112 beds operating at 99% occupancy. He added that there is a need to refurbish to meet customers' expectations.

Mr. Bridgham made a motion to approve the request made by Dover Rehabilitation Center to submit a CON application. Ms. Fox seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

## **Other Business**

### **10. Other Administrative Business**

- **Committee Reports**
  - **State Health Plan**
  - **Rules Subcommittee**

Mr. Bridgham stated that the rules subcommittee will review the CON application form at today's meeting.

Ms. Carrier stated that she will speak to Mr. Spiess regarding future meeting dates for the State Health Plan. .

- **Legislation Update**

Ms. Carrier stated that there is no legislative update.

- **Next Meeting Dates**

Ms. Carrier informed the Board of the next meeting dates as follows:

- The Rules subcommittee will meet immediately following today's Board meeting.
- The next Board meeting is scheduled for Thursday, August 21, 2014, at the Frisbie Memorial Hospital with a tour relating to their Psych application.

- **Other Business**

Ms. Carrier stated that staff provided a history of past decisions in regards to the SJH NSR request for MRI replacement. She added that the staff also supplied a follow up on Core Physicians and stated that physician office space is looked at as an exemption.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:30 a.m.

Signature:

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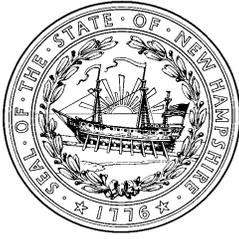
Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

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Date

## HEALTH SERVICES PLANNING AND REVIEW



August 21, 2014

9:30 a.m.

Board Meeting

Frisbie Memorial Hospital  
Community Education & Training Center  
Strafford Room  
11 Whitehall Road, Rochester, NH

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, Ms. Debra Grabowski, and Mr. Paul Spiess

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, Ms. Angel McFetridge, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:35 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### 1. Approve July 17, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius briefly stated that the Board meeting minutes from the July 17, 2014 Board meeting needed to be approved.

Ms. Fox then made a motion to approve the July 17, 2014 Board meeting minutes. Mr. Bridgham seconded the motion. Mr. Spiess abstained and the remaining Board members voted in favor of the motion; thus, the Board meeting minutes were approved.

### 2. Approve Findings LTC 13-02 – THI of New Hampshire at Derry, LLC – 109 Bed Nursing Home in Londonderry, NH - \$14,370,000 - Denied

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck stated that at its July 17, 2014 meeting, the Board denied a Certificate of Need to THI of New Hampshire at Derry, LLC for the establishment of a 109-bed nursing home in Londonderry, NH. The findings supporting the Board's decision were enclosed in the Board packet for review, and require the Board's approval at this time.

Chair Grabowski accepted a motion from Mr. Bridgham to approve the findings for CON LTC 13-02 for THI of NH at Derry, LLC, to deny a 109 Bed Nursing Home proposed in Londonderry, NH. Ms. Fox seconded the motion. Mr. Spiess abstained and all remaining Board members voted in favor; thus, this agenda item was approved.

### **3. Board Update – Outstanding NSR conditions:**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. Mr. Lakevicius stated that this agenda item returns for Board discussion. He explained that HSPR has updated the list of outstanding conditions and reviewed the list for the Board. He explained that Insight Premier Health has withdrawn its NSR for Mobile Pet Cardiac Imaging.

Ms. Fox asked when Insight's NSR would expire. Ms. Carrier explained that Insight intends to send in a new request if they choose to pursue the project in the future; therefore the NSR is considered expired

Mr. Spiess made a motion to accept the outstanding NSR conditions report and the withdrawal from Insight regarding its NSR for Mobile PET Cardiac Imaging. Ms. Fox seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

## **NEW BUSINESS**

### **4. Public Hearing – He-Hea 201.01, 203.02 and 208.01, Practice and Procedures – Definitions, Consent Agenda, Contested Cases Rules Amendments**

**Discussion:** Chair Grabowski opened the public hearing at 9:45 a.m. and then asked Ms. Carrier to provide an introduction to this agenda item. Ms. Carrier stated that, at this time, the Board will hear testimony in support of and opposition to rule amendments affecting the Board's practice and procedures, specifically definitions relating to NSR and Change of Scope, as well as consent agenda and contested case requirements. She noted that JLCAR has weighed in on these rule changes with edits and comments, and the biggest issue is the use of the word "may" versus "shall" in He-Hea 203.02.

Mr. Bridgham stated that JLCAR's proposals make sense and don't get in the Board's way; therefore, he recommends that the Board accept them in total.

Chair Grabowski then invited any public testimony, of which there was none.

Ms. Fox stated that she felt discretion is lost in regards to the consent agenda by using "shall" rather than "may". Ms. Carrier pointed out that on page 8 the rule states that anyone can ask that an item be removed from the consent agenda. Ms. Fox stated that she felt the party should receive notice ahead of time. Chair Grabowski stated that she agreed and suggested changing the rule to require 48 hours notice to remove an item from consent.

This portion of the public hearing was closed at 9:55 a.m., there is an additional 7-day period to allow for any final written comment on the rule. No Board action was required on this agenda item.

**5. Public Hearing – He-Hea 301.01, 301.03, 301.14, 301.15, NSR, Change of Scope and Form 301-C, Threshold Adjustments Rules Amendments**

**Discussion:** Chair Grabowski opened the public hearing at 9:55 a.m. She then asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that in concert with the previous agenda item, the Board will now hear testimony in support of and opposition to the rule amendments pertaining to NSR and Change of Scope. She stated that rulemaking requirements forced two separate submissions. Ms. Carrier stated that JLCAR comments were included in the Board packet and reviewed them for the Board. She stated that most of the changes are on page 7.

Mr. Bridgham stated that he accepts the 1<sup>st</sup> comment and “technical” is in the law. He added that paragraph 2 could be deleted. Mr. Spiess stated that he concurs with that. Ms. Carrier suggested accepting the items at the bottom of page 7. Ms. Carrier explained that there is a 7-day wait period for any written testimony on the rule.

There was no public testimony and the public hearing was closed at 10:02 a.m. No Board action was required on this agenda item.

**6. Littleton Regional Hospital, Littleton, NH - Request for Approval for a Change of Scope of AC 08-04 - \$603,484**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck stated that Littleton Regional Hospital (“LRH”) submitted a request for a Change of Scope for its now completed CON project (AC 08-04). He explained that HSPR staff requested that the hospital submit this request when LRH disclosed in its final implementation report that it did not complete the project as stated in the application. He further explained that normally, a Change of Scope is made while a project is still active but because LRH did not do so, staff requested that they clarify the record. Mr. Peck stated that a hospital representative is present to discuss this matter with the Board.

Mr. Robert Mach, Regional Director of Operations, came forward at this time. Mr. Mach explained that Littleton Regional Hospital did not complete CON 08-04 so therefore is asking for a change of scope to clarify the record. Mr. Bridgham then asked why the change of scope was not filed earlier. Mr. Mach stated that they intended to complete the project but priorities changed and time ran out. Mr. Bridgham asked why the birthing center was dropped, and stated that it was considered important because many other centers were closing their birthing units. Mr. Mach explained that Weeks and Cottage Hospitals closed their units within the last couple of years. He added that Littleton will likely complete it in the next couple of years and will file a CON or NSR depending on the cost. He also added that they are currently recruiting for an OB/GYN doctor. Mr. Brannen asked how soon this project will likely be addressed. Mr. Mach replied that it will be within the next 2-3 years now that Cottage and Weeks have closed their units. Mr. Bridgham asked what the volumes look like compared to the past few years. Mr. Mach stated that it has been steady or decreased slightly as the population is aging and there are fewer young families in the North Country. Ms. Fox asked about the 36-month look back. Ms. Carrier explained that this was a CON and that the lookback pertains to NSRs only. Mr. Bridgham stated that a change of scope should be requested as soon as plans change. Mr. Brannen stated that the issue is timing and added that he is not concerned about the change of scope itself. Mr. Spiess suggested to the Board that they should incorporate change of scope into implementation reporting as it will help catch changes to projects. He also suggested changing it to a 6-month reporting timeframe.

Mr. Brannen made a motion to approve the Change of Scope request for Littleton Regional Hospital, Littleton, NH for CON AC 08-04. Mr. Spiess seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**7. NSR 14-23 - Fairview Nursing Home, Hudson, NH - Renovations Relating to NSR 13-05 (private rooms) \$175,000**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the request from Fairview Nursing Home of Hudson, NH to complete work first approved by NSR 13-05. Fairview now seeks to convert 7 shared rooms into 14 private rooms. Mr. Peck explained that the work will include the necessary renovations for asbestos removal and code compliance for the bathrooms. He stated that HSPR's staff evaluation of this request was enclosed in the Board packet. He added that because the two projects are related, staff recommends a condition that Fairview document the final cost of each to ensure that the total does not exceed the threshold. Mr. Peck stated that a representative is present to discuss this matter with the Board.

Mr. Richard LeBeouf, Administrator, Fairview Nursing Home came forward at this time. He provided a brief overview of the renovation plans for the Board. He explained that the renovations will provide private rooms to better serve the clients and clarified that this is the 2<sup>nd</sup> part of the NSR 13-05 project. Mr. Brannen asked if the bed count will stay at 101. Mr. LeBeouf stated yes.

Mr. Spiess made a motion to approve NSR 14-23, Fairview Nursing Home for renovations relating to NSR 13-05 with a cost of \$175,999 with the condition that Fairview document that the combined costs do not exceed the current statutory threshold. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

**8. NSR 14-24 – Catholic Medical Center, Manchester, NH – Replacement of Fixed MRI Equipment (Lease) - \$290,000 (\$1,460,000 Equipment)**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the request from Catholic Medical Center (CMC) of Manchester, NH to replace its current fixed MRI unit. He explained that HSPR's evaluation of this request was enclosed with the Board packet. He added that based upon our review; it appears that the proposal could be eligible for a Not Subject to Review determination, pending additional information regarding cost of the MRI unit. He stated that hospital representatives are at the meeting to discuss this proposal with the Board.

At this time, Ms. Sue Manning, VP of Strategy and Ms. Lisa Roux Coggins, BS, MHA, VP of Operations/Surgical Services, CMC came forward. Ms. Manning provided a brief explanation of the project. She stated that the lease expired and CMC wishes to replace the unit with a new one under a new lease. Mr. Brannen asked if they could speak to volume, capacity and utilization. Ms. Coggins stated that they have lost some volume to ASC's, etc. Mr. Bridgham asked if they anticipate reduced costs and if it will be reflected in the charges. Ms. Manning stated that most volume is inpatient and is folded into the DRG payments. Ms. Coggins added that the savings will be in utilities by approximately 20%.

Mr. Bridgham made a motion to approve NSR 14-24 Catholic Medical Center, Manchester, NH for the replacement of fixed MRI equipment with the condition that CMC provide a copy of the equipment quote. Ms. Fox seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**9. Board Discussion: Determine Need for Informal Investigation:**

➤ **Parkland Medical Center, Derry, NH – NSR 13-33 and CON PSY 14-02, Re-Open Inpatient Psychiatric Unit**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier explained that Parkland Medical Center (PMC) received NSR approval in November 2013 to re-open its closed 12-bed psychiatric unit at an established cost of \$2,868,676. She reminded the Board that during the discussion on this matter, PMC also stated that it would like to add 2 additional beds to the unit, and would do so by submitting a CON application in response to the 2/1/2014 RFA for additional psychiatric beds and such CON application would contain little additional cost, as the bulk of the work would be completed under the NSR. Ms. Carrier further explained that PMC has submitted its application – CON PSY 14-02, at a cost of \$3,537,079, which incorporates the previous NSR cost, plus additional required costs. She added that when asked during completeness review if it felt the NSR was no longer applicable since it appears it has been eclipsed by the CON application, PMC stated that it believes the NSR is still in effect and that it will complete construction costs up to the CON threshold and open the 12-bed unit if the CON is not granted.

Ms. Carrier then explained that HSPR staff has been in discussion with the Attorney General on this matter and she advises that the Board discuss this matter to determine the correct process going forward. She stated that at issue is whether the CON application can be approved as submitted, since the project costs appear twice – once in the NSR and once in the CON. While the NSR allows PMC to “get a jump” on construction, the fact that the project is now over the threshold causes concern. She added that PMC’s response to final completeness, even the NSR project now exceeds the threshold from \$2,868,676 to \$3,316,079 due to necessary HVAC and other equipment costs not identified in the original NSR filing. Ms. Carrier further explained that any project costing more than the statutory amount requires a CON and to allow any entity to commence a project as an NSR and then follow with a CON application to preserve some sort of right to expend the costs to construct or renovate prior to Board approval runs afoul of RSA 151-C:4,I, and subjects the person to sanctions pursuant to RSA 151-C:14. She stated that if allowed, HSPR staff believes this would be set dangerous precedent that could entice other entities to follow.

Mr. John Malmberg, Esquire, Legal Counsel, Ms. Susan Palmer Terry, CON Consultant, Mr. Jeffery Scionti, COO and Mr. Shawn Daugherty, Director of Behavioral Health came forward at this time. Attorney Malmberg provided a brief explanation as to why all of the costs are included in the CON. He stated that the NSR was granted in November 2013 and PMC thought that the project for the 12 beds could be done under the threshold amount and had said that the 12-bed unit could be done under the threshold even if the CON wasn’t approved. He added that PMC is trying to get the cost of the 12 beds under the threshold and that it is important that PMC continue with construction. He also added that the cost will not exceed the threshold before the CON is approved. He stated that the NSR did not include the equipment cost of \$139,739 – this won’t cause the project to exceed the threshold.

Attorney Malmberg then explained that there were two changes, which are the HVAC system that was assumed adequate to support new construction and then later determined that it was

not, which added \$279,000 additional costs. He went on to explain that an additional cost of \$40,000 was added due to needing more turnaround space for emergency vehicles. He added that they learned this when they applied for the building permit. He stated that PMC has otherwise found \$175,000 in savings from the project by re-reviewing the financial documents.

A handout outlining the project costs was handed out to the Board. Attorney Malmberg stated that PMC can amend the application within 45 days or September 5, 2014. He explained that the application would be for 14 beds, not 2 and the costs would be updated. He went on to say that they would ask for permission to amend the application today with hopes of the hearing still being held in October; he added that they are not assuming the CON would be approved. Mr. Bridgham stated that if the project went as planned the PMC would have completed 12 beds under the NSR and 2 beds and the lobby under the CON application. Mr. Brannen stated that NSR's do not go through the same review process as CON's.

Board discussion ensued regarding sanctions and the correct process. Mr. Spiess asked if there could be an abbreviated process for CON's just over the threshold. Mr. Bridgham stated that they could cite public need as a justification for allowing this specific situation. He added that he wouldn't want to set a precedent. Mr. Spiess stated that need was established for the beds and it's not in the Board's best interest to stop them for doing so. Mr. Brannen stated that a specific need should be cited for this case. Attorney Malmberg stated that this was a bed RFA which makes a difference. Ms. Fox asked how much money has been spent to date. Attorney Malmberg stated that \$400,000 has been spent so far and he added that steel is going up to start the addition. Mr. Spiess stated that they are accepting the risk that the CON may not be approved. Attorney Malmberg stated that the only change is to add the 2 beds. Ms. Fox asked when the construction would be completed. Attorney Malmberg stated that completion will be at the end of November. Ms. Fox stated that her preference is not to go through the investigation process. Attorney Malmberg stated his request for permission to amend the CON application. Ms. Carrier talked about waiving the completeness review period for the amendment to keep the public hearing in October. Attorney Andrew Eills, representing Frisbie Memorial Hospital, stated that FMH will likely file a motion to sever the applications. Attorney Malmberg stated that he had no objection to that.

Mr. Bridgham then made a motion to permit PMC to amend its CON application and waive the 10-day review period, if staff finds the changes are restricted to the number of beds and technical issues in recognition of the urgent public need for the beds. Ms. Fox seconded the motion. All Board members voted in favor and this agenda item was approved.

#### **10. Board Discussion – Expiring Rules**

- **He-Hea 1200 Transfer of Ownership (8/22/14)**
- **He-Hea 1600 Megavoltage Radiation (12/16/14)**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier noted that the He-Hea 1200 Transfer of Ownership rule will expire August 22, 2014, before the Board can take any action to re-adopt the rule. She explained that the effect is that any entity subject to the Transfer of Ownership CON process would be prevented from submitting an application until the rule is re-adopted. She added that this affects only privately held entities in the state of which there are few. She stated that there is a low risk of anyone needing to file an application.

Ms. Carrier then explained that He-Hea 1600 expires in December 2014. She stated that the Board has not issued an RFA for additional Radiation Therapy units since 2000, and the data

collected suggests that there is no immediate need to do so. She suggested rather than rushing to re-adopt this rule, it might be prudent to review the content and determine if changes would be necessary prior to initiating the re-adoption process. She added finally that the Board could use an interim rule to extend it for 6 months.

Ms. Carrier suggested that the rules subcommittee review these rules and should move them up in priority. No Board action was necessary on this agenda item.

## **OTHER BUSINESS**

### **11. Other Administrative Business**

- **Committee Reports**
  - **State Health Plan**
  - **Rules Subcommittee**

Mr. Spiess stated the funding to develop a State Health Plan was not approved and meetings will be scheduled for this fall to discuss the progress to date for a report to the governor that is due 12/1/14. He then stated that the next meeting for the State Health Plan is scheduled for Friday, September 12, 2014 from 12:30 – 3:00 at Parkland Medical Center with a tour for the Board following the meeting. Ms. Fox stated that she preferred a 1:00 start time for the 9/12/14 meeting.

Mr. Bridgham stated that the rules subcommittee will meet briefly after today's tour. He added that they will be reviewing the CON application and that they are still working on a policy for need but need State Health Plan in place for this.

#### ➤ **Next Meeting Dates**

Mr. Lakevicius informed the Board of the next meeting dates as follows:

- The Rules subcommittee will meet immediately following today's Board meeting and tour.
- The next Board meeting is scheduled for Thursday, September 18, 2014, at the Concord Hospital with a tour of the facility after the Board meeting. He added that the reconsideration request for LTC 13-02 THI at Derry, LLC will be on the Agenda.

#### ➤ **Other Business**

Ms. Carrier informed the Board that there are 3 applications scheduled for public hearings at the October Board meeting.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Spiess to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:25 a.m.

Signature:

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Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

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Date

## HEALTH SERVICES PLANNING AND REVIEW



September 18, 2014

9:30 a.m.

Board Meeting

Concord Hospital, Conference Room B  
250 Pleasant Street, Concord, NH

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Robert Bridgham, Ms. Katja Fox and Ms. Debra Grabowski

**Absent:** Mr. Tyler Brannen and Mr. Paul Spiess

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, Ms. Angel McFetridge, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:40 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### 1. Approve August 21, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius briefly stated that the Board meeting minutes from the August 21, 2014 Board meeting needed to be approved.

Ms. Fox then made a motion to approve the August 21, 2014 Board meeting minutes. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion; thus, the Board meeting minutes were approved.

### 2. NSR Outstanding Conditions

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius provided the Board with an update regarding the outstanding NSR conditions. He stated that CMC and Shields were notified as well as Convenient MD, however; HSPR hasn't received any response from Convenient MD and the next step is a certified letter. Chair Grabowski mentioned that Convenient MD has had an open house at their Exeter location. She directed the staff to send a certified letter to Convenient MD and to update the Board next month.

## **NEW BUSINESS**

### **3. Request for Extension – NSR 14-11 ClearChoice MD, LLC, Establish Urgent Care Center in Hillsborough, NH**

**Discussion:** Mr. Peck was asked to introduce this agenda item. Mr. Peck stated that a request from ClearChoice MD to extend the completion date for NSR 14-11, to establish an urgent care center in Hillsborough, NH was received. He reminded the Board that ClearChoice received approval from the Board in February 2014 to change the location of the proposal, with the condition that it (1) submit evidence of a signed lease within six months, and (2) withdraw the original NSR 13-47. Mr. Peck explained that the six-month timeframe is now up and ClearChoice is still pursuing the project, and requests additional time. He further explained that although they have not specified any target date, it would not be unreasonable to allow the applicant another 6 months to complete the project and this would be in keeping with the proposed NSR rules (now reaching final status) allowing a one year (12 month) completion date. He stated that representatives from ClearChoice are present to discuss this matter with the Board.

Mr. Mike Porembski, President and COO, ClearChoice MD, LLC came forward at this time. Mr. Bridgham asked Mr. Porembski if a 6-month extension would be sufficient time to execute the lease. Mr. Porembski responded that yes it would be as the construction would likely start in the spring. Ms. Carrier clarified that the due date is 6-months from today's date.

Mr. Bridgham made a motion to grant Clear Choice, MD, LLC a 6-month extension for NSR 14-11. Ms. Fox seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

### **4. Request for Extension – NSR 14-12 ClearChoiceMD, LLC, Establish Urgent Care Center in Claremont, NH**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item as well. Mr. Peck stated that similar to the previous agenda item, ClearChoice has also requested an extension to complete NSR 14-12 to establish an urgent care center in Claremont, NH, the deadline for which has now also passed. Mr. Peck stated that HSPR staff suggests that the Board apply the same determination made in Agenda Item #3 to this matter as well.

Mr. Mike Porembski, President and COO, ClearChoice MD, LLC remained at the testimony table for this agenda item. Mr. Porembski provided a brief explanation of his request for an extension. He explained that they ran into a stumbling block with Valley Regional Hospital regarding the licensing of the facility. Mr. Bridgham asked him if a 6-month extension would allow ClearChoice enough time. Mr. Porembski stated that he hopes so but won't know for sure until the architects get started. Ms. Fox asked if the Board can ask for a status update at any time. Ms. Carrier replied that the Board can. Ms. Fox suggested doing so at 4 months. Mr. Bridgham stated that he liked the association they will have with the hospital.

Ms. Fox made a motion to grant Clear Choice MD, LLC a 6-month extension for NSR 14-12 with the condition that an update be provided in 4 months. Mr. Bridgham seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

**5. NSR 14-25 Access Sports Medicine and Orthopaedics, Purchase MRI Scanner for Plaistow, NH office, \$325,000/\$5,000 (Renovation)**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the request from Access Sports Medicine and Orthopaedics of Exeter, NH for the purchase of a fixed MRI scanner for its Plaistow office. He stated that the HSPR staff evaluation of this request was forwarded to the Board and recommends a condition, if approved, of receipt of the final invoice of the unit but that HSPR staff does conclude the project is eligible for an NSR determination.

Mr. Kenneth Bartholemew, Legal Counsel, came forward at this time. He stated that NFS leasing, the lessor of the unit at the Exeter office, contacted them to say they had repossessed a unit and offered it for sale to Access. He added that Access accepts the condition recommended by HSPR staff. He explained that there's a \$5,000 fit up charge to move a wall. He added that the average price per scan is \$700. Ms. Fox asked if this unit replaces the current unit. He answered that there is no current unit. Mr. Bridgham asked if the expected usage would be in the office. Attorney Bartholemew answered yes, to increase convenience for patients and to be a backup for other offices.

Mr. Bridgham made a motion to approve NSR 14-26, Access Sports Medicine and Orthopaedics to purchase an MRI scanner for their Plaistow, NH office with a cost of \$325,000/\$5,000 with the condition that they provide the Board with the final invoice for the unit. Ms. Fox seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

**6. Determine Issuance of 10/1/14 Ambulatory Surgery Center (ASC) RFA**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that per its evaluation, HSPR staff recommends not issuing the 10/1/14 RFA for Ambulatory Surgery Centers as there was no interest expressed.

Ms. Fox asked where the notices are published. Ms. Carrier explained that a notice was sent to the hospitals and ASCs and posted to the Web, eStudio and emailed to the electronic notice list. Ms. Fox then asked when the last ASC RFA was issued. Ms. Carrier stated that an RFA was issued last spring and Laser Spine Institute submitted an application and then later withdrew it.

Ms. Fox made a motion to not issue the 10/1/14 RFA for Ambulatory Surgery Centers. Mr. Bridgham seconded the motion and all Board members voted in favor of the motion; thus the RFA will not be issued.

**7. Adopt He-Hea 100 rules amendments**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the Joint Legislative Committee on Administrative Rules (JLCAR) approved the Board's He-Hea 100 rules amendments at its August 21, 2014 meeting. The Board must now vote to adopt these rules for filing.

Mr. Bridgham made a motion to adopt He-Hea 100 rules amendment. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

**8. Approve Final Proposal - He-Hea 201.01, 203.02 and 208.01, Practice and Procedures – Definitions, Consent Agenda, Contested Cases Rules Amendments**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. She stated that the final proposed text of these rules is now established, and requires a Board vote to bring them to JLCAR for a hearing in October.

Mr. Bridgham noted an extra “C” on page 8. Ms. Carrier stated that she will remove it before filing the final proposal of the rule.

Ms. Fox made a motion to adopt the Board’s He-Hea 200 etal rules amendments. Mr. Bridgham seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**9. Approve Final Proposal – He-Hea 301.01, 301.03, 301.14, 301.15, NSR, Change of Scope and Form 301-C, Threshold Adjustments Rules Amendments**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. She stated that the final proposed text of these rules is now established, and requires a Board vote to bring them to JLCAR for a hearing in October.

Ms. Carrier noted that the filing includes the rule and 3 forms: 301A – NSR Form; 301C – Change of Scope Form; and 301W – lease worksheet.

Mr. Bridgham made a motion to adopt the Board’s He-Hea 301.01 et al rules amendments. Ms. Fox seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

**10. Request for Reconsideration – CON LTC 13-02 THI of New Hampshire at Derry, LLC – 109 bed Nursing Home in Londonderry, NH \$14,370,000**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the THI of Derry, LLC has submitted a request for reconsideration of the Board’s denial of its CON application, LTC 13-02 for Traditions at Londonderry, a 109-bed proposed nursing home. She explained that the Board heard this application at its June 2014 meeting, and made its final deliberation and decision at the July 2014 meeting, whereupon it denied THI’s application. She further explained that at this point THI is afforded the opportunity to make a request for reconsideration, which it has done – pursuant to RSA 151-C:9,IV and He-Hea 210. She noted that He-Hea 210.01 (f) allows the Board the option to make a determination on this request with or without an oral hearing; therefore, if the Board so chooses, it does not have to hear from the applicant prior to making a decision on this request, but it must make its decision in the usual public forum (i.e. at the Board meeting).

Ms. Carrier stated that if the request for reconsideration is denied, then the Board’s original decision becomes the final decision on the matter. At this point, the applicant can either abide

by the Board's decision, or appeal to the NH Supreme Court – see RSA 151-C:10 and He-Hea 211. If the request is granted, then a hearing on the matter will be scheduled at a future Board meeting. The Board can limit the hearing to any matter it chooses to hear, and does not have to re-hear the entire proposal – see He-Hea 201.01 (f) and (g). Upon completion of the re-hearing, the Board can either confirm its original decision, or reverse its decision due to new evidence presented by the applicant in the form of: new information not previously considered; changes in factors or circumstances the Board used to reach its original decision; or a demonstration that the Board failed to follow its adopted procedures in reaching its original decision. If the original decision is upheld, the applicant either abides by the Board's decision, or appeals to the NH Supreme Court.

Finally, Ms. Carrier noted that if the decision is reversed, then the applicant's CON application is essentially approved.

Chair Grabowski let the representatives from THI know that they would have an opportunity to say a few words but would like for it be kept brief. Mr. Andrew Eills, Legal Counsel, Ms. Susan Palmer Terry, CON Consultant and Mr. Mark Fulchino came forward at this time. Attorney Eills stated that under RSA 151-C:9 a party that is denied a CON can file a request for reconsideration. He stated that it should be a limited hearing and that the entire hearing wouldn't be repeated. He added that there is information for reconsideration and they anticipate coming before the Board in October. Ms. Fox stated that significant and relevant information should be presented. Ms. Palmer Terry stated that all of the Board's findings have been in favor of THI and she added that she wants the application looked at in terms of need in the Rockingham County. Chair Grabowski asked if it will be tied to the statute regarding the moratorium. Ms. Palmer Terry answered yes and stated that they believe the Board is well within the law to approved these beds.

Ms. Fox made a motion to deny the request for reconsideration for LTC 13-02 THI of New Hampshire at Derry, LLC. Mr. Bridgham seconded the motion. After brief discussion, the Board members voted in favor of the motion, thus denying THI's motion for reconsideration.

## **OTHER BUSINESS**

### **11. Other Administrative Business**

- **Committee Reports**
  - **State Health Plan**
  - **Rules Subcommittee**

Chair Grabowski acknowledged Board member Spiess' recent presentation at the NHHHA meeting. Ms. Carrier provided a brief update on the State Health Plan subcommittee. She stated that Mr. Spiess is reaching out to a North Country hospital for a possible meeting place. The meetings are currently scheduled at the Dept. of Insurance but staff will keep the Board updated on time and locations.

Mr. Bridgham stated that the rules subcommittee will meet briefly after today's meeting. He added that they will be reviewing the CON application and that they are still working on a policy for need but need the State Health Plan in place for this.

➤ **Next Meeting Dates**

Ms. Carrier informed the Board of the next meeting dates as follows:

- The Rules subcommittee will meet immediately following today's Board meeting.
- The next Board meeting is scheduled for Thursday, October 16, 2014, at the NH Hospital Association. She added that there are 3 applications scheduled for public hearings at this meeting, including PSY 14-01, PSY 14-02 and CC 14-04.

➤ **Other Business**

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Ms. Fox to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 10:32 a.m.

Signature:

\_\_\_\_\_  
Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

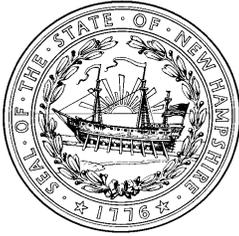
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Date

## HEALTH SERVICES PLANNING AND REVIEW

October 16, 2014

9:30 a.m.

Board Meeting



NH Hospital Association, Conference Room 1  
125 Airport Road, Concord, NH

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, Ms. Debra Grabowski and Mr. Paul Spiess

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, Ms. Angel McFetridge, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:32 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### 1. Approve September 18, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius briefly stated that the Board meeting minutes from the September 18, 2014 Board meeting needed to be approved.

Ms. Fox then made a motion to approve the September 18, 2014 Board meeting minutes. Mr. Bridgham noted 2 corrections to the minutes and Ms. Fox then made a motion to approve the Board meeting minutes as amended. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion; thus, the Board meeting minutes were approved.

### 2. NSR Outstanding Conditions

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck discussed the updated report on the NSR conditions for the Board. Ms. Fox stated that she believes the condition is met with the statements in the letter from Convenient MD. Chair Grabowski stated that she agreed. Ms. Fox asked staff the timeframe on the remaining Convenient MD projects not addressed in the letter provided. Ms. Carrier stated that there were none given and she explained that the Board can grant an extension if they wish.

Ms. Fox made a motion to extend the timeframe for completion for the remaining Convenient MD projects by 6 months with a due date of April 16, 2015. Mr. Spiess added that if it is not

resolved in that timeframe a new application will be required. He then seconded the motion. All Board members voted in favor of the motion and the motion was unanimously approved.

## **NEW BUSINESS**

### **3. NSR 14-25 - Access Sports Medicine and Orthopaedics, Request to Amend NSR to Re-Locate Purchased MRI Scanner from Plaistow, NH office to Dover, NH \$325,000**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. Mr. Lakevicius reminded that Board that Access Sports Medicine and Orthopaedics received an NSR with condition at the Board's September 18, 2014 meeting to acquire and install an MRI unit its Plaistow, NH offices. He explained that Access now seeks to amend its NSR to change the location of the MRI unit to offices it plans to construct in Dover, NH. According to Access, there are no other anticipated changes to the project other than the location. HSPR staff notes that the revised NSR application does contain a copy of the equipment invoice, which satisfies the condition applied to the NSR determination made in September. Representatives from Access are available to discuss this matter with the Board.

Mr. Kenneth Bartholemew, Legal Counsel, came forward at this time and was sworn in by Ms. Carrier. Attorney Bartholemew clarified that Access is not building a new facility; they are renovating a building in Dover, NH at the Web Plaza off of exit 16. He added that it is a better location and a volume increase is anticipated. He explained that they will use the same machine, with less than \$5,000 in fit up costs, as outlined at last month's meeting. Mr. Spiess asked when the facility will open. Attorney Bartholemew stated that it will open on December 1, 2014. Mr. Spiess asked if there is a negative impact for Plaistow. Attorney Bartholemew replied that it will not result in any negative result as Plaistow is well served by other area MRI services.

Mr. Spiess made a motion to approve NSR 14-25 for Access Sports Medicine and Orthopaedics' request to amend their NSR to re-locate the purchased MRI scanner from their Plaistow, NH office to Dover, NH. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

### **4. NSR 14-26 - Hackett Hill Center, Manchester, NH – Transfer of Ownership, \$4,200,000**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the 301B form submitted by Genesis Healthcare, LCC for the acquisition of assets of the Hackett Hill Healthcare Center (Manchester Integrated Health, Inc.) with a future lease involving the real estate and the facility. He stated that the transaction cost is estimated at \$4,200,000 for the transfer, and as a Medicaid/Medicare facility under the Board's He-Hea 1200 rules, the proposal is not subject to CON review. He stated that HSPR staff has notified Genesis that the associated \$750,000 renovation costs must be handled via a separate NSR transaction and will not be included with the Board's decision on this matter.

Ms. Lynn Carpenter, Administrator, came forward at this time. Ms. Carpenter explained the \$750,000 consists of \$550,000 in working capital and \$150,000 for closing costs. Ms. Fox asked if they anticipate submitting an NSR for renovations. Ms. Carpenter stated that they do not.

Mr. Bridgham made a motion to approve NSR 14-26 to Hackett Hill Center, Manchester, NH for the transfer of ownership in the amount of \$4,200,000. Mr. Spiess seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

**5. NSR 14-27 - Grafton County Nursing Home, North Haverhill, NH, Facility Renovations, \$713, 977**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius referred to the Not Subject to Review request from the Grafton County Nursing Home for the renovations for two shower rooms. Estimated project costs are \$713,977. Mr. Lakevicius explained that because the costs fall below the statutory threshold for nursing homes, HSPR staff concludes that this project is not subject to CON review.

There were no representatives present at the Board meeting on behalf of the Grafton County Nursing Home. Chair Grabowski asked about the 30 residents that are being relocated. Ms. Carrier explained that the applicant has been in contact with Health Facilities Administration regarding such temporary relocation of residents.

Mr. Bridgham made a motion to approve NSR 14-27 for Grafton County Nursing Home, North Haverhill, NH for facility renovations in the amount of \$713,977. Ms. Fox seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

**6. NSR 14-28 Warde Health Center, Windham NH, Transfer of Ownership, \$2,750,000**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the 301B form submitted by NH Catholic Charities for the acquisition of the Warde Health Center of Windham, NH. He stated that, as noted in the submission, NH Catholic Charities has managed the facility for the past 20 years and the facility operates under NHCC policies. He explained that, as a Medicaid/Medicare facility under the Board's He-Hea 1200 rules, the proposal is not subject to CON review. Mr. Peck stated that HSPR staff did notify NHCC that the associated \$750,000 in anticipated improvements must be handled via a separate NSR transaction and are not included with the Board's decision on this matter. Mr. Peck also stated that he spoke with the representative prior to the meeting, who had another meeting to attend so had to leave. He informed Mr. Peck that NHCC intended to submit an NSR for the renovation costs in a month or two.

Mr. Spiess made a motion to approve NSR 14-28 for the Warde Health Center, Windham, NH for a transfer of ownership in the amount of \$2,750,000. Mr. Bridgham seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

**7. Public Hearings – February 1, 2014 Acute Psychiatric RFA for Additional Beds:**

- **CON PSY 14-01, Frisbie Memorial Hospital, Rochester, NH, Add 10 Geriatric Psychiatric Beds, \$1,350,625**
- **CON PSY 14-02, Parkland Medical Center, Derry, NH, Add 14 Adult Psychiatric Beds, \$3,357,079**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that a Joint Motion for Severance of the Psychiatric Bed (PSY) Certificate of Need

Applications was submitted by both Frisbie and Parkland. She stated that as noted in the respective Staff Analysis documents on these applications, HSPR staff supports severance of the applications for the reasons stated in the motion, and recommends that the Board perform such severance prior to the hearings in order for each application to be heard and decided on its own merits.

Attorney Andrew Eills came forward at this time. He briefly stated that severance is requested as there is no geographic relation between the applicants.

Mr. Bridgham made a motion to grant severance of the 2/1/14 Acute Psychiatric RFA applicants CON PSY 14-01, Frisbie Memorial Hospital and CON PSY 14-02, Parkland Medical Center. Ms. Fox seconded the motion and all Board members voted in favor, thereby approving the request for severance.

➤ **CON PSY 14-01, Frisbie Memorial Hospital, Rochester, NH, Add 10 Gero-Psychiatric Beds, \$1,350,625**

**Discussion:** Chair Grabowski then asked Ms. Carrier to provide a brief introduction to the public hearing for CON PSY 14-01, Frisbie Memorial Hospital. Ms. Carrier stated that the Board will now hear the application proposed by Frisbie Memorial Hospital of Rochester, NH to add 10 gero-psychiatric beds to its facility. She explained that the HSPR Staff Analysis and Checklist of Outstanding Items were enclosed with the Board packet for Board review and consideration. She noted that an updated checklist was provided via a handout before the start of the meeting. She stated that HSPR staff concludes that the proposal is eligible for CON approval with the condition that FMH provide proof of licensure.

At this time, Mr. Joseph Shields, VP of Planning, Mr. John Marzinzik, Senior VP and CFO, Ms. Amy Dumont, VP of Patient Care Services, and Dr. Tricia Mendoza, Medical Director, Geropsychiatry Unit came forward for testimony. Mr. Shields provided a brief overview of the proposed project. He stated that they wished to expand service to the Gero-psychiatry unit by 10 beds. Frisbie has provided such service (10-bed unit) since 1984. He added that they will use the former maternity unit and retrofit it for the psych unit. Dr. Mendoza stated that they specialize in serving patients 65 and older and that they currently have a waiting list of 10-15 people and growing. She stated that the population is aging and there are increasing length of stays. She added that it has grown from 8 days to 14.5 days since 2008. She explained that patients are admitted based on their acuity, and the average wait time is 11.3 days.

Ms. Fox asked if they accept anyone that is under 65 years of age, such as 60 – 64. Dr. Mendoza replied that they would if there is an early onset of dementia. Ms. Fox asked where patients are from. Dr. Mendoza stated that patients come from home, the ED and other hospital ED's. Ms. Fox then asked what states they come from. Dr. Mendoza stated that they receive referrals from Northern Massachusetts, Vermont but mostly from NH. Mr. Brannen asked what happens with the patients that are on the waiting list. Dr. Mendoza explained that patients are ending up in the ED as families don't know what else to do. Mr. Brannen that asked what percentage of cost is Medicare and Dr. Mendoza stated that the gero-psychiatry service is fully covered by Medicare. Mr. Spiess asked the appropriate place to discharge patients. Dr. Mendoza explained that it depends on the patient and the level of dementia, etc. She stated that some go home, a few to assisted living facilities. She added that safety is an issue as many have behavioral problems and may need to go to a nursing home or to a family member with experience caring for the patient. She stated that they set up appointments with social workers to discuss options and educate the family members.

Mr. Bridgham asked about the anticipated change in the length of stay as the issue is with the place to discharge the patients. Mr. Shields stated that the existing unit is mostly semi-private rooms and they cannot be used to full capacity. Mr. Bridgham asked how adding beds will help the length of stay problem since issues with discharge will remain. Dr. Mendoza stated that they will have more patients with less acuity.

Chair Grabowski asked if it is true that there are very few Medicaid assisted living beds in the state. Dr. Mendoza stated yes. Chair Grabowski referenced community based options and stated that the state is required to build community based options. She then asked how this would affect the gero-psych unit. Ms. Mendoza stated that it probably won't affect it and explained that many patients using community based services are younger and also utilize outpatient services.

There was no public testimony.

Mr. Spiess made a motion to approve CON PSY 14-01, Frisbie Memorial Hospital in Rochester, NH for the addition of 10 gero-psychiatric beds for a total cost of \$1,350,625 with the condition that they provide proof of licensure. Ms. Fox seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

➤ **CON PSY 14-02, Parkland Medical Center, Derry, NH, Add 14 Adult Psychiatric Beds, \$3,357,079**

**Discussion:** Chair Grabowski then asked Ms. Carrier to provide a brief introduction to the public hearing for CON PSY 14-02, Parkland Medical Center. Ms. Carrier stated that the Board will now hear the application proposed by Parkland Medical Center of Derry, NH to add 14 adult psychiatric beds to its facility. She stated that the HSPR Staff Analysis and Checklist of Outstanding Items were enclosed with the Board packet for review and consideration. She explained that HSPR staff concludes that the proposal is eligible for CON approval with the conditions that Parkland provide proof of licensure upon operation of the unit, and a copy of the amended QA plan prior to licensure. As a third condition, PMC will also withdraw NSR 13-33, which was approved in November 2013 for 12 of the psychiatric beds; these beds have now been folded into the CON application.

Mr. Sean Daugherty, Director of Behavioral Health; Mr. Jeff Scionti, Chief Operations Officer, Mr. Jacob Wiesman, CFO; and Ms. Susan Palmer Terry, Consultant came forward at this time. Mr. Scionti provided a brief background on the project and presented a PowerPoint with slides of the facility, floor plans, etc. He explained that there is currently an 8 day waiting period in the ED, and the 14 bed unit is based on an optimal patient to staff ratio. He explained that there will be 2 floors with the 2<sup>nd</sup> floor consisting of patient rooms and the first floor consisting of space for activities, therapy, meals and things of that nature. He added that there will be a small lobby created as well. He stated finally that they do accept the conditions proposed by HSPR staff.

Mr. Daugherty added that Parkland is addressing a well known community need and hope to keep people close to home. Mr. Brannen asked about the payor mix. Mr. Scionti stated that its 50% Medicare/Medicaid, which is higher than the rest of the hospital. Mr. Brannen asked if Medicare will cover 100% and Mr. Scionti stated that it will come close. Mr. Wiesman stated that variable costs will be covered and fixed costs will not be completely covered. He explained that they project a loss in the first year with gains in the ensuing years. Mr. Brannen clarified that Parkland is doing this project to benefit the community and not to help the bottom line. Mr.

Scionti stated that he is correct. Ms. Fox asked why the average length of stay is projected to increase. Mr. Scionti explained that it is projected to start off lower to develop the program and will then increase. Ms. Fox spoke in regard to community based services and stated that resources may increase over time and will help transfer people out. She stated that she supports the addition of the lobby. Mr. Bridgham stated that Parkland hasn't been active in Psychiatric services for some time and asked if they will be able to staff in time. Mr. Scionti explained that they have already started advertising and interviewing. He added that he is confident that they will have staff in place when the building is complete. Chair Grabowski asked about the 2-floor model. Mr. Daugherty explained that they went over floor plans for the 1<sup>st</sup> floor to include the quiet space, group therapy space, dining space, etc. and stated that this format will be both a challenge and an opportunity. Mr. Scionti added that it provides a clear separation from their room so patients will participate in therapy. Chair Grabowski asked Parkland to explain more about the addition of the lobby which was dropped from CON 02-05. Mr. Scionti explained that they are using economies of scale to complete it with this project and that it was dropped from the earlier project due to cost issues.

There was no public testimony received for this agenda item.

Mr. Bridgham made a motion to approve CON PSY 14-02, Parkland Medical Center in Derry, NH for the addition of 14 adult-psychiatric beds for a total cost of \$3,357,079 with the conditions that PMC provide: (1) proof of licensure upon operation of the unit; and (2) a copy of the amended QA plan prior to licensure. And as a third condition, PMC will also withdraw NSR 13-33. Mr. Spiess seconded the motion. All Board members voted in favor of the motion, approving this agenda item unanimously.

Chair Grabowski called for a 10 minute break at this time.

**8. Public Hearing – March 26, 2014 Cardiac Catheterization RFA for Additional Labs:**  
➤ **CON CC 14-04, Concord, Hospital, Concord, NH, Add Third Cath Lab, \$3,700,759**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that at this time, the Board will hear the application proposed by Concord Hospital of Concord, NH to add a third cardiac catheterization laboratory to its facility, in response to the March 26, 2014 RFA for additional Cardiac Catheterization services. He stated that the HSPR Staff Analysis was enclosed with the Board packet for Board review and consideration. He noted that there was no Checklist of Outstanding Items. Mr. Lakevicius stated that based upon staff review, the proposal is eligible for CON approval.

At this time, Ms. Erin Almeda, Dr. Richard Boss, MD, Mr. Domenic Ciavarro, Mr. Scott Sloane, Mr. James Thorne and Ms. Deborah Bosquet came forward. Ms. Almeda provided a brief introduction of the presenters. Dr. Boss provided a background on Cardiac Services at Concord Hospital. He stated that the lab first opened in 1988 with an addition of a second room in 2001. He stated that in 2010 the equipment in the original room was replaced. He stated that the lab is supported by a 16 physician group practice with 12 from Concord Hospital and 4 from LRGH and they do a clinic at Franklin Regional Hospital 2 days a week. He explained that half of the physicians are employed by Concord and half are employed by the Dartmouth Hitchcock Clinic. Dr. Boss explained that they have been performing cardiac surgery since 1998 and that they have exceeded national benchmarks of 90 minutes for opening the artery. He stated that currently patient flow is uneven and unpredictable and although there have been no safety issues yet they want to prevent this from happening. He stated that the third cath lab will increase flexibility and safety.

Mr. Ciavarro reviewed the floor plans for the Board. He explained that they looked over alternatives and decided it was best to keep all 3 cath labs in the same area. He added that the project will be a phased project and both labs will remain operational. Mr. Bridgham asked them to explain ablation procedures. Dr. Boss described the procedure and the time required to complete the procedure. Mr. Bridgham stated that there is no room to expand the lab area any further and asked about predictions for the future. Dr. Boss explained that the increase in volume will be fairly slow and other hospitals will have to expand capacity too. He stated that the volumes for stents are decreasing and added that lifestyle changes are helping. Mr. Spiess asked what other hospitals have equipment and provide cardiac surgery. Dr. Boss stated that Catholic Medical Center, Portsmouth Regional Hospital and Dartmouth Hitchcock Medical Center all do. Mr. Spiess asked if the proposed equipment is similar to the existing equipment. Dr. Boss explained that it will be GE which is similar to the equipment in the first room. Mr. Brannen asked about the letter of support provided by CMC. Dr. Boss stated that he knows the cardiologists at CMC. Mr. Thorne added that there are no adverse relationships and the competition is not aggressive. Dr. Boss stated that they have a good relationship with DHMH as well and added that they support each other. Mr. Brannen asked how the project impacts the cost of services. Mr. Sloane stated that there is no big impact and added that it is a trade off of routine capital money. He added that there will be no change in prices. Chair Grabowski stated that there are only 4 programs doing surgery and asked if other facilities are doing caths without doing surgery. Dr. Boss explained that Exeter and Elliot Hospital both are. Chair Grabowski spoke about the arrangements with EMS bringing patients directly to Concord Hospital and asked if they have talked about this with their regional network. Dr. Boss stated that other regions do this as well and added that this program helps to expedite the opening of the artery.

There was no public testimony for this agenda item.

Mr. Bridgham made a motion to approve CON CC 14-04 for Concord Hospital of Concord, NH for the addition of a third Cath Lab for a total cost of \$3,700,759. Mr. Spiess seconded the motion and all Board members voted in favor of the motion, unanimously approving this agenda item.

## **9. Board Discussion - Rules Amendments**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. She stated that the Board will now have a discussion on the necessities surrounding its rulemaking responsibilities, as requested by the Board at its September meeting. She stated that as the Board may be aware, the He-Hea 1200 Transfer of Ownership rules expired in August 2014, and the He-Hea 1600 Megavoltage Radiation rules will expire in December 2014 and stated that the Rules Subcommittee continues its work on revising the CON application form and process. She added that other rules expire in 2015 and 2016. Ms. Carrier explained that HSPR staff has developed a Work Plan document for each rule in order to determine a timeline for amending and/or re-adopting these rules, and a process for determining the applicable content therein.

Mr. Bridgham stated that the rules should follow the direction of the Board and added that the State Health Plan will help guide the process. Mr. Spiess stated that there is information that the Board doesn't collect that would be useful and the State Health Plan and rules should reflect this. Ms. Fox asked if the Board still needed a pro-competitive rule for MRI. Ms. Carrier stated that the 1600 rule expires in December and the Board must decide what to do with this rule. She added that the long term care rule expires in June 2015. Mr. Spiess asked staff to provide a 5 – 10 year summary of the number of applications and NSR's that have gone through the

Board. He added that the legislature is trying to get a handle on capital expenditures. Chair Grabowski asked staff to provide options for the 1600 rule at the November Board meeting. Ms. Palmer Terry from the audience made a suggestion to bring Dr. Tom Sheldon in to speak. Ms. Carrier stated that she will reach out to him. Mr. Bridgham mentioned that the rule for transfer of ownership has expired and asked if the Board should resurrect the rule. Ms. Carrier stated that that rule is rarely invoked and stated that it will be brought back for discussion as well.

There was no Board action taken on this agenda item.

## **OTHER BUSINESS**

### **10. Other Administrative Business**

- **Committee Reports**
  - **State Health Plan**
  - **Rules Subcommittee**
- **Next Meeting Dates**
- **2015 Board Meeting Schedule**

Mr. Spiess provided a brief update on the State Health Plan meetings. He stated that the next meeting is scheduled for November 6, 2014 from 12:30 – 4:00 and the group will be discussing the draft report to the legislature and will address issues of access, cost and quality. He added that the group will hear from Doris Lotz in December regarding quality issues. Ms. Carrier stated that she will talk to Alisa Druzba regarding her report on primary care and have her speak to the Board again. Chair Grabowski added that the Foundation for Healthy Communities has done some work in this area. Mr. Bridgham stated that many physician practices are owned by hospitals and added that the NHHA may have information regarding this.

#### ➤ **Next Meeting Dates**

Mr. Peck informed the Board of the next meeting dates as follows:

- The Rules subcommittee will meet briefly immediately following today's Board meeting to discuss future meeting dates.
- The next Board meeting is scheduled for Thursday, November 20, 2014, with the location to be determined.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Bridgham to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 12:10 p.m.

Signature: \_\_\_\_\_

Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board: \_\_\_\_\_

Date

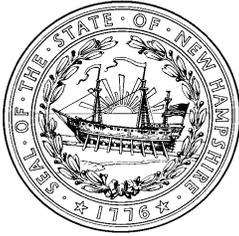
## HEALTH SERVICES PLANNING AND REVIEW

November 20, 2014

9:30 a.m.

Board Meeting

Wentworth-Douglass Hospital  
Eastwood Auditorium (Auditorium D) Garrison Wing  
789 Central Avenue, Dover, NH 03820



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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

**Excused:** Mr. Paul Spiess

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Chair Grabowski brought the meeting to order at 9:34 a.m. and thanked Wentworth-Douglass Hospital for hosting the Board meeting that day. She requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so, and also read the evacuation procedures for the facility. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### 1. Approve October 16, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck briefly stated that the Board meeting minutes from the October 16, 2014 Board meeting needed to be approved.

Ms. Fox then made a motion to approve the October 16, 2014 Board meeting minutes. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion; thus, the Board meeting minutes were approved.

## OLD BUSINESS

### 2. NSR Outstanding Conditions

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier discussed the updated report on the NSR conditions for the Board. She stated that she had discussed with Catholic Medical Center NSR 13-32 relative to ED renovations and the condition of receipt of a signed construction contract. The project was approved in December 2013 and HSPR staff asked CMC if it might need a 6-month extension to complete the project. CMC has

stated that it would be amendable to an extension as the project has not yet begun. Some Board discussion took place on this matter. Mr. Brannen inquired as to a reason for the delay of project start. Mr. Bridgham requested that CMC appear at the next meeting and further explain the delay. The Board then directed Ms. Carrier to contact CMC to appear at the next meeting.

Ms. Carrier then noted that NSR 14-09 from ClearChoice MD for the establishment of an urgent care center in Pittsfield, NH was approved in February 2014; she contacted the ClearChoice representative Mr. Michael Porembski to determine if the project might need a 6-month extension. Ms. Grabowski invited Mr. Porembski to discuss this issue with the Board. Mr. Porembski stated that ClearChoice still seeks to complete the project but has been seeking to share the building with a primary care provider and that has yet to be accomplished. He stated that if the project cannot be completed with a 6-month extension then it will likely be scuttled. He stated that ClearChoice will have a decision within that timeframe. Mr. Bridgham made a motion to extend the timeframe for completion of the project for 6 months with a due date of May 20, 2015. Ms. Fox seconded the motion. All Board members voted in favor of the motion and the motion was unanimously approved.

## **NEW BUSINESS**

### **3. Adopt Rules Amendments to He-Hea 201.01, He-Hea 203.02, and He-Hea 208.01 Practice and Procedures – Definitions, Consent Agenda, Contested Cases**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. Ms. Carrier reminded the Board that the Joint Legislative Committee on Administrative Rules (JLCAR) approved these rule amendments at its October 16, 2014 meeting. The Board must now vote to adopt the changes for filing in order to make them effective. This will then update the rules to re-include a consent agenda, and that the Board can begin using a consent agenda at its December meeting.

Mr. Bridgham made a motion to adopt rules amendments affecting He-Hea 201.01, He-Hea 203.02 and He-Hea 208.01. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

### **4. Adopt Rules Amendments He-Hea 301.01; He-Hea 301.13; He-Hea 301.14; He-Hea 301.15 – NSR; Change of Scope; Threshold Adjustments; Form 301A; Form 301C; Form 301W**

**Discussion:** Ms. Carrier was also asked to introduce this agenda item. Ms. Carrier stated that JLCAR also approved the above listed rule amendments and accompanying forms at the same October 16, 2014 meeting. The Board must now vote to adopt the changes for filing in order to make them effective. This will now enable the use of the new NSR form, the new Change of Scope form, and introduce the use of the 301W form, a worksheet for the determination of leases.

Mr. Bridgham made a motion to adopt rules amendments affecting He-Hea 301.01, He-Hea 301.13, He-Hea 301.14, and He-Hea 301.15, and new forms 301A, 301C and 301W. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving this agenda item. Ms. Grabowski then thanked Mr. Bridgham and the CON Rules Subcommittee for the work put into the rules changes.

5. **Approve Findings of Fact, CON PSY 14-01, Frisbie Memorial Hospital, Rochester, NH, Add 10 Gero-Psychiatric Beds, \$1,350,625**

Mr. Lakevicius was asked to introduce this agenda item. Mr. Lakevicius reminded the Board that it granted a Certificate of Need with condition to Frisbie Memorial Hospital to add a 10-bed gero-psychiatric unit at the facility at the October 2014 Board meeting. The findings supporting the Board's decision now require approval.

Mr. Brannen made a motion to approve the Findings for CON PSY 14-01. Mr. Bridgham seconded the motion and all Board members voted in factor, unanimously approving this agenda item.

6. **Approve Findings of Fact, CON PSY 14-02, Parkland Medical Center, Derry, NH, Add 14 Adults Psychiatric Beds, \$3,357,079**

Mr. Lakevicius was also asked to introduce this agenda item. Mr. Lakevicius reminded the Board that it granted a Certificate of Need with conditions to Parkland Medical Center for the addition of a 14-bed adult psychiatric unit, as well as an entrance lobby, to the hospital at the October 2014 Board meeting. The findings supporting the Board's decision now require approval.

Mr. Bridgham made a motion to approve the Findings for CON PSY 14-02. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

7. **Approve Findings of Fact, CON CC 14-04, Concord Hospital, Concord, NH, Add Third Cardiac Catheterization Lab, \$3,700,759**

Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius reminded the Board that it granted a Certificate of Need to Concord Hospital for the construction of a third cardiac catheterization laboratory at the hospital at the October 2014 Board meeting. The findings supporting the Board's decision now require approval.

Ms. Fox made a motion to approve the Findings for CON CC 14-04. Mr. Bridgham seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

8. **NSR 14-29 Nashua Regional Cancer Center, Nashua, NH – NSR Request for Replacement of RT Equipment, \$2,000,000 Equipment/\$97,700 Construction Costs**

Mr. Lakevicius was asked to introduce this agenda item. Mr. Lakevicius referred the Board to the NSR request from the Nashua Regional Cancer Center of Nashua for replacement of one of its two radiation therapy machines, as well as the accompanying HSPR staff evaluation. Based upon its evaluation, HSPR Staff concludes that this proposal meets all the criteria for equipment replacement, and is thus eligible for an NSR determination. Facility representatives are at the Board meeting today to discuss this proposal with the Board.

At this time, Ms. Barbara Kimball, Executive Director of the Nashua Regional Cancer Center came forward. She stated that the existing unit is 13 years old and will be replaced within the same vault now being used. The project will be financed with cash on hand and there will be no outstanding debt as a result. Mr. Brannen asked about price variation and the Cancer Center's ability and choice of the selected unit. Ms. Kimball replied that it did consider different units but that the unit chosen from Electra is also the provider of its electronic medical records. Mr. Brannen asked about the Center's purchasing power. Ms. Kimball stated that the Center is a collaborative venture and that it did consult with the other Center members before choosing this unit. Ms. Fox asked about utilization. Ms. Kimball stated that the unit is in use 8 hours per day with an 359 patients and some 9000 treatments thus far in 2014. The Center can treat 55 patients per day. Ms. Grabowski asked about the radiation therapy service area for the Center. Ms. Kimball replied that its patient base is the Greater Nashua area and the next closest unit is at the Elliot Hospital in Manchester.

Mr. Bridgham then made a motion to approve NSR 14-29 as not subject to CON review. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving this agenda item.

**9. NSR 14-30 Mary Hitchcock Memorial Hospital, Lebanon, NH – NSR Request for Facility Renovations, \$1,707,582/\$495,000 Equipment**

Ms. Grabowski asked MR. Peck to introduce this agenda item. Mr. Peck referred the Board to the NSR request from Mary Hitchcock Memorial Hospital (MHMH) for renovations to its ED to accommodate 5 additional short stay observation beds. He noted that the applicant has responded to the HSPR staff request for additional information for the project and that the project is eligible for an NSR determination. Hospital representatives are at the meeting to discuss this proposal with the Board. At this time, Ms. Grabowski invited Mr. Stephen Marion to the table to discuss the project with the Board. Mr. Marion firstly apologized for the lateness of the submission, noting that this project and the one following on the Board agenda have already been completed. He explained that once the project reached the site inspection stage, a representative from the Bureau of Health Facilities Administration (BHFA) inquired whether the project had received a determination of CON review; this then prompted a conversation with HSPR staff who advised the submission of an NSR application to the Board.

Mr. Marion then described the project at hand, stating that the request is for 5 observation beds to alleviate the "bed squeeze" in ICU and medical surgical beds. This would then keep patients off the inpatient floors and more appropriately monitored in the ED to determine treatment. More than likely these patients would be discharged within 24 hours but can stay up to 72 hours without requiring admission. Mr. Brannen asked about the cost differential. Mr. Marion replied that the cost would be equal to or less than an inpatient bed. Ms. Fox then asked HSPR staff to explain how projects are chosen for the NSR process. Ms. Carrier explained that HSPR has a "dotted line" to BHFA and that certain projects such as freestanding birthing centers, by agreement, are not reviewable. For all other projects, BHFA will inquire of an applicant whether it has received a determination of CON review. BHFA will not stop a project from going forward, but will notify HSPR of a potential project. HSPR will then guide applicants to the NSR form and process. Mr. Marion then provided a brief background on the development of the NSR process and pointed out that it is not statutory but regulatory in

nature. He stated that MHMH will use project cost as a determination point. Mr. Bridgham then noted that the Board is bound to declare projects below the statutory threshold as not subject to CON review. He noted for this particular project, the system costs will likely be lower as patients will not be admitted to the hospital for care. Mr. Marion agreed, and stated that the issue is not one of profit, but of patient care.

Mr. Bridgham then made a motion to approve NSR 14-30 as not subject to CON review. Mr. Brannen seconded the motion. All Board members voted in favor of the motion, thereby unanimously approving this agenda item.

10. **NSR 14-31 Mary Hitchcock Memorial Hospital, Lebanon, NH – NSR Request to Add 2 ORs to Freestanding ASC, \$619,535/\$1,289,000 Equipment**

Mr. Peck was asked to introduce this agenda item. Mr. Peck referred the Board to the NSR request from Mary Hitchcock Memorial Hospital (MHMH) to add 2 operating rooms to its freestanding ASC on the hospital campus. Because this project is tied to CON ASC 07-05, HSPR staff requested additional clarifying information regarding the total ORs, which the applicant provided. The ASC was built with 4 ORs and space shelled for 4 additional ORs, 2 of which are the subject of this NSR request.

Mr. Marion remained at the table to discuss this project with the Board. He stated that a question was made by HSPR staff as to whether there was a net increase in ORs and that MHMH did reduce the ORs as agreed by CON ASC 07-05. He noted that there have been no adverse impacts with the opening of the ASC on existing community hospitals in the area.

Board questions ensued relative to utilization and turnover time. Mr. Bridgham then made a motion to approve NSR 14-31 as not subject to CON review. Mr. Brannen seconded the motion. All Board members voted in favor of the motion, thereby unanimously approving this agenda item.

11. **Board Discussion - Rules Amendments**

➤ **He-Hea 1600 Megavoltage Radiation – Mr. Tom Sheldon, MD, presenting**

Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the Board's He-Hea 1600 rules are slated to expire in December 2014. At last month's Board meeting, the Board discussed the ramifications of expiration, and requested a presentation by current providers in order to receive information about this service. Dr. Tom Sheldon of Radiation Oncology Associates, PA, was contacted to make such presentation to the Board. Ms. Carrier noted that Dr. Sheldon has been instrumental in the content development of the He-Hea 1600 rules over the past decade, and brings a wealth of clinical and administrative experience to the table for discussion.

Dr. Sheldon then came forward and introduced himself and his background as president of Radiation Oncology Associates at Concord Hospital. He then walked the Board through a brief history of the advent of radiation therapy treatment, noting that regulation of such is a great success of the CON process as it ensures the right volume and quality for a successful program. He noted that cancer treatment

involves a large team including physicists, dosimetrists and radiation therapists – all high quality professionals to provide robust quality of medicine. He stated that a diagnosis of cancer has evolved from a perspective of cure to survivorship. Radiation therapy is instrumental in palliative care, and it is often now combined with chemotherapy as a treatment regimen. He noted that national radiation therapy treatment has grown less than 1% per year despite the aging population. Radiation oncologists are now looking to achieve the same results with less external beam treatments with the aid of better technology. The three cancers most treated with radiation therapy are breast, prostate and lung. Dr. Sheldon closed by stating that he felt the current need formula in the rule is correct and that it should not be changed.

Board discussion and questions ensued. Mr. Brannen asked about cost effective care and the capacity of treatment. Dr. Sheldon replied that cost effective care makes up the ethics of medicine, and that there is still a shortage of radiation oncologists, so capacity is still an issue. Ms. Fox asked when the last CON was issued for radiation therapy. Ms. Carrier replied that it was at least 10 years ago and was issued to Exeter Hospital. Mr. Bridgham asked what should be done with the rule. Ms. Carrier explained that the Board had two options: Adopt an interim 6-month rule should the Board feel it can re-adopt a permanent rule within that timeframe; or at a minimum, re-adopt the data collection portion of the rule in order to keep that from lapsing – this way the Board could work on a permanent rule without the deadline. Even though the rule would expire, the current data suggests that there is no need for an RFA at this time. Ms. Carrier also stated that the rule should now include a section to address any related construction to a new, replacement and/or relocated unit; this avoids the need for an acute care application for construction and a second CON application for the radiation therapy units.

From the audience, Attorney John Malmberg stated that he supported an interim rule and also the construction amendment suggested by Ms. Carrier. Ms. Erin Almeda also stated that she supported an interim rule to give the Board some time to re-adopt the permanent rule. Mr. Stephen Marion stated that in non-CON states such as Florida the cost of health care is high and referral issues abound. Ms. Barbara Kimball stated that from an administrative standpoint volume is important for a quality program and supports keeping the rule in place. Attorney Andrew Eills encouraged use of the interim rule. Ms. Susan Palmer Terry stated that from a patient perspective the best quality and volume are most important.

Ms. Fox then made a motion to approve rulemaking for both an interim rule and permanent rulemaking. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion.

➤ **He-Hea 1200 Transfer of Ownership**

Ms. Carrier was asked to speak to this agenda item. Ms. Carrier stated that the transfer of ownership rules, He-Hea 1200, expired in August 2014 and are applicable to any non-Medicare /Medicaid certified facility seeking a transfer of ownership. She noted that the rules are established under the 1984 Federal Deficit Reduction Act and that she had contacted the Attorney General to determine whether this act is still in effect. The AG has confirmed such. At this point, although there are few facilities in New Hampshire that would be affected by the rule, it is a standard which the

Board must maintain by statute. Therefore, HSPR staff recommends that the Board initiate rulemaking to begin the process of re-adopting the rule.

Mr. Bridgham made a motion to begin rulemaking for the He-Hea 1200 rule. Mr. Brannen seconded the motion and all Board members voted in favor, unanimously approving the motion. HSPR staff will present an initial proposal of the rule at the December 2014 meeting.

**12. Approve Initial Proposal – He-Hea 1602.10 Megavoltage Radiation Data Collection rule**

As a result of the discussion and determination of agenda item #11 relative to the re-adoption of the He-Hea 1600 rule, the Board took no action on this matter.

**13. Confirm 2015 Board Meeting Schedule**

Mr. Peck was asked to speak to this agenda item. Mr. Peck stated that HSPR staff seeks confirmation of the 2015 Board meeting schedule. While we have recommended continuance of the 3<sup>rd</sup> Thursday meeting date, changes can be made for the accommodation of Board members' schedules. He stated that finalization of the schedule may be difficult without the input of Mr. Spiess. Ms. Fox stated that the Board should agree to the proposed January 15, 2015 date in order to schedule appropriately; the other Board members agreed. Chair Grabowski stated that she will work with Mr. Spiess and Ms. Carrier to finalize the schedule and have it discussed at the December 2014 meeting.

**OTHER BUSINESS**

**14. Other Administrative Business**

➤ **Committee Reports:**

Rules Subcommittee: Chair Grabowski asked Mr. Bridgham to update the Board on the work of the Rules Subcommittee. Mr. Bridgham stated that the group met on November 13, 2014 and worked on the standards applicable to the CON process. He stated that the task is to determine what to ask for information and evidence, and that work is being done to cut out whatever makes too much work of the process. He noted that the group is working on an access standard that is currently too passive; the goal is to drive toward prevention and incorporating primary care services into the standard. He stated that the subcommittee is slated to meet after today's Board meeting.

State Health Plan: Chair Grabowski asked Mr. Peck to update the board on the work of this Committee. Mr. Peck stated that the Committee will next meet on Friday, December 5, 2014, from 12:30 p.m. to 3:30 p.m. at the NH Insurance Department. Ms. Fox confirmed that Dr. Lotz will make a presentation that day. Mr. Peck handed out a copy of the Commonwealth report as requested by Mr. Spiess, and reminded Board members and others in attendance that any recommendations for the December report to the NH Legislature be forwarded to HSPR Staff as soon as possible.

➤ **Next Meeting Dates:**

- Mr. Peck stated that the next Board meeting is scheduled for Thursday, December 18, 2014 at Dover Center for Health and Rehabilitation. Board members decided that the meeting will begin at 9:00 a.m. that day.

➤ **Other Business:**

Mr. Peck informed the Board of the following:

- A copy of the appeal by THI in the NH Supreme Court has been forwarded to Board members
- A copy of the updated He-Hea 100 rule has been provided to Board members for replacement in their binders.

Chair Grabowski then wished all a Happy Thanksgiving and asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Bridgham to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:35 a.m.

Signature:

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Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

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Date

## HEALTH SERVICES PLANNING AND REVIEW



December 18, 2014

9:00 a.m.

Board Meeting

Dover Center for Health and Rehabilitation

307 Plaza Drive

Dover, NH 03820

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

**Excused:** Mr. Paul Spiess

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Chair Grabowski brought the meeting to order at 9:05 a.m. and thanked the Dover Center for hosting the Board meeting that day. She requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day. Ms. Carrier did so, and announced evacuation procedures and other housekeeping items. Chair Grabowski then asked that anyone planning to testify to any of the agenda items come forward as staff introduces that item in order to better facilitate the meeting.

### CONSENT AGENDA:

#### 1. Approve November 20, 2014 Board Meeting Minutes

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck briefly stated that the Board has re-established use of the consent agenda, and that the only item on such was the Board meeting minutes from the November 20, 2014 Board meeting, which needed to be approved.

Mr. Bridgham then made a motion to approve the November 20, 2014 Board meeting minutes. Ms. Fox seconded the motion. All Board members voted in favor of the motion; thus, the Board meeting minutes were approved.

### OLD BUSINESS:

#### 2. Board Update – NSR Outstanding Conditions

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the report continues to be distributed at Board meetings and that, for this particular meeting, there were no new items to be discussed. He stated that the issue relating to Catholic Medical

Center is the subject of the next agenda item. Ms. Fox expressed her thanks to the HSPR staff for continuing to provide this list. Ms. Grabowski added that it is a good way to hold the Board and the parties responsible for action.

No other action was necessary for this agenda item.

**3. NSR 13-32 Catholic Medical Center, Manchester, NH, ED Renovations, \$2,132,241 and \$727,521 Equipment – Follow-up Discussion**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that at the last Board meeting, NSR 13-32, an NSR with condition from Catholic Medical Center (CMC) of Manchester, NH, was discussed relative to a 6-month extension, whereupon it was noted that this project had not yet begun. Because there was no representative from CMC at the meeting to discuss the project with the Board, the Board then requested that CMC be contacted to appear and speak to the status of its project. HSPR staff made such request and a representative is present today for such discussion.

The Board then recognized Ms. Sue Manning, VP of Strategy at CMC. Ms. Manning explained that the project was slated to begin in February 2014, but that it was part of a list of sequential projects, and as components of the other projects changed, this proposal was delayed. It was also put back out to bid and came back with a higher cost, which resulted in a re-review and re-phasing of the project. The project is in review now, with a goal of completing it without disrupting the operations of the ED and achieving it with an effective cost. Mr. Brannen asked for a clarification of the sequencing of the overall projects. Ms. Manning replied that it is a matter of assigning resources (i.e., personnel) to these projects in order to complete them. Mr. Bridgham asked if a June 2015 extension date would suffice for the project. Ms. Manning stated that CMC would know by then whether the project could be completed or would require a re-filing of the NSR request. Ms. Grabowski asked whether there has been an impact on ED volume as a result of the project delay. Ms. Manning stated that ED volume has increased and that patients of a higher acuity are being seen and treated.

Mr. Bridgham then made a motion to extend the project by 6 months, or June 2015. Mr. Brannen seconded the motion. All Board members voted in favor of the motion; thus, the extension was approved for CMC.

**NEW BUSINESS:**

**4. Approve Interim Rule – He-Hea 1600 Megavoltage Radiation Therapy Services**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that at the last Board meeting, it was determined that the Board re-adopt its He-Hea 1600 rules in order to keep them effective, but that because amendments would be necessary, an Interim He-Hea 1600 rule would be approved in order to minimize the time the rule would be expired. Thus the Interim rule has been drafted and is ready for approval. She noted that no public hearing is required by the Board for this rule – the purpose is to simply place the existing rule back into effect. Any necessary amendments to the rule will be established by the permanent rule and regular rulemaking – the next agenda item will establish this process. She added that once the rule is approved, it will be filed with the Joint Legislative Committee on Administrative Rules (JLCAR) and scheduled for a public hearing before that committee. Once approved, it can be adopted by this Board, probably in February 2015. She pointed out that the regular rule expired on December 16, 2014.

Mr. Bridgham made a motion to approve the Interim He-Hea 1600 rule. Ms. Fox seconded the motion. All Board members voted in favor of the motion and the rule was approved for JLCAR review.

**5. Approve Initial Proposal – He-Hea 1600 Megavoltage Radiation Therapy Services (Re-Adoption)**

**Discussion:** Ms. Carrier was also asked to introduce this agenda item. She stated that concurrent with the Interim rule, the He-Hea 1600 permanent rule is presented for approval of the Initial Proposal in order to begin the process of re-adopting this rule. Because the rule has expired, it is presented as a new rule; however, for ease of review, HSPR staff annotated by italicization the proposed changes. She then reviewed the changes appearing on page 2 (He-Hea 1602.01(b)); page 4 (He-Hea 1602.04(a)(5)); and pages 7-9 (He-Hea 1602.09). She stated that once the rule is approved, it will be sent for a Fiscal Impact Statement, and then scheduled for a public hearing before this Board.

Ms. Fox made a motion to approve the initial proposal of the rule as presented. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion and the rule was approved.

**6. NSR 14-35 St. Ann Rehabilitation and Nursing Center, Dover, NH, Facility Renovations, \$586,087**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He referred to the request from the St. Ann Home of Dover, NH for facility renovations totaling \$586,087, and the HSPR staff evaluation of the request. He stated that, pending receipt of additional information, HSPR staff concludes that this proposal is eligible for an NSR determination.

Mr. Mike Lehrman of NH Catholic Charities came forward at this time to explain the proposal. He stated that the project entails renovation of common areas including lobby space and the main corridors, as well as finishes. He noted that the dining room will be converted into restaurant-style space and that the nurses' station will be renovated to be more office-like. Mr. Bridgham asked if the additional information requested by HSPR staff had been received. Ms. Carrier asked if the short stay bed unit would be developed from the existing complement of licensed beds. Mr. Lehrman replied that it would be and there are no new beds being requested. Ms. Fox inquired as to the timeframe contemplated for the project. Mr. Lehrman stated that the proposal is slated to begin within the next 2 to 3 months, and completed within the next 5 to 6 months.

Ms. Fox then made a motion to approve the NSR request as presented; Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the proposal was approved as NSR.

**7. NSR 14-36 NH Catholic Charities, Construct 4 Nursing Bed Rooms at Warde Health Center, Windham, NH \$250,000**

**Discussion:** Mr. Lakevicius was also asked to introduce this agenda item. He referred the Board to the request from NH Catholic Charities (NHCC) for the construction of 4 nursing bed rooms at the Warde Health Center in Windham, NH. He stated that these 4 beds were approved for transfer in March 2011 from the Webster at Rye facility located in Rye, NH (both in Rockingham County) but have not yet been put into operation. He also noted that Webster at Rye should now have reduced their licensed complement by 4 beds due to the 2011 transaction; to date, this has not been completed. He stated that the proposal is eligible for an NSR determination but HSPR staff requests that the Board discuss the licensing issue before any final decision is made.

Mr. Lehrman remained at the table to discuss this issue with the Board. He stated that the transaction for the beds has been completed and that the facility is now ready to renovate to make them operational. He stated that he did not know the status of the license at Webster at Rye. Board discussion ensued; Mr. Bridgham stated that the issue of the Webster at Rye license should not be a condition of any decision on this proposal. Ms. Grabowski agreed and directed HSPR staff to separately inquire as to the Webster at Rye license. Mr. Bridgham then made a motion to approve the proposal as Not Subject to CON Review for the addition of 4 nursing bed rooms at a cost of \$250,000. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the project was approved as Not Subject to Review.

**8. CON LTC 11-01 Mt. Carmel Nursing Home, Manchester, NH, Facility Renovation, \$4,200,000 – Project over Budget and Statutory Allowances**

**Discussion:** Mr. Peck was asked to address this agenda item. Mr. Peck explained that CON LTC 11-01 for renovations as Mt. Carmel nursing home has been completed but that the final implementation report received from the facility contains addition errors that have resulted in the project cost exceeding the 15% statutory allowance and the allowable inflation amount by 1.6%, or \$85,970. He noted that this matter could result in a fine levied by the Board, although an option may exist to allow a change of scope; the required project completion date is 5 years from the date of approval, or June 16, 2016. As an option, the Board could choose to direct the applicant to withdraw its final implementation report and file a waiver of a change of scope for the amount exceeded, then re-file the implementation report. He stated that HSPR staff sees no real material harm with this process, due to the specific nature of the circumstances – the small percent over and the apparent and unintentional addition error. If the CON timeframe for completion had been exceeded, then this would not be a likely option, but Mt. Carmel is well within the CON deadline. He then stated that the applicant has made this request of the Board via a letter received by fax and now before the Board.

Mr. Lehrman remained at the table to discuss this issue with the Board. He apologized for the error and stated that Mt. Carmel has requested approval to withdraw its implementation report in order to file a change of scope. Mr. Bridgham made a motion accordingly. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the request was approved.

**9. NSR 14-34 Concord Hospital, Concord, NH, Request to Renovate Telemetry Unit, \$2,559,800**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He stated that Concord Hospital has submitted an NSR request for necessary renovations to its telemetry unit. HSPR staff concludes that, in and of itself, the proposal is likely eligible for an NSR determination, but is concerned about the declared previous expenditures made by the hospital, two of which result in an additional \$5,000,000 that was not reviewed by this Board. HSPR staff thus requests that Concord discuss this matter with the Board to determine whether such projects should have been taken together as an integrated project for CON review.

Ms. Erin Almeda, Director of Program Development at Concord Hospital, was recognized at this time. Ms. Almeda explained the details of the project and stated that it included the construction of private rooms as well as a nurses' station and space for family waiting. She stated that she is also a member of the Board's rules subcommittee and understands the Board's desire to capture costs expended that are determined as Not Subject to CON Review. Concord has responded accordingly via this NSR proposal. Mr. Brannen asked if any of the projects listed in the request are related. Ms. Almeda explained that the conversion to private rooms had not been previously contemplated, but all hospitals are now moving to this room configuration. She stated that for Concord, such conversion is now taking place with the timing of renovation projects on a unit-by-unit basis. As such, the proposals are not considered by Concord as integrated.

Mr. Bridgham noted that this introduces some difficulty for the Board in figuring how to flag projects that are separately brought forward that touch a larger hospital strategy such as the conversion to private rooms. Mr. Brannen stated that he believed that the conversion to private rooms is part of a larger strategic initiative. He questioned what would happen if the Board denied this request. Ms. Carrier replied that the hospital would have to utilize the annual August 1<sup>st</sup> RFA for proposals and encounter a delay in both approval and renovation that could impact services. Ms. Almeda stated that the conversion of rooms by unit does not meet the criteria for an integrated project under the Board's rules. Ms. Fox asked if Concord brought any of the previous projects to the Board for NSR review. Ms. Almeda replied no, and stated that Concord, and some other facilities, have "self-determined" that if a project costs less than the statutory threshold and does not require any licensure then no NSR is necessary. Board discussion ensued on the need to make rule amendments to make this issue clear. Ms. Carrier pointed out that the rule had been changed to require applicants to file an NSR application to determine if a project required CON review; previously, the rule language used the word "may" and allowed facilities discretion to make a self-determination that a project is not subject to CON review.

Mr. Bridgham asked Ms. Almeda if the telemetry unit in question must function in some particular way; hence the need for such renovations. Ms. Almeda replied that the unit is located in a 1980s section of the building and is tired. She noted that as a result of changing standards of care, and also a Lean initiative at the hospital, the manner in which care is delivered at the bedside must be changed in this unit. Ms. Fox asked about the timeframe to complete the project. Ms. Almeda stated that it would take about a year to complete. Board discussion then ensued on capital projects contemplated for the hospital. From the audience, Mr. Domenic Ciavarro of Concord Hospital discussed a list of infrastructure and maintenance projects being considered for the hospital, and stated that there is no capital plan for investiture developed by the Board of Trustees.

Mr. Bridgham then made a motion that the project was Not Subject to Con Review. Ms. Fox stated that she would second the motion with a condition that Concord submit a copy of the construction contract for the project. Mr. Bridgham accepted the condition. All Board members voted in favor of the motion and the project was approved as not Subject to CON Review with condition.

**10. NSR 14-32 Mary Hitchcock Memorial Hospital, Lebanon, NH, Replacement of DaVinci® Surgical System, \$2,500,000 and Purchase Second System, \$1,800,000**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier referred the Board to the NSR request from Mary Hitchcock Memorial Hospital (MHMH) for the replacement of its DaVinci® Surgical System, along with a plan to acquire a second system. She noted that the DaVinci units have heretofore not been subject to CON review, although the equipment costs are clearly in excess of the statutory \$400,000 threshold. Part of the reason has been that the units have been leased and the previous version of the statute was unclear as to how equipment leases should be handled. Another reason has been that hospitals “self-determined” that such equipment fell outside of review because it has not been named by regulation, like MRI or PET. The Board at that time determined that it would not write any regulations for such. She stated that at this time the Board must decide how to proceed with this request – one option is to determine this proposal as NSR and then initiate rulemaking for future units; or it can determine that such equipment should be subject to review and hold back this decision until rules can be written. Ms. Carrier noted that the Board might want to consider some sort of general equipment rule in order to more easily address the need to review future diagnostic and therapeutic equipment that exceeds the statutory cost threshold. She stated that, for this particular request, the replacement unit portion can likely be determined as NSR as it follows the statutory requirements, but the acquisition of the additional system requires discussion.

Mr. Stephen Marion, representing MHMH, came forward at this time and was sworn in by Ms. Carrier. He then explained the system and how it is used for surgery. He also outlined for the Board the history of its existence and its use in the State and how previous Board membership determined that it was not subject to CON review.

Mr. Brannen stated that the Board should write some sort of “robotics” rule in light of the system cost and corresponding maintenance fees. He also noted a *Wall Street Journal* article that raised issues of quality of care regarding robotic surgery and lack of surgeon experience. He stated that the rule would help govern quality of care issues. Mr. Marion responded that there has been no history of laparoscopic equipment rules for Board review but that was not to say that there should not be regulation. He noted that training varies widely on the unit, with as little as 2-days for some physicians to as long as residency specialization for others. He stated that the manufacturer, Intuit, has chosen MHMH as one of 5 sites countrywide for use of the systems to develop research and data.

Ms. Fox asked HSPR staff if there was an existing definition of “diagnostic or therapeutic equipment” in the statute. Ms. Carrier replied that there was none, which allows the Board to determine its own definition via rulemaking. Mr. Marion stated his support of rulemaking, but requested that the Board determine that it apply to future projects and not the MHMH proposal on the table. Mr. Bridgham stated that he had no issue with the request for the replacement unit, but that the statute obligates the Board to do something by way of regulation, either as general or specific rules. Attorney John Malmberg, representing himself, stated that such equipment came into use under the lease provisions of the statute, but with the statute changes

it must now be subject to CON review. Ms. Fox and Mr. Brannen agreed with Mr. Bridgham that new systems must be subject to CON review. Mr. Brannen expressed reluctance over creating a delay to MHMH as a result. Mr. Marion stated that the time needed to draft and approve a rule, then issue an RFA to receive applications, and then schedule it for a public hearing would take a minimum of 18 months and prove devastating to MHMH. Further Board discussion ensued on the process necessary for regulation. Mr. Marion questioned how many hospitals that now operate a DaVinci system would likely require more than one. Ms. Fox suggested that HSPR staff perform a survey for that purpose. Chair Grabowski agreed that the Board should perform some due diligence on this issue and educate itself on these systems and the utilization of such. She then asked the Board members how they wanted to proceed on the request in front of it. Mr. Bridgham made a motion to approve as NSR the replacement Da Vinci unit, and take no action on the request for the new unit. Ms. Fox seconded the motion. All Board members voted in favor of the motion, thus approving as NSR the replacement unit, but not the additional unit.

The Board then discussed the need for information in order to begin drafting rules for such equipment. It then directed HSPR staff to extend an invitation to hospitals and ambulatory surgery centers to speak at the February 19, 2015 meeting, and also to obtain some utilization data from such facilities on current and future planned use of this equipment.

## **OTHER BUSINESS**

### **14. Other Administrative Business**

#### **➤ Committee Reports:**

State Health Plan: Chair Grabowski asked Mr. Peck to update the board on the work of this Committee. Mr. Peck stated that the Committee had met on Friday, December 5, 2014, and from that Mr. Spiess finalized the progress report he wished to provide to the Legislature, subject to Board approval. Mr. Brannen recommended suggested language changes to pages 7 and 8 of the report. After some discussion, the Board agreed to changes at page 7, fourth paragraph, from “do not presently exist” to “may not presently exist.” Also at page 7, the last bullet, changes were made to include the term “state wide data **sharing** system” and remove the term “universal.”

Mr. Bridgham then made a motion to accept the report as amended. Mr. Brannen seconded the motion. All members voted in favor of the motion and the report, as amended, was approved.

Rules Subcommittee: Chair Grabowski asked Mr. Bridgham to update the Board on the work of the Rules Subcommittee. Mr. Bridgham stated that the group would not meet after today’s meeting due to the limited time available in this meeting room, but that he would get together with HSPR staff to determine 2015 meeting dates.

#### **➤ 2015 Board Meeting Schedule:**

- Mr. Peck stated that unless there were issues with the proposed 2015 Board meeting schedule, it will stand as the official schedule. No board members opposed the schedule.

➤ **Next Meeting Dates:**

- Mr. Peck stated that the next Board meeting is scheduled for Thursday, January 15, 2015. St. Joseph Hospital of Nashua, NH will be our host for this meeting.

Chair Grabowski then wished all Happy Holidays and asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Bridgham to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:04 a.m.

Signature:

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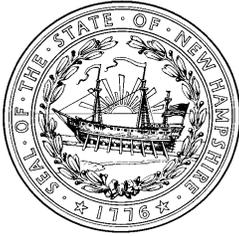
Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

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Date

## HEALTH SERVICES PLANNING AND REVIEW



January 15, 2015  
9:30 a.m.  
Board Meeting  
St. Joseph Hospital  
Carl Amelio Room  
172 Kinsley Street  
Nashua, NH 03061

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:35 a.m. and thanked St. Joseph Hospital for hosting the Board meeting that day. She then announced that Mr. Paul Spiess had resigned from the Board. She requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day, and Ms. Carrier did so.

### CONSENT AGENDA:

1. Approve November 20, 2014 Board Meeting Minutes
2. NSR 14-37 Langdon Place of Nashua, Transfer of Ownership, \$0

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that the above-noted items were placed on the consent agenda because there are no potential bases for objections, and no party wishes to discuss or otherwise testify on either issue. Chair Grabowski noted a correction to page 6 of the minutes. Ms. Fox then made a motion to remove the November 20, 2014 minutes from the consent agenda. Mr. Brannen seconded the motion and all Board members voted in favor. Mr. Brannen then made a motion to approve the remaining item on the consent agenda. Ms. Fox seconded the motion, and all Board members voted in favor; thus, the NSR for Langdon Place of Nashua was approved.

Mr. Bridgham arrived to the meeting at 9:40 a.m. Mr. Brannen noted another correction to page 6 of the minutes. Ms. Fox then made a motion to approve the minutes as amended. Mr. Bridgham seconded the motion, and all Board members voted in favor; thus, the Board meeting minutes were approved as amended.

**OLD BUSINESS:**

**3. Board Update – NSR Outstanding Conditions**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that the report continues to be distributed at Board meetings and that, for this particular meeting, there were no new items to be discussed.

No other action was necessary for this agenda item.

**4. Follow-Up Discussion: 4 beds transferred from Webster at Rye to Warde Health Center**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that at the last Board meeting, NSR 14-36 regarding the transfer of 4 nursing home beds from Webster at Rye to Warde Health Center was approved. At that time it was unclear whether Webster had reduced its bed complement by 4 beds to reflect the transfer to the Warde Health Center. HSPR staff followed up with Webster at Rye and has confirmed that the beds are no longer reflected in their licensed bed count. No further action is required by the Board on this as a result.

**5. NSR 14-32 Mary Hitchcock Memorial Hospital, Lebanon, NH, Purchase Additional da Vinci® Surgical System, \$1,800,000 – Follow-up Discussion**

**Discussion:** Mr. Steve Marion, representing Mary Hitchcock Memorial Hospital (“MHMH”) came forward at this time. He stated that since the December Board meeting he met with some surgeons at MHMH who use the da Vinci® surgical system. He also reviewed the rules for Radiation Therapy (an equipment rule) and Cardiac Services (a “service initiation” rule). Mr. Marion believes a “service initiation” rule would apply to the da Vinci®. He also believes the Board has the right to state that additional equipment is not subject to review despite the law change. He stated that MHMH has teaching and research components, and has recruited an additional surgeon who would use the da Vinci® system. Mr. Marion stated that adding evening and weekend shifts for surgery would be more costly than adding a second da Vinci® system.

Mr. Bridgham stated his agreement with what the rule should be, but wants to hear from the other providers before making any decisions as to whether or how to regulate this equipment. Mr. Brannen stated that the Board has new requirements now, and rules need to be developed. He expressed concern about other organizations coming forward, and does not want the Board to set double standards. He stated that he is, however, sensitive to the fact that MHMH is a resource for the state, and that the Board needs to be careful about creating a barrier for them. Attorney John Malmberg came forward and stated that the additional equipment loophole has been closed, and the Board does not have the discretion to allow additional equipment without CON review. Therefore, a rule needs to be developed or the Board must formally declare that da Vinci® systems will not be regulated. Mr. Marion stated that the previous Board chose not to regulate da Vinci® equipment, and there are now at least 6 hospitals using this equipment. He stated that this Board could choose not to regulate this equipment, and that MHMH is not requesting rulemaking but that a second unit is not subject to review. Attorney Andrew Eills also came forward and pointed out that RSA 151-C:6 prompts the Board to promulgate a rule within a deadline if a request for rulemaking is made. Ms. Susan Palmer-Terry came forward and stated that MHMH’s volume provides a reason for the Board to regulate an additional unit.

Board discussion ensued, and it was agreed that the Board should meet with the Attorney General to discuss this matter. Accordingly, the MHMH matter was continued to the February 19, 2015 Board meeting.

## **NEW BUSINESS:**

### **6. Approve Initial Proposal – He-Hea 1200 Transfer of Ownership Rule and Form 301B**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that the Board approved the re-adoption of this rule at its November 2014 meeting, but HSPR Staff was unable to bring it forward in December 2014 due to other workload commitments. Ms. Carrier requested that the Board approve this rule and form so that it can be entered into the rulemaking process. She stated that once the rule is approved, it will be sent for a Fiscal Impact Statement, and then scheduled for a public hearing before this Board.

Mr. Bridgham made a motion to approve the initial proposal of the rule as presented. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the rule was approved.

### **7. Determine February 1, 2015 Inpatient Psychiatric RFA**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He stated that a Request for Applications (RFA) is due to be issued on February 1, 2015 for acute psychiatric inpatient beds pursuant to He-Hea 802.01(f). Accordingly, the Board must determine whether a need exists for additional psychiatric inpatient beds and issue an RFA pursuant to He-Hea 804.01. Mr. Lakevicius referred to the calculation performed by HSPR staff which shows a need for 149 additional beds. He also noted a condition the Board may want to consider, should the RFA be issued, that priority be given to an applicant proposing to locate additional beds in an acute care hospital to secure coordination of patient care, pursuant to He-Hea 805.01(b).

Ms. Fox then made a motion to issue the RFA with the condition suggested by HSPR staff; Mr. Bridgham seconded the motion. All Board members voted in favor of the motion; thus, the RFA will be issued.

### **8. NSR 14-38 Strafford County/Riverside Rest Home, Dover, NH, Request to Add 14 Hospice Beds (Hyder Family Hospice House), \$0**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She referred to the request from the Strafford County Commissioners on behalf of the Riverside Rest Home, the county nursing facility. The County seeks to re-establish a 14-bed hospice facility on land owned by the county where the nursing home is also located. This facility had been previously operated by other entities but closed in 2014. Strafford County is now looking to take this facility over and operate it themselves as an accompanying County service. Due to federal regulations, the facility will have to be licensed as a skilled nursing facility; however, the Bureau of Health Facilities Administration has agreed to place a “hospice only” restriction on the license to prevent the beds from being used for long term care. Ms. Carrier referred to several conditions recommended in the HSPR staff evaluation.

Representing Strafford County were Mr. Raymond Bower, Administrator of Riverside Rest Home, and Mr. George Maglaras, Chairman of the County Commissioners. Mr. Bower provided a history of the Hyder Family Hospice House, noting that it has been the only hospice house in the area. He pointed out that per CMS only a hospital or SNF can provide inpatient hospice services without providing home care services as well, which the County does not desire to do at this time. The County has tried to find another party to operate the facility, but has not been successful. The building is fully furnished and requires no modifications. The three area hospitals (Frisbie Memorial, Wentworth-Douglass and Portsmouth) support the County's proposal and are willing to help oversee the operations of the facility.

Board discussion ensued regarding billing and occupancy rates. Mr. Bower stated that the County will continue looking for another operator, but in the meantime wishes to operate the facility with a goal to at least break even.

Mr. Bridgham then made a motion to approve the proposal as Not Subject to CON Review with the following conditions:

- The beds will be restricted for use as hospice only per the license issued by the State and not used for any general long term care services;
- The County will furnish a copy of said license once issued;
- The County will notify the Board at any time that the license will be relinquished or revoked;
- Any transfer of ownership of the beds will require Board review for potential CON applicability.

Mr. Brannen seconded the motion. Ms. Fox suggested an additional condition that the County provide a copy of all additional contracts with in-home hospice providers upon facility operation. Mr. Bridgham and Mr. Brannen agreed to this additional condition. All Board members voted in favor of the motion and the project was approved as Not Subject to Review with conditions.

At this time (10:55 a.m.) Chair Grabowski called for a 10-minute break. The meeting reconvened at 11:10 a.m. Chair Grabowski then announced that agenda item 11, the public hearing for Shields Imaging of NH, would be moved up on the agenda.

**11. Public Hearing:**

- **CON PET 14-05 Shields Imaging of NH, LLC, Establish Mobile PET Vendor, \$81,750**

**Discussion:** Mr. Peck was asked to address this agenda item. Mr. Peck stated that the Board would now hear the CON application submitted by Shields Imaging of NH, LLC for the establishment of a mobile PET vendor for the State. He noted that the HSPR staff analysis and checklist of outstanding items had been provided to the Board. HSPR staff had noted that, due to the cost of the project, it may not require CON review. However, the applicant has made arguments in favor of a CON award rather than an NSR determination. Mr. Peck stated that HSPR staff has no issue with these arguments, and respectfully requests that the Board discuss this issue with the applicant to determine the best course of action. Mr. Peck noted that HSPR staff recommends several conditions to CON or NSR approval which should be incorporated into the Board's decision.

Representing Shields Imaging of NH were Lou Masella, Vice President of Business Development, Peter Ferrari, Chief Strategy Officer, Sarah Modine, Finance Director, and Donald

Crandlemire, Esquire, Legal Counsel. Mr. Ferrari provided some background on Shields Health Care Group, referring to the PowerPoint slides being shown. Mr. Masella then reviewed some specifics relating to the CON application, again referring to the PowerPoint slides. Mr. Bridgham expressed his concern with the project, since Shields has no partner with whom to provide the service. Attorney Crandlemire responded that mobile PET is a pro-competitive service, and Shields cannot enter into agreements until it is permitted and licensed. Mr. Bridgham then had to leave the meeting at 11:30 a.m.

Chair Grabowski then opened the hearing for public testimony. Mr. Mark Taylor, CEO of New England PET Imaging, stated that he agreed with Mr. Bridgham's concerns. He stated that there is already excess capacity for mobile PET services in the state; thus, there is no need for another provider. He also stated that Shields' costs and charges are actually higher than current providers; thus, Shields' presence could increase health care costs for this service.

Attorney John Malmberg, representing New Hampshire Imaging Services ("NHIS"), then addressed the Board. He provided the history and background on NHIS, which was created in 1985 to provide mobile MRI services, and obtained a CON for mobile PET services in 2001. Attorney Malmberg stated that NHIS serves several critical access hospitals in addition to the larger hospitals; Shields has no plans to serve these hospitals. Attorney Malmberg stated that Shields needs a CON as opposed to an NSR, and should be subject to all of the proposed conditions.

Attorney Matthew Lapointe and Mr. Stephen Randall, representing Insight-Premier, then addressed the Board. Attorney Lapointe acknowledged that the rule is pro-competitive, but stressed that an applicant must demonstrate need. He noted that HSPR staff has indicated in past evaluations that there is sufficient mobile PET capacity in the state. Mr. Randall added that Shields' proposed rates are higher than reimbursement to the existing providers.

Mr. Ferrari then stated that the service is pro competitive, and Shields' model is the same as the NHIS model; it will lease the equipment and then provide the service to the facilities. Attorney Crandlemire added that Shields has satisfied all of the rules to receive a CON.

Chair Grabowski then closed the hearing at 12:15 p.m., and the Board deliberated on the Shields proposal. Mr. Brannen stated that Shields' rates are high, which could drive up costs. Ms. Fox then made a motion to approve a CON for Shields Imaging of NH with the conditions noted at page 21 of the HSPR staff analysis. Chair Grabowski seconded the motion. Ms. Fox then amended her motion to add a condition that Shields document the current value of the equipment so that it is on the record. Chair Grabowski approved the amendment. She then suggested an amendment to require Medicare and Medicaid participation for facilities contracting with Shields. Ms. Fox agreed to this amendment. Chair Grabowski and Ms. Fox then voted in favor of the motion. Mr. Brannen voted against the motion. Thus, by a 2 to 1 vote, the CON was approved with conditions.

**9. NSR 14-39 Elliot Hospital, Manchester, NH, Replace and Relocate Two Radiation Therapy Units to River's Edge, \$6,000,000 Equipment/\$1,000 Legal Fees**

**Discussion:** Attorney Robert Best and Ms. Jennifer Driscoll, representing Elliot Hospital, came forward at this time. Attorney Best stated that Elliot seeks to replace and relocate its two active hospital-based radiation therapy units from the hospital campus to the River's Edge campus, both located in Manchester, NH. The existing units (2 active and 1 backup) would then be removed. This request is part of the larger CON proposal, AC 14-07, to relocate the entire

radiation therapy service to River's Edge. This CON application is currently undergoing completeness review by HSPR staff. Attorney Best stated that Elliot requires assurance that the replacement equipment can be purchased in order to proceed with the Certificate of Need; one cannot be done without the other. Should the Board not determine the replacement as NSR, then Elliot would need to add the equipment costs to the CON application within a short window of opportunity that allows applicants to amend an application.

Mr. Brannen asked if the clinicians favor this relocation. Ms. Driscoll stated that New Hampshire Oncology - Hematology Associates, which provides medical oncology services, favors the new location and will lease space there.

Mr. Brannen then made a motion that the project is Not Subject to CON Review, with the following conditions:

- Approval of the NSR is contingent upon approval of CON AC 14-07. The requisite time for completion of the equipment replacement will begin on the date of the CON approval.
- EH shall submit final contracts and invoices for the equipment.
- EH shall certify that the existing units have been removed from service once the new units are placed into service.

Ms. Fox seconded the motion. All Board members voted in favor of the motion and the project was approved as not Subject to CON Review with conditions.

**10. NSR 14-03 ConvenientMD Urgent Care Centers, Request Change of Location from Amherst, NH to Manchester, NH, \$1,219,250/\$67,000 equipment**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck stated that ConvenientMD is requesting to change the location named in NSR 14-03, from Amherst, NH to Manchester, NH. He pointed out that other entities have received Board approval for location changes; however, these locations have all remained within the same town. In this case, Convenient MD seeks to change locations and towns entirely, with increased capital costs; this raises uncertainty as to whether this proposal can be considered as an amendment to the original NSR determination, or should be considered as a new request. One advantage for amendment is that it allows ConvenientMD to follow the statutory requirements in place at the time the project was heard; the proposal was approved prior to February 2014, meaning that the value of the lease does not have to be considered. Now, however, any new proposal is subject to the lease changes made in the statute. Should the Board decide that this is a new proposal, then the project could be subject to CON review; if so, rules would need to be promulgated.

Mr. Max Puyanic and Mr. Gareth Dickens, representing ConvenientMD, came forward at this time. Mr. Dickens first explained that there was an error in the construction cost reported in the application; the cost will be identical to the original location. He also confirmed that the landlord in Manchester is not an affiliate. Mr. Dickens stated that the lease in Amherst didn't work out, and they had to find a new address for the facility. He stated that the Manchester location is 15 miles away as the crow flies, and a 19-mile driving distance. He then reviewed the handout provided to the Board showing maps of the two locations and the patient overlap. Finally, Mr. Dickens stated that ConvenientMD participates with Medicare, Medicaid and commercial insurers, has reimbursement rates far lower than hospital EDs, employs 30 people at each site, and has received very positive feedback on its Press, Ganey surveys.

Mr. Brannen then made a motion to approve the location change. Chair Grabowski seconded the motion. Mr. Brannen voted in favor of the motion, while Chair Grabowski and Ms. Fox voted against the motion. Thus, by a 2 to 1 vote, ConvenientMD's request for a location change was denied.

## OTHER BUSINESS

### 12. Other Administrative Business

➤ Committee Reports:

State Health Plan: Chair Grabowski announced that Mr. Brannen has agreed to take over as chair of the State Health Plan subcommittee, and thanked him for doing so.

Rules Subcommittee: Mr. Bridgham had previously left the Board meeting; thus, there is no update at this time.

➤ CON Project Status Report:

- Mr. Peck stated that HSPR staff has provided its semi-annual CON Project Status report of all open CON projects and the costs associated with such.

➤ CON Nursing Home Bed Need Report:

- Mr. Peck stated that the 2015 Nursing Home Bed Need Calculation has been provided for consideration and review. He stated that despite a need for 1,188 long-term care beds in the state based on the current formula of 40 beds per 1,000 population aged 65+, a request for applications cannot be issued due to the moratorium established per RSA 151-C:4, III (a). He noted that an LSR has been received (LSR 15-0243) that seeks to lift the moratorium effective June 30, 2015. HSPR staff has responded to the request for a fiscal impact on such potential legislation, and will keep the Board updated.

➤ Next Meeting Dates:

- Mr. Peck stated that the next Board meeting is scheduled for Thursday, February 19, 2015, 9:30 a.m. at the NH Hospital Association, Concord, NH.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 12:57 p.m.

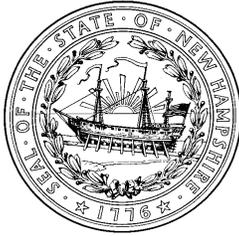
Signature:

\_\_\_\_\_  
Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



February 19, 2015  
9:30 a.m.  
Board Meeting  
NH Hospital Association  
Conference Room 1  
125 Airport Road  
Concord, NH 03301

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:32 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day; Ms. Carrier did so.

### CONSENT AGENDA:

1. Approve January 15, 2015 Board Meeting Minutes
2. Approve Findings of Fact, CON PET 04-05, Shields Imaging of NH, LLC, Establish Mobile PET Vendor, \$81,750
3. Request to Sever Acute Care CON Applications – AC 14-06 LRGHealthcare and AC 14-07 Elliot Hospital

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated that the above-noted items were placed on the consent agenda because there are no potential bases for objections, and no party wishes to discuss or otherwise testify on either issue. Mr. Brannen made a request to remove the minutes from the consent agenda for discussion. Ms. Fox then made a motion to approve the remaining two items on the consent agenda. Mr. Bridgham seconded the motion, and all Board members voted in favor; thus, the Findings of Fact for CON PET 04-05, and the request to sever the acute care applications was approved.

### Approve January 15, 2015 Board Meeting Minutes

**Discussion:** Mr. Brannen noted corrections starting at page 3 of the minutes relative to the spelling of his name, and requested that Staff make the appropriate corrections. He then made a motion to approve the minutes as amended. Mr. Bridgham seconded the motion, and all Board members voted in favor; thus, the Board meeting minutes were approved as amended.

**OLD BUSINESS:**

**4. Board Update – NSR Outstanding Conditions**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the report continues to be distributed at Board meetings and that, for this particular meeting, there were no new items to be discussed, although there will be updates for the upcoming meetings as deadlines for submission of material by NSR applicants are approaching.

No other action was necessary for this agenda item.

**5. NSR 14-32 Mary Hitchcock Memorial Hospital, Lebanon, NH, Purchase Additional da Vinci® Surgical System, \$1,800,000 – Follow-up Discussion**

**Discussion:** Chair Grabowski stated at this time that the Board would deliberate on the NSR request from Mary Hitchcock Memorial Hospital (MHMH) for the purchase of an additional da Vinci surgical system, and asked Ms. Carrier to introduce this agenda item. Ms. Carrier provided a review of the issue thus far:

- MHMH first requested that the purchase of an additional da Vinci surgical system was not subject to CON review in December 2014;
- The Board discussed the matter that day and tabled a decision until January 2015;
- The Board discussed the matter at the January 15, 2015 meeting and again tabled a decision pending advice from the Attorney General;
- The AG meeting took place and now the Board will take up the matter for deliberation;
- The cost of the equipment is \$1,800,000;
- The statutory threshold amount to determine whether diagnostic or therapeutic equipment is subject to CON review is \$400,000
- The statute change eliminating the opportunity for entities to acquire equipment via operating lease, or acquire “substantially similar” equipment, was adopted August 2013 with an effective date of February 2014;
- The request was made in December 2014, some months after the statutory change;
- Any entity that seeks to acquire equipment that is not yet regulated has a duty to request of the Board whether such equipment is subject to a CON review standard. The standard is either an He-Hea rule, or a statement of competition, i.e., that the equipment is not regulated;
- The absence of a standard is not a blanket approval for any such equipment; and
- A statutory process exists pursuant to RSA 151-C:6 that any entity can avail themselves of to ensure that the Board develop a standard within 120 days.

Ms. Carrier then stated that the question before the Board is whether the purchase of an additional da Vinci surgical system in the amount of \$1,800,000 is subject to CON review.

Chair Grabowski recognized Mr. Stephen Marion, representing MHMH. Mr. Marion stated that the hospital has hired a surgeon from Sloan-Kettering, who has arrived and is ready to use the additional unit. He stated that to deny the NSR request severely affects patient scheduling as the hospital will be forced to schedule night and weekend use of the existing unit. This will also affect patient treatment. He asked that the Board find the project not subject to CON review.

The Board then deliberated on the request. Ms. Fox stated that she wanted to make clear that her decision was not one about the value of the equipment system, but that it was a matter of

process. Chair Grabowski agreed. Ms. Fox then made a motion that (1) the request was subject to CON review and (2) that the Board begin rulemaking on such equipment. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion, and the request that the equipment system was not subject to CON review was denied.

## **NEW BUSINESS:**

### **6. NSR 14-33 Keady Family Practice – Establish Outpatient Center in Newport, NH, \$86,500**

**Discussion:** Mr. Peck was asked to introduce this item. He referred the Board to the attached request and additional supporting information from the Keady Family Practice of Charlestown, NH seeking to establish an outpatient center in Newport, NH, at the site of an existing medical practice. He noted that the Staff evaluation of the request identifies a need for some additional material as well as two conditions for approval. He stated that Staff has requested that a representative be at the meeting to discuss this application with the Board.

Chair Grabowski asked if there was any representative in the audience present to discuss this matter with the Board; no one stepped forward. Mr. Bridgham stated that he was somewhat confused by the request, and did not know what was intended by it. He questioned what category or standard of service would result. Ms. Carrier noted that the Staff has the same questions and cannot make any conclusion on the request at this time. Ms. Fox then asked whether the agenda item could be tabled and allow time for the applicant to appear later in the meeting. Mr. Bridgham made a motion to table the agenda item. Mr. Brannen seconded the motion and all Board members voted in favor. Thus, the agenda item was tabled to later in the meeting.

Since no representative arrived before the end of the meeting, the item was tables until the March Board meeting.

### **7. NSR 15-02 Valley Regional Hospital, Claremont, NH – Renovate Former Emergency Department Space to Establish Urgent Care Center, \$225,000 (\$25,000 equipment)**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He referred the Board to the enclosed request from Valley Regional Hospital of Claremont, NH for the renovation of former Emergency Department space to establish an urgent care center at a cost of \$200,000, of which \$25,000 is slated for equipment. He explained that the center will be located in existing space and run by the hospital; therefore, there is no need to complete the 301W form relating to leases. Because the cost of the project falls below 25% of the applicable statutory threshold, HSPR staff concludes that it is eligible for a Not Subject to CON Review determination. He also reminded the Board that a similar project came forward proposed by ClearChoice MD for a collaborative effort between it and Valley Regional Hospital, but that today's request was not that proposal. He then noted that hospital representatives are present to discuss this proposal with the Board. Ms. Carrier added that the Staff had requested an itemized equipment list, and that this had been received as a handout to the Board today.

Chair Grabowski recognized Mr. Tim Clark of Valley Regional hospital, who explained that the project is proposed to treat lesser acuity patients in a more appropriate setting. He stated that the equipment list reflects minor equipment as would be necessary in an urgent care facility. Mr. Bridgham asked Mr. Clark to describe necessary staffing. Mr. Clark stated that the center

would operate ten to twelve hours per day, Monday through Friday, and ten hours on Saturday. A Physician's Assistant and Medical Assistants will be on duty. He noted that an emergency room physician would also be available as needed. Mr. Brannen asked about projected volumes. Mr. Clark stated that the proposal would reduce ED volume by one third by shifting some 50 patients out of the ER to the urgent care center. Mr. Brannen asked whether the services at the urgent care center would be priced differently; Mr. Clark responded yes. Mr. Bridgham asked whether such diversion of flow from the ED would require a staffing change. Mr. Clark responded that there were no anticipated staffing changes and that the patient flow would be improved, thereby allowing current staff to handle.

Mr. Bridgham then made a motion that the request was not subject to CON review. Mr. Brannen seconded the motion. All Board members voted in favor and the request was declared not subject to CON review.

**8. NSR 13-40 BASC Imaging, Bedford, NH – Request to Amend NSR to Re-Locate Placement of Imaging Center on Existing Campus, \$695,250 (\$343,000 Increase)**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius referred the Board to the request submitted by BASC Imaging of Bedford, NH to amend NSR 13-40, which was issued in December 2013, in order to relocate the planned imaging center from 11 Washington Place to 20 Washington Place in the Bedford Medical Park, at the same campus. He reminded the Board that the proposal was for the establishment of an imaging center in Bedford, NH and will host an open, bore-less high field MR unit. He noted that the MR unit will be acquired via an operating lease and, at the time submitted, such equipment acquisitions via lease were allowed under the statute in place. He stated that BASC had confirmed that the service to be provided via the proposal remains the same – only the location will be changed. Mr. Lakevicius concluded that the cost increase for additional space still renders the project below the statutory cost threshold, and that the relocation within the same campus results in no other material change to the project.

Chair Grabowski recognized Mr. Ken Bartholomew, Esq., legal counsel, Ms. Sharon Worsham, business development/marketing for BASC, and Ms. Sue Majewski, COO for BASC. Attorney Bartholomew stated that as the project progressed the proposed space presented fit-up constraints, which prompted the need for the new location. He stated that the lessor remains the same; ASC Realty is an affiliate; and so the increase in costs have been included in the application. He stated that the increase in space will allow more imaging modalities.

Ms. Worsham stated that the new proposed location at 20 Washington Place make more sense from a patient standpoint; the building is more visible from the roadway and provides more space to allow for MRI, ultrasound and CT scanning; these last two are not subject to CON review. Chair Grabowski asked whether the equipment proposed with the project still remains the same. Ms. Majewski answered yes.

Mr. Brannen then made a motion that the request was not subject to CON review. Ms. Fox seconded the motion. All Board members voted in favor and the request was approved as not subject to CON review.

**9. NSR 15-01 Monadnock Community Hospital, Peterborough, NH, Request for Exemption to Expand Chemotherapy Treatment Space on Campus MOB, \$1,705,747 (\$245,747 Equipment)**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that NSR 15-01 has been submitted by Monadnock Community Hospital of Peterborough, NH as a request to confirm that the expansion of chemotherapy treatment space at the campus Medical Office Building is exempt from CON review under RSA 151-C:13, I(a). She explained that chemotherapy is an outpatient service, but is only provided by physicians as part of cancer treatment by appointment and referral only; such service is not offered as part of general outpatient services as part of a walk-in clinic, and is not open to the public. She noted that MOB space has been traditionally viewed as physician office space and has not been subject to CON review unless hospitals are utilizing space for services; in those cases, hospitals have allocated the cost of such space for the determination of CON review. She referred to the HSPR staff evaluation of this request and the attached NSR from 2006 pertaining to a similar project by Cheshire Medical Center of Keene. She concluded that based on the evaluation, the project can be considered as exempt from CON review.

Chair Grabowski recognized the representatives from Monadnock Community Hospital: Mr. Michael Flynn, Director of Pharmacy and Oncology; Mr. Michael Ward, Project Manager; Mr. Thomas Humphrey, Director of Engineering; and Mr. Richard Scheinblum, Chief Financial Officer. Mr. Ward introduced the project, and stated that a shift in demographics has prompted the need for the proposal with a forty percent increase in services over the past ten years. He noted that persons aged 65 and over is the population that uses the most cancer services, and that the current 7 infusion seats at the existing clinic are now at capacity. The proposal will add 2 additional seats and 1 infusion bed; 2 additional exam rooms and 3 additional bathrooms, along with a family room. All services will be located under one roof at the MOB, which does not require a license for operation. No additional staffing is planned. Mr. Ward stated that Monadnock enjoys a collaborative relationship with Cheshire Medical Center and Dartmouth-Hitchcock of Keene, NH, as well as the Norris Cotton Cancer Center.

Mr. Brannen asked for further explanation on the shift toward chemotherapy and away from radiation. Mr. Flynn responded that oftentimes the treatment is one of surgery, radiation and then chemotherapy. Monadnock does not perform any high end radiation or surgery, but does provide chemotherapy and this allows patients to stay close to home.

From the audience, Dr. Tom Sheldon stated that certain cancers are now treated and respond better to chemotherapy rather than radiation. He noted that chemotherapy is also used for palliative care.

Mr. Bridgham asked if the service was now a hospital service. Mr. Ward replied that it is offered in the hospital building now but that it will not be run differently from an operating standpoint when moved to the MOB. Mr. Bridgham asked whether there were any disadvantages with moving to a non-hospital space. Mr. Scheinblum replied that there will be no operational changes and that there will be an improvement in some quality measures.

Board discussion ensued. Mr. Brannen asked for a description of billing practices. Mr. Scheinblum stated that there will be no changes; patients will still be billed the same. He noted that funds have been raised from the community for the project and that to expand the service within the hospital would be more costly than adding it to the MOB setting. Further Board discussion ensued on billing practices and construction costs.

Ms. Fox then made a motion that the request to relocate and expand chemotherapy space at an MOB on the Monadnock Community Hospital campus is exempt from CON review. Mr. Brannen seconded the motion. All Board members voted in favor of the motion, and the proposal was declared exempt under RSA 151-C:13, I.

#### **10. Adopt Interim Rule He-Hea 1600 Megavoltage Radiation Therapy**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that the Interim He-Hea 1600 rule for Megavoltage Radiation Therapy is now ready for adoption by the Board, after the Joint Legislative Committee on Administrative Rules (JLCAR) voted to approve the interim rule at its January 16, 2015 meeting. She stated that the Board must now vote to adopt this interim rule in order to make it effective for 180 days and provide “coverage” while the permanent He-Hea 1600 rule makes its way through the rulemaking process.

Mr. Bridgham made a motion to adopt the interim rule. Ms. Fox seconded the motion. All Board members voted in favor and the interim rule was adopted.

#### **11. Public Hearing: He-Hea 1600 Megavoltage Radiation Therapy rules**

**Discussion:** Chair Grabowski then opened the public hearing on the He-Hea 1600 Megavoltage Radiation Therapy rules at 10:21 a.m. Ms. Carrier was asked to introduce this agenda item. She stated that at this time, the Board will hold a public hearing to receive testimony in support of and opposition to the proposed He-Hea 1600 Megavoltage Radiation Therapy rules. This rule expired and the interim rule, just adopted, provides temporary effective rule in order to capture data reporting and determine a need for additional services while this permanent rule completes the required rulemaking stages. She noted that the rule is essentially being adopted with little change but for the “new” section He-Hea 1602.09, Criteria, which did not exist in the prior rule. Such addition will improve the RFA and CON process by allowing an applicant to submit one application for construction and equipment acquisition; up to now, applicants have been forced to use the August 1<sup>st</sup> RFA for the construction portion of a radiation therapy project, and follow that with a second CON application for the equipment portion.

There was no public testimony taken at this time.

Ms. Carrier reminded the Board that no further action was required at this time while the time for submission of any written testimony took place; persons have until February 26, 2015 to provide testimony on the rule. She noted that the rule would return as a final proposal to be voted upon by the Board at the March 19, 2015 meeting.

At this time, Chair Grabowski called for a 10 minute break before proceeding with the next agenda item.

#### **12. Public Discussion: Development of Robotic Equipment System Rules**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that, as instructed by the Board, HSPR staff surveyed all NH acute care hospitals and ambulatory surgery centers to determine if they are existing robotic surgery systems users and, if so, the historical and projected volumes for such. For non users of such equipment, Staff asked whether they anticipated becoming a user within the next 24 months. Interested persons were asked to appear and speak to this issue. She noted that of the known current owners/operators of such equipment, two entities did not respond for volume data – Elliot Hospital of Manchester

and Parkland Medical Center of Derry. The data collected has been presented in a spreadsheet for discussion. She noted that two of the existing entities, Wentworth-Douglass Hospital of Dover and Mary Hitchcock Memorial Hospital of Lebanon, have expressed interested in obtaining additional units within the next 24 months. Finally, Ms. Carrier stated that some entities are here today and are invited to speak on the issue to the Board.

Chair Grabowski recognized Mr. Steve Marion, a consultant for Mary Hitchcock Memorial Hospital, but representing himself for this testimony. He stated that the Board does have authority to determine which equipment over \$400,000 it will review, and referred to digital mammography equipment that hasn't been reviewed by this Board. He stated that the Board could utilize some "administrative branch of NSR" review by asking for additional information during the NSR cycle, such as cost information relating to amortization and staffing, and quality information such as credentialing. He noted that other providers at the meeting today have not chosen to speak, which might be indicative of a minimal need for additional services. He stated that this equipment in particular does not have a competitive feel to it when compared to radiation therapy or cardiac services; those rules employ a utilization formula used to avoid duplication of such high profile services. The equipment in question here is not used for such elaborate or comprehensive services. He outlined the timeline for the development of a rule and noted that this was elaborate regulatory work for a limited number of providers.

Mr. Brannen noted that the Board must determine the standards to apply for review of this equipment and whether to specify that the rules apply to all robotic surgery or to a specialized type of equipment. Mr. Marion responded that equipment that is high cost with a high use rate should benefit from CON review but that the da Vinci is expected in treatment of certain cancers and also for research. He noted that there is not a lot of capital rate/use rate data for review.

Ms. Erin Almeda of Concord Hospital next spoke and stated that the hospital had no intent to speak today, not from lack of interest as implied by Mr. Marion, but because it believes that there is no way around rulemaking. She stated that Concord wants to be an involved party in the development of a standard, whether it be a rule or a statement on competition.

Mr. John Malmberg, Esq., representing himself, stated that he, too, takes issue with Mr. Marion's comments on 2 points: (1) the Board has no authority for any auxiliary NSR review for equipment of this type; and (2) the only choice is rulemaking, either by rule or a statement on competition. He stated that the Board should be diligent in the application of its statute, and that a rule on this equipment can contain volume and quality elements similar to cardiac surgery; the cardiac surgery rule can be used as a basis for the development of a robotic surgery rule.

Mr. Bridgham noted that the \$400,000 threshold has remained in the statute for a number of years and cannot be inflated; he hoped that this can be dealt with at some time. He questioned whether the equipment would be used to treat an expanded class of conditions, and how a rule would accommodate that. Attorney Malmberg stated that this would be resolved with a quality question in the rule relative to experience. Mr. Bridgham stated that the Board has not heard from any professionals regarding the operation and utilization of such equipment and would appreciate some discussion on this.

Mr. Andrew Eills, Esq., representing himself, brought two issues for Board consideration: (1) the \$400,000 threshold is an anomaly and should be given future consideration for increase; and (2) Rulemaking is a role and function of the Board – the Board should be proactive on both issues.

Ms. Michelle Hansen, Manager, Strategic Planning and Ms. Christine Hamill, Assistant Vice President, Surgical and Outpatient Services, representing Wentworth-Douglass Hospital (WDH)

of Dover, NH, came forward next. Ms. Hamill stated that there were only 38 days in 2014 when WDH did not perform robotic surgery. She stated that the hospital is close to maxing out the existing unit it has. She noted that some services have been reduced as a result of this capacity. She stated that WDH surgeons using the equipment should be able to speak to the Board in more detail regarding its use. Mr. Brannen inquired as to the surgery volume. Ms. Hamill stated that they are 10% over budget. Mr. Brannen asked whether this was from local demand or from other areas. Ms. Hamill replied that it was a case of both.

Mr. Bridgman stated that when comparing cases, WDH and MHMH have grown in volume while the others have not and asked what explained this difference. Ms. Hamill stated that the hospital has not done any advertising and that the interest is word of mouth and also surgeon excellence. She noted that Dover is not a big community, although it does have a relationship with Mass General, and that a surgeon travels up to perform surgeries. She noted that scheduling is now an issue and that block time for surgeons must be balanced with surgeon office time, often resulting in scheduling based on case severity.

Ms. Hansen concluded by stating that WDH is more than willing to participate in rulemaking with the Board on the development of a rule for robotic surgery.

Ms. Susan Palmer Terry spoke next and stated that WDH made a compelling case for rulemaking and the issues to be considered within a rule review, especially regarding numbers of procedures; number of available hours; and the data by ICD-9 code that should be available from the State. She noted that the law was written to account for what could not be prepared for, and that resulted in the \$400,000 standard. The law leaves it up to the Board to determine the details such as why and how and the quality measurements.

Ms. Gail Dahlstrom, Vice President of Facilities, representing Dartmouth-Hitchcock (DH), stated that DH would be very much willing to participate in the rulemaking process with the Board. She stated that the physicians are also interested in participating. She noted that volumes are increasing at the hospital as surgeons find more applications for use of robotic surgery. She also stated that there are expectations at DH as an educational facility that have led to increased demand. Recruitment also comes with similar expectations as surgeons come from other institutions where such surgery is available. Demand is also seen as the hospital runs a noted cancer treatment center. Ms. Fox asked whether this was a case of patient demand or physician preference. Ms. Dahlstrom replied that it is both patient need and demand, especially for complicated surgeries – use of the equipment leads to lower lengths of stay and an improved recovery rate.

Mr. Marion made a concluding statement that the review process can be simplified as he suggested and that the statute allows for such.

No other discussion was given on this matter. As Ms. Fox had included the need for rulemaking on the robotic surgery equipment in her motion on agenda item #4, there was no further action taken by the Board. The issue will now be taken up by the Board's rules subcommittee.

## OTHER BUSINESS

### 13. Other Administrative Business

#### ➤ Committee Reports:

State Health Plan: Chair Grabowski asked Mr. Brannen to provide the Board an update on this topic. Mr. Brannen stated that work would need to begin again on the State Health Plan, most likely by the end of March. He noted that the Board had previously heard from other entities on health planning, and that his intent is not to displace or override this work; but that the information can be used to establish patterns and identify gaps, which can then be reviewed. He stated that the biggest issue is how to perform such work with or without any resources. Chair Grabowski thanked Mr. Brannen for taking on this important work and providing the leadership to move the project forward.

Rules Subcommittee: Chair Grabowski asked Mr. Bridgham to provide an update on this topic. Mr. Bridgham stated that rulemaking work must begin again and requested those in attendance who have been part of the subcommittee to remain after the meeting to schedule meeting times.

#### ➤ **Update on HB389**

- Mr. Peck stated that HSPR staff is watching this bill, which lifts the moratorium on nursing home beds effective June 30, 2015. Ms. Fox stated that she had seen that the bill was slated for an Executive Session, but did not know the outcome.
- Mr. Peck noted that HSPR staff is also watching SB214, dealing with 10 nursing home beds allotted to Franklin Regional Hospital/LRGH, and also SB224, which allows for funding to Valley Regional Hospital to develop a 10-bed involuntary psychiatric unit, also known as a DRF.

#### ➤ **Next Meeting Dates**

- Mr. Peck stated that the next Board meeting is scheduled for Thursday, March 19, 2015, 9:30 a.m. at the NH Hospital Association, Concord, NH. He noted that the Board will conduct two public hearings that day. He also requested that the Board take the three CON applications now in formal review in order to be prepared to hear two of them at the next meeting.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:40 a.m.

Signature:

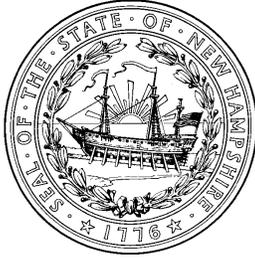
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Debra Grabowski  
HSPR Board Chair

Approved by  
HSPR Board:

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Date



## HEALTH SERVICES PLANNING AND REVIEW

March 19, 2015  
9:30 a.m.  
Board Meeting  
NH Hospital Association  
Conference Room 1  
125 Airport Road  
Concord, NH 03301

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:30 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day; Ms. Carrier did so.

### CONSENT AGENDA:

1. **Approve February 19, 2015 Board Meeting Minutes**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated the minutes of the meeting are complete and require Board approval; this is the only item on the consent agenda. Mr. Bridgham made a motion to approve the consent agenda. Ms. Fox seconded the motion. All members voted in favor and the consent agenda was approved.

### OLD BUSINESS

2. **LTC 11-01 Mt. Carmel Nursing and Rehabilitation Center – Request for a Change of Scope \$1,381,484 (\$150,685 net amount exceeded for project completion)**

**Discussion:** Mr. Peck was asked to introduce this agenda item. He stated that Mt. Carmel appears today seeking approval of its Change of Scope request. He reminded the Board that this is in response to the request by the Board in December 2014 to answer to the finding that its final implementation report for CON project LTC 11-01 exceeded the 15% statutory allowance and the allowable inflation amount by 1.6%, or \$85,970. At that time, the Board accepted a request from Mt. Carmel to withdraw its final implementation report and file a Change of Scope for the amount exceeded, then re-file the implementation report; doing so would not materially harm the applicant as it had filed the implementation report well within the CON completion deadline. At this time, Mt. Carmel has supplied the requisite Change of Scope.

Mr. Peck stated that the project was originally approved at \$4,200,000. The total allowed amount including the 15% statutory allowance and inflation totals \$5,430,769. The final cost is reported as \$5,581,454, which is a difference of \$1,381,454; this is the amount to be approved as a Change of Scope. The project cost is thus \$150,685 (2.6%) beyond the 15% statutory allowance and the allowable inflation amount, a difference that is not significant. He noted that Mt. Carmel will still be required to re-file its final implementation report once this Change of Scope is approved.

Representing Mt. Carmel was Mr. Joe Bohunicky. He apologized to the Board for the mathematical error that led to the need for the Change of Scope, and explained that the renovation project was a difficult one to complete due to work within an occupied building. There were no questions from the Board. Mr. Bridgham then made a motion to approve the Change of Scope in the amount of \$1,381,454. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the Change of Scope was approved for Mt. Carmel Nursing and Rehabilitation Center.

**3. NSR 14-33 Keady Family Practice – Establish Outpatient Center in Newport, NH, \$86,500**

**Discussion:** Mr. Peck was asked to introduce this item. He stated that this request returns from last month when no representative appeared at the meeting to discuss this proposal with the Board. Ms. Carrier noted that HSPR Staff had been in contact with the applicant to appear today.

Chair Grabowski asked if there was any representative in the audience present to discuss this matter with the Board; no one stepped forward. The Board thus took no action on this request and it will remain tabled indefinitely.

**4. Board Update - NSR Outstanding Conditions and Project Status**

- **NH Open MRI/Minglewood, MRI Services in Bedford, NH**
- **NSR 14-11 ClearChoiceMD, Establish Urgent Care Center in Hillsborough NH**
- **NH 14-12 ClearChoiceMD, Establish Urgent Care Center in Claremont, NH**
- **NSR 14-23 Fairview Nursing Home, Hudson, NH, Renovation Project**

**Discussion:** Ms. Carrier provided an update on this agenda item. She stated that NSR 14-11 and NSR 14-12 were due to expire or be completed by March 18, 2015 and that she had received documentation from ClearChoice that it was taking no further action on these two locations. Therefore, no Board action is required for these two projects. She then stated that the NH Open MRI project has been open since 2010 and that the Board granted an extension last fall with a completion date of March 2015. The applicant was mailed a reminder but no response has been received. No representative was present to speak to the issue. Therefore, the Board took no further action on this project and it is now considered expired. Ms. Carrier then stated that she had not received any response from Fairview Nursing Home on the status of the project, but that this proposal was not in danger of expiration. She stated that she would contact the facility again to gain a status of the project. There was no need for any Board action on this item.

## **NEW BUSINESS**

### **5. Adopt Interim Rule He-Hea 1600 Radiation Therapy Services**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that the Interim He-Hea 1600 rule for Megavoltage Radiation Therapy is back before the Board for adoption due to a missed filing date on her part. Upon discovery, JLCAR allowed an extension for filing as long as the Board performed its adoption of the rule again. She stated that the vote to adopt this interim rule will make it effective for 180 days and provide “coverage” while the permanent He-Hea 1600 rule makes its way through the rulemaking process.

Mr. Bridgham made a motion to adopt the interim rule. Mr. Brannen seconded the motion. All Board members voted in favor and the interim rule was adopted.

### **6. Approve Final Proposal He-Hea 1600 Megavoltage Radiation Therapy Rule**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that the final text of the He-Hea 1600 Megavoltage Radiation Therapy rule has been set. There was no testimony that required amendment of the rule language, only comments from JLCAR that have been incorporated into the rule; she reviewed for the Board the annotations to He-Hea 1602.06 (d) and He-Hea 1602.08 (d). She also reviewed the necessary corrections to He-Hea 1602.09 discovered by HSPR staff to eliminate references to construction costs per bed, as they do not apply to this rule. Mr. Bridgham made a motion to approve the final proposal of the He-Hea 1600 rule. Mr. Brannen seconded the motion. All Board members voted in favor and the final proposal of the rule was approved.

### **7. Public Hearing – He-Hea 1200 Transfer of Ownership Rule**

**Discussion:** At this time Chair Grabowski opened the public hearing in order to receive testimony in support of and opposition to the rule. There was no public testimony. Ms. Carrier stated that the comment period will remain open until March 26, 2015 and then the final text of the rule will be prepared for approval by the Board at the April 2015 meeting. There was no need of any further action by the Board at this time.

### **8. Determine April 1, 2015 Ambulatory Surgery Center (ASC) RFA**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He referred the Board to the enclosed HSPR staff evaluation regarding the issuance of this RFA. He stated that HSPR staff has sent notices to existing providers alerting them of this opportunity to apply for a CON; at this point there has been no response. Ms. Carrier stated that the Board could vote to not issue the RFA unless or until a request to issue is received by March 27, 2015 (to allow time for posting of the public notice). Mr. Bridgham made a motion to this effect. Ms. Fox seconded the motion. All Board members voted in favor and the RFA will not be issued unless or until a request is received by March 27, 2015.

### **9. Determine April 1, 2015 Mobile MRI RFA (Data Report)**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. He referred the Board to the enclosed HSPR staff evaluation regarding the issuance of this RFA, as well as the staff’s data analysis presentation of Fixed and Mobile MRI in NH. He stated that, to date, no

letters of interest have been received, nor any other support expressed, in support of an RFA for Mobile MRI Services.

Mr. Bridgham noted some confusion with the varying costs and charges listed in the report and asked if there existed a definition of each. He questioned whether these figures being reported included both the professional and technical components. Ms. Carrier stated that the terms were not defined and that the staff would follow up with the providers on this concern. Ms. Fox then made a motion not to issue the RFA unless or until a request to issue is received by March 27, 2015 (to allow time for posting of the public notice). Mr. Bridgham seconded the motion. All Board members voted in favor and the RFA will not be issued unless or until a request is received by March 27, 2015 to allow time for posting of a public notice.

**10. Public Hearing: LTC 14-08 Dover Center for Health and Rehabilitation, Dover, NH, Refurbishment Project, \$2,869,800**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. He stated that at this time, Dover Center for Health and Rehabilitation of Dover, NH will present to the Board its CON application for repair and refurbishment of the facility. He stated that the HSPR staff analysis and checklist of outstanding were included in the Board packet, and that the checklist has been continually updated, with the latest copy handed out today. Mr. Peck stated that the applicant provided new projections based on increased Medicare census that VK Facilities has experienced at other facilities that underwent renovations but that these assumptions were not used in the previous projections; thus HSPR staff is seeing this information for the first time. He stated that these new projections show much improved financial performance. HSPR staff concludes that the issue remains partially resolved in order for Board discussion to take place on the purported financial projections.

At this time, Chair Grabowski opened the public hearing on CON LTC 14-08 and invited representatives to come forward. Representing Dover Center were Ms. Susan Palmer Terry, consultant; Mr. Scott Stone, Administrator; and Mr. Marvin Ostreicher, Mr. Kevin Pisco and Mr. John Russell of National Health Care Associates. Mr. Stone described the facility and the proposal and stated that Dover Center is a 112-bed facility containing a mix of short-term and long-term patients. He explained that the project is one of refurbishment to a "tired building." Mr. Russell explained that mechanical and electrical systems at the facility are good but that new interior finishes are needed. He stated that the front entrance of the building will be re-designed and that public and common areas will be upgraded. The project will add 15 single, short stay beds and 3 single long term beds within the allowable license; this will be accomplished by relocating offices. The project will take place in multi-phases.

Mr. Ostreicher then addressed the census and finance issues, and stated that the original proposal presented a conservative view. Based upon construction experience seen in sister facilities, it is estimated that Medicare census can be increased, resulting in a positive net income. Mr. Bridgham asked for a "walk through" of the capital lease and no interest loan. Mr. Ostreicher explained that the master lease is held with Ventas, Inc. Due to GAAP requirements, the cost of the lease with amortization and depreciation must remain "below the line." The capital lease does not affect the cash flow or P&L on the internal financial statements, but when costs reach a certain amount amortization and depreciation must be applied to the lease. Mr. Bridgham questioned whether the building would be purchased since the lease is a capital lease. Mr. Ostreicher stated that the building will continue to be leased, but it is considered a capital lease according to GAAP standards because of the length of the lease (30 years). Mr. Bridgham then questioned the nature of the interest free loan. Mr. Ostreicher explained that it is an "interest only" loan and stated that the interest would be added to the lease (7% annually

with no repayment of principal). Mr. Bridgham then stated that the facility's cash flow is now thin and remains so through the construction period. Additionally, occupancy cannot be increased during construction. Should an unexpected event occur, then resources will not be available to cover such an event; what is the back up plan? Mr. Ostriecher noted that it has a line of credit with VK in the amount of \$7 million, with backing of National Health Care Associates. He stated that the project is considered an investment to improve financial performance.

Ms. Fox stated her concern with the days cash on hand. Mr. Ostriecher pointed out that this will increase after the project is completed. Mr. Brannen asked whether there existed any major exclusions to Medicare coverage. Mr. Ostriecher stated that there are none. Mr. Stone explained that Dover Center is part of an ACO with Wentworth-Douglass Hospital and that the goal is to keep patients in the region. He noted that the ACO has recommended the refurbishment project. Further Board discussion ensued on the viability of the project.

There was no public testimony.

The Board then deliberated on the proposal. Mr. Bridgham made a motion to approve CON LTC 14-08 in the amount stated in the application, with the condition that the applicant supply a status of its line of credit with each filing of its required implementation report. Ms. Fox seconded the motion. All Board members voted in favor of the motion and the application was approved with condition.

#### **11. Public Hearing: AC 14-06 LRGHealthcare, Laconia, NH, Emergency Department Construction/Renovation, \$21,749,000**

**Discussion:** Mr. Peck was asked to introduce this agenda item. Mr. Peck stated that at this time, LRGHealthcare, d/b/a Lakes Region General Hospital, will present to the Board its CON application for construction and renovation of its Emergency Department. He noted that the HSPR staff analysis and checklist of outstanding items were part of the Board packet and the checklist has been updated to reflect responses made by LRGH. He stated that HSPR staff concludes that the items noted on the checklist have been resolved. The proposal is eligible for CON approval with the condition that LRGH provide documentation that the HUD is approved prior to commencement of the project.

At this time, Chair Grabowski opened the public hearing on CON AC 14-06 and invited representatives to come forward. Ms. Carrier performed a swear-in for those persons not present earlier. Representing LRGH were Mr. Henry Lipman, Chief Financial Officer; Ms. Kendra Peaslee, ED Director; Ms. Susan Palmer Terry, consultant; Mr. John Dunleavy, Facilities Manager; Ms. Deb Livernois, CON preparer; and Mr. John Weaver, Architect. Ms. Peaslee presented a pictorial overview of the project and explained the current issues in the hospital Emergency Department relating to patient privacy, infection control and efficiency of care. She noted access and hallway congestion issues, ramps that exacerbate safety, treatment rooms that are too small, and the use of curtains hampering patient privacy and infection control. She also noted that the behavioral health population does not have adequate space in which to be treated. She noted staff workplace issues and a lack of line of sight to patient areas. She also noted that radiology is not co-located within the ED, affecting treatment for critical patients.

Mr. Brannen asked for an explanation of LRGH as a regional resource. Mr. Lipman explained that the hospital is a regional resource for vascular and orthopedics as well as ENT. Ms. Palmer Terry noted that patient origin included Plymouth, Wolfeboro and North Conway. Mr. Lipman also noted utilization peaks around seasonal events in the Lakes Region. Mr. Brannen

asked about the need for additional resources during these times. Ms. Palmer Terry pointed out that the inclusion of a nurse navigator ensures that patients are receiving the correct services in the most efficient manner. She explained that the normile methodology was employed to determine the correct number of treatment rooms and that although fewer patients might be seen the acuity level requires more treatment time. Board discussion ensued regarding utilization across populations. Mr. Brannen noted that cost is an issue and that the hospital relies heavily on commercial payers; LRGH's prices are among the highest in the state now. Mr. Lipman explained that the market for financing is improved and that rates have come down; by refinancing LRGH's existing debt the project can be paid for. He stated that he recognizes charge sensitivity and that the payer mix for sister facility Franklin Regional Hospital is 78% Medicaid/Medicare/self pay, and 60% for the same payers at LRGH. He noted that fundraising is taking place for the project, and that LRGH is taking advantage of HUD taxable bonds. He stated that for overall pricing the NH Health Protection program was not built into the plan although it is supported; Medicare cuts could impact costs, and that LRGH is the only hospital in Belknap County.

There was no public testimony.

The Board then moved to deliberation on the application. After some discussion, Ms. Fox made a motion to approve CON AC 14-06 in the amount stated in the application with the condition that the applicant document that the HUD financing is approved prior to commencement of the project. Mr. Bridgham seconded the motion. During discussion on the motion, Mr. Brannen noted that he was not comfortable voting in favor of the motion based upon the responses made by LRGH; it is a large project for a hospital that size, and will affect its costs and charges. The Board then voted on the motion, and all Board members voted in favor. Thus, the project was approved.

Chair Grabowski then called for a 10 minute break.

**12. NSR 14-03 ConvenientMD, Request for Reconsideration to Amend Location of Urgent Care Center from Amherst to Manchester, \$760,000/\$107,000 Equipment**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier referred the Board to the request for reconsideration submitted by ConvenientMD, LLC and the HSPR Staff evaluation regarding this request. She then briefly outlined the points for Board consideration regarding the request: location specifics and Board action; the service area previously defined by the applicant; and the opportunity for the applicant to apply for the new location via NSR or CON application, as applicable. Mr. Bridgham asked for a clarification of the action by the Board. Ms. Fox stated that the vote was whether to hear the reconsideration request, and made a motion to re-hear the issue. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the re-hearing will take place at the April 16, 2015 meeting.

**13. Other Business**

➤ **Committee Reports:**

- **State Health Plan:** Chair Grabowski asked Mr. Brannen to provide the Board an update on this topic. Mr. Brannen stated that a meeting has been scheduled for Friday, March 27, 2015 beginning at 2:30 pm at the NH Insurance Department, 21 South Fruit Street, Concord, NH. He suggested that anyone attending take note of the following 4 documents: (1) the 2010 HB234 final report; (2) the Vermont

Allocation Resource Plan; (3) the Maryland State Health Plan; and (4) the December 2014 Progress Report on the NH State Health Plan produced by the Board. He stated that he will present a discussion at the meeting regarding the dedication of existing and future resources to the project.

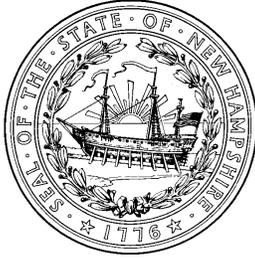
- **Rules Subcommittee:** Chair Grabowski asked Mr. Bridgham to provide an update on this topic. Mr. Bridgham stated that the subcommittee met on March 6, 2015 and is slated to meet again on March 26, 2015, 29 Hazen Drive, Concord, NH beginning at 10:30am. He also noted that a teleconference will take place at Concord Hospital on April 9, 2015 beginning at 3pm. He noted that at the 3/6 meeting, the group determined that its first priority is to develop rules for robotic surgery systems, followed by a re-adoption of the soon to expire Long Term Care rules. He noted that the rules for non-emergency walk-in clinics is on hold, and that the group should continue its work on the CON application standards begun last fall.
- **Update on HB389, SB 214, SB224, and HB2**
  - Ms. Carrier stated that HB389 was voted Inexpedient to Legislate (ITL);
  - Ms. Carrier stated that SB214, which dealt with the allocation of 10 nursing home beds to Franklin Regional Hospital/LRGH, was gutted and replaced with language to repeal the CON program effective July 1, 2015; this was defeated on a vote of 19 to 5. The original language will be added back to the bill;
  - Ms. Carrier noted that HSPR staff is following SB224, which allows for funding to Valley Regional Hospital to develop a 10-bed involuntary psychiatric unit, also known as a DRF. Ms. Fox added that the bill was referred to committee so action is not likely at this time;
  - Ms. Carrier noted that the HB2 items dealing with the extension of the CON program to 2018 and the addition of a one-time \$250,000 appropriation for the development of the State Health Plan, were voted down by the House Division III Finance Committee.
- **2015 Statutory Thresholds**
  - Mr. Peck stated that the 2015 statutory thresholds have been published as follows:
    - \$3,015,329 for acute care hospitals
    - \$2,010,218 for other health care facilities

Mr. Bridgham noted the third threshold of \$856,865 for ASCs in a small hospital service area
- **Next Meeting Dates**
  - Ms. Carrier stated that the next Board meeting is scheduled for Thursday, April 16, 2015, 9:30 a.m. at the NH Hospital Association, Concord, NH. She noted that the Board will conduct a hearing on the Elliot Hospital application, AC 14-07, on that day.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 11:40 a.m.

Signature: \_\_\_\_\_  
Debra Grabowski  
HSPR Board Chair

\_\_\_\_\_ Board Approval Date



## HEALTH SERVICES PLANNING AND REVIEW

April 16, 2015

9:30 a.m.

Board Meeting

NH Hospital Association

Conference Room 1

125 Airport Road

Concord, NH 03301

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:33 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day; Ms. Carrier did so.

### CONSENT AGENDA:

1. **Approve March 19, 2015 Board Meeting Minutes**
2. **Approve Findings of Fact, CON LTC 14-08 Dover Center for Health and Rehabilitation, Dover, NH, Refurbishment Project, \$2,869,800**
3. **Approve Findings of Fact, CON AC 14-06 LRGHealthcare, Laconia, NH, Emergency Department Construction/Renovation, \$21,749,000**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated the consent agenda includes three items: the minutes of the March 19, 2015 meeting; the Findings of Fact for CON LTC 14-08, and the Findings of Fact for CON AC 14-06. Ms Grabowski asked members if any items needed to be removed from the consent agenda for discussion; none were removed. Ms. Fox then made a motion to approve the consent agenda. Mr. Bridgham seconded the motion. All members voted in favor and the consent agenda was approved.

## OLD BUSINESS

### 4. **Board Update – NSR Outstanding Conditions**

#### **Discussion:**

➤ **NSR 14-23, NSR 13-05 Fairview Nursing Home Hudson, NH**

Ms. Carrier stated that she has been in contact with Fairview on the submission of its final costs for NSR 13-05; she reminded the Board that a condition to NSR 14-23 requires the costs for both projects to be tallied to ensure that they do not exceed the statutory threshold. She stated that Fairview has asked that it present its final costs at the May 21, 2015 Board meeting. As a result, the Board took no action on this item.

➤ **NSR 14-01 ConvenientMD, LLC Londonderry, NH**

➤ **NSR 14-02 ConvenientMD, LLC, Broad St. Nashua, NH**

➤ **NSR 14-05 ConvenientMD, LLC Portsmouth, NH**

Ms. Carrier stated that ConvenientMD has submitted documentation for the above 3 applications: an extension for Londonderry to provide time to deal with development and DOT issues; an extension and amended address for Nashua (same town); and an extension and amended address for Portsmouth (same town). She noted that the Board allowed the first extensions in October 2014 with the condition that the projects would expire if the dates were not met. She pointed out that this type of issue is germane to those NSR applications that were submitted in January 2014 ahead of the February 2014 statutory change, and were likely in the very beginning development phases. She stated that the proposals are in various stages of development and that the applicant was present to discuss each with the Board.

Mr. Gareth Dickens and Mr. Max Puyanik, representing ConvenientMD, LLC came forward at this time and discussed each project with the Board.

Mr. Puyanik explained that the location for NSR 14-01 in Londonderry, NH is a multi-tenant site and requires a new traffic signal that requires DOT involvement. He stated that ConvenientMD is committed to the site and will be an anchor tenant. After some further discussion, Mr. Bridgham made a motion to allow NSR 14-01 a 9-month extension. Ms. Fox stated that she would second the motion if an amendment was added to have the applicant provide a 3-month check in on the project status. Mr. Bridgham accepted the amendment. All members voted in favor of the amended motion and the request was approved.

Mr. Puyanik then explained that NSR 14-02 for Broad Street in Nashua, NH requires a change of location within Nashua as ConvenientMD was unable to complete a lease with the landlord at the initial location. As a result, the project will move to East Dunstable Road in Nashua. He stated that a letter of intent (LOI) has been signed for the new location. After some discussion, a motion was made by Mr. Bridgham and seconded by Ms. Fox to approve a 6-month extension and change of location for the project. All Board members voted in favor and the request was approved.

Mr. Andrew Eills, Esq., representing ClearChoiceMD, then asked to be heard regarding the next project for Portsmouth, NH. Chair Grabowski stated that she would recognize ClearChoice once the project was taken up.

Mr. Puyanik then explained that NSR 14-05 for Portsmouth, NH encountered a dispute with the landowners that resulted in the sale of the building. As a result, ConvenientMD will be relocating to a nearby building. He stated that they expect the lease to be signed within one week. Chair Grabowski then recognized Attorney Eills, who came forward and stated that the Portsmouth request results in a new lease and that the capital expenditure should be reviewed to determine if the project exceeds the statutory cost threshold and, if so, then the project is subject to CON review. Mr. Dickens explained to the Board that the ClearChoiceMD request for Portsmouth also required a location change that was approved by this Board, and that ConvenientMD, LLC is utilizing the same process.

Mr. Bridgham noted that location changes are not unique to these projects and that the Board has granted such, recognizing the time it takes to accomplish operation of such facilities. After some Board discussion, Mr. Bridgham made a motion to approve a 6-month extension and change of location for the project. Ms. Fox seconded the motion. After some discussion on the motion, all Board members voted in favor and the request was approved.

## **NEW BUSINESS**

### **5. Reconsideration Hearing: NSR 14-03 Convenient MD, LLC, Amend Location of Urgent Care Center from Amherst to Manchester, \$760,000/\$107,000 Equipment**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. She stated that at this time the Board will re-hear the request from ConvenientMD, LLC to change the location of its planned urgent care center from Amherst to Manchester under the existing NSR 14-03. She referred the Board to ConvenientMD's enclosed legal argument. She also noted that the applicant has revised the NSR application to include the updated costs. She also noted that HSPR staff provided a background evaluation of this request that includes points for consideration as the Board deliberates on this matter. She concluded that because the issue is one of process, HSPR staff has not made any recommendation on the request at this time.

Chair Grabowski then opened the re-hearing at 10:03 a.m. Representing ConvenientMD, LLC were Mr. Gareth Dickens, Mr. Max Puyanik, and Mr. John Malmberg, Esq. Attorney Malmberg handed out a copy of applicable RSA 151-C statute sections for reference. He stated that once the Board has determined that a project is Not Subject to Review (NSR) then it has no further regulatory authority over it. He reviewed the two statute sections pertaining to the determination of CON review – RSA 151-C:5, II and RSA 151-C:13, I(f). He stated that if a project is not covered by a standard and falls under the exemption section of the statute then the Board's authority is over. He stated that location is not material to any decision regarding NSR projects; if the cost is under the threshold then the project is NSR. Therefore, the Board should reverse its decision denying ConvenientMD a change of location from Amherst, NH to Manchester, NH.

Mr. Dickens then stated that ConvenientMD reduces the cost of care in the state. It has surveyed its patients by asking them where they would go if they did not have access to such a facility. The majority have stated that they would visit either a hospital-run urgent care center or a hospital ED. ConvenientMD estimates that it has saved over \$100M in costs by its offering of care. Ms. Beth Roberts, SVP, Harvard Pilgrim Healthcare, next spoke and stated that she served on the Board for 6 years and thanked the current members for their work. She stated that she supports the legal argument that the project is under the threshold and that location is irrelevant. She stated that these organizations offer access at a lower cost for patients.

Board discussion ensued relative to the issue of location. Ms. Fox stated that even if the location issue was set aside as a technicality, there is still value to it. Chair Grabowski stated that she understands the environment that these facilities work in, but that she struggles with the requirements of the statute. Mr. Bridgham stated that location does matter as costs are associated with real estate. He noted that all these requests have specified a market area as a 5-7 mile radius; this relocation changes the community to be served and results in a different impact. Attorney Malmberg replied that in this case the real estate has not affected the price. Therefore, the analysis is the same and the project remains as NSR. He pointed out that ConvenientMD had supplied maps to the Board in January showing overlap of the service area that should be considered. Mr. Brannen pointed out that he had a concern over the flurry of these NSR requests when they were first introduced in January 2014 and that the better way to review them was in a collective manner; he does not see that location matters. Ms. Fox noted that she is struggling with the argument that location is not relevant. Further discussion ensued.

There was no public testimony. Mr. Brannen then made a motion to approve NSR 14-03 for a change of location. Ms. Fox seconded the motion. Chair Grabowski called for the vote. Mr. Brannen and Ms. Fox voted yes; Chair Grabowski and Mr. Bridgham voted no. On a tie vote, the motion failed.

**6. NSR 15-03, Cheshire Medical Center, Keene, NH, Replacement of Fixed MRI Unit, \$150,390/\$2,129,358 Equipment**

**Discussion:** Mr. Peck was asked to introduce this agenda item. He stated that Cheshire Medical Center has submitted a request for a Not Subject to CON Review determination for the replacement of its fixed MRI equipment. HSPR Staff has also provided an evaluation of this request. Since the project meets the requirements of RSA 151-C:5, II(d)(2), HSPR staff recommends that this request be determined to be Not Subject to CON Review. He noted that a representative from Cheshire Medical Center is present to discuss this matter with the Board.

Chair Grabowski then recognized Mr. Paul Pezone, VP of Clinical Support Services, Cheshire Medical Center. Mr. Pezone explained that the original MRI unit was acquired in 2004 and it is tired and the time is appropriate to replaced it. He stated that the cost of the new equipment is slightly below the original cost after accounting for inflation. New technology results in increased throughput. Operating costs will be the same or lower. Mr. Brannen asked about operating capacity. Mr. Pezone stated that he estimates capacity at 400 cases per month, or 2 to 3 more per day. Ms. Fox noted that costs to the healthcare system will increase if more MRIs will be ordered. She then made a motion to approve the request as stated. Mr. Bridgham seconded the motion. All Board members voted in favor and the request was approved.

**7. Determine May 1, 2015 Radiation Therapy RFA**

**Discussion:** Mr. Lakevicius was asked to introduce this agenda item. He stated that, pursuant to He-Hea 1603.01, the Board must determine a need in order to issue an RFA for Radiation Therapy services effective May 1, 2015. He noted that letters of intent were due to this office by April 1, 2015, but none have been received. He referred to the HSPR staff evaluation concerning the need formula for additional units and the resulting data collected. Based upon the data received, and the lack of interest, HSPR staff recommends that the RFA not be issued at this time. Ms. Fox made a motion that the Board not issue an RFA for Radiation Therapy at this time. Mr. Bridgham seconded the motion. All Board members voted in favor of the motion and the RFA will not be issued. Ms. Fox thanked the staff for the report and noted that the data presentation was good; Ms. Carrier noted that the data is collected directly by HSPR staff.

## **8. Approve Final Proposal – He-Hea 1200 Transfer of Ownership Rules**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. She stated that the final annotated draft rule and 301B form are enclosed for review and approval. She noted that edits have been made as a result of JLCAR attorney review of the rule, and reviewed them with the Board. She also stated that the 301B form has also been annotated on the last page to remove language that is not applicable. She stated that an approval of the rule is needed to continue the rulemaking process. Mr. Bridgham noted that the form was previously being used for those transfers of ownership that were not subject to review, and that the form is now applicable for those transfers of non-Medicaid/Medicare facilities. Ms. Fox noted a change needed to the form to remove the requirement for a Medicare/Medicaid number. With that, she made a motion to approve the final proposal of the rule. Mr. Bridgham seconded the motion. All Board members voted in favor and the final proposal of the rule was approved.

## **9. Approve Initial Proposal – He-Hea 900 Long Term Care Rule (re-adoption)**

**Discussion:** Ms. Carrier was asked to introduce this item. She explained that the long term care rule is slated to expire in June 2015 and required re-adoption. She referred the Board to the crosswalk showing how the rule has been re-arranged for better flow, and explained that changes were made to the standards and criteria section. She then noted that upon discussion of the rule at the April 9, 2015 Rules Subcommittee meeting, it appears that more changes need to be made to the rule. Therefore, she requested that the item be taken off the agenda in order to work on the further amendments. Ms. Carrier explained that there is not harm with waiting for the next Board meeting to bring this rule back; as long as an initial proposal of the rule is received by JLCAR before the rule expires, the rule will be extended.

Mr. Bridgham agreed that the rule requires further review. The rest of the Board members agreed and there was no action taken on this agenda item.

Chair Grabowski called for a 10-minute break at this time.

## **10. Public Hearing: CON AC 14-07, Elliot Hospital, Manchester, NH, Construction at River's Edge Campus for Relocation of Radiation Therapy Services, \$31, 311,840**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. Mr. Peck stated that at this time the Board will hear the application submitted by Elliot Hospital for the re-location of its radiation therapy program from the hospital campus to the River's Edge campus; both are located in Manchester, NH. He referred the Board to the HSPR Staff Analysis, as well as the updated Checklist of Outstanding items which lists 3 recommended conditions, should the application be approved. They are: (1) Evidence of lease of the proposed medical oncology space within one year of project completion, or sooner, if available; (2) submission of the final transport policy; and (3) submission of documentation from the lender showing that the loan was approved prior to commencement of the project.

At this time, Chair Grabowski opened the public hearing at 11:10 a.m., and recognized the representatives from Elliot Hospital: Mr. James Woodward, President & CEO; Dr. Greg Baxter, MD, SVP Medical Affairs & CMO; Mr. Brad Smith, Director Facilities & Clinical Engineering; Mr. Rick Elwell, SVP & Chief Financial Officer; Dr. Peter Crow, MD, NH Oncology-Hematology; and Dr. Brian Knab, MD, Radiation Oncology Associates. Mr. Woodward introduced the project and explained the history of radiation therapy at Elliot Hospital. He stated that the plan is to replace 2 units that are 8 and 10 years old, respectively. The service itself will move to the River's Edge (RE) campus, which provides greater ease of access and brings the program close to other

oncologic offerings in place at RE now. He briefly reviewed the 2007 plan for development of the RE campus, which was mainly to re-locate all outpatient services and reduce congestion at the main hospital campus. He noted that the project has received support, both internally and from the business community, as well as legislatively from the City of Manchester. He stated that constructing space at RE allows the current radiation therapy program to continue operating until such time as it can be re-located.

Dr. Baxter spoke of the need to replace the current radiation therapy units as well as the need to bring all services together as a comprehensive cancer center; this will bring best practices together and enhance the patient experience. Dr. Knab described the current patient experience and the hardship encountered with radiation and chemotherapy 5 days a week coupled with a 7-8 week recovery period over 2 locations, weather and family member involvement. He stated that Elliot can do better for the patient by locating services under one roof.

Mr. Smith reviewed the site plan and planned space. He stated that the existing facility contains an ambulatory surgery center, a parking garage and a retail pharmacy. The garage contains 978 spaces and access is gained via a covered and heated bridge. The planned space will locate radiation therapy on the 1<sup>st</sup> floor; medical oncology on the 2<sup>nd</sup> floor; shell space for the 3<sup>rd</sup> and 4<sup>th</sup> floors; and mechanical space on the 5<sup>th</sup> floor.

Mr. Elwell reviewed the financials of the project, stating that of the \$31,300,000 cost, some \$22,600,000 will be financed through traditional tax-exempt bonds at 4.5% over 30 years. The rest of the project will be financed from internal equity.

Questions and discussion ensued by the Board. Mr. Brannen asked about the project cost and charge increases, noting a 70% increase already in FY14 as based on the All Payer Claims database. Mr. Elwell responded that the increase in charges is at 4.5% and most contracts have increases capped. He stated that the net increase in operating costs is only some \$312,000, which is a minimal impact on its bottom line. Mr. Brannen further inquired about the reason for the 70% increase. Mr. Elwell stated that Medicare and Medicaid have fixed fees that cannot be adjusted; there are fee schedules with at-risk plans. Mr. Brannen asked if the existing space will be utilized. Mr. Elwell responded that the existing space being vacated will not be used and that there are discussions now regarding a Master Facility Plan but there are no immediate plans for using the space. Further discussion ensued regarding charges to commercial payers Medicare reimbursement costs. Mr. Elwell reminded the Board that this is a project of a larger organization and that Elliot believes this is a reasonable project. He noted that the parking and infrastructure was built into the 2007 River's Edge project. He stated that the only other alternative would be to renovate and retrofit a 50-year old existing building at the hospital.

Mr. Brannen expressed his concern over the cost of the project as presented. Mr. Bridgham noted that the overall service is attractive due to the single location, and asked whether NH Oncology-Hematology (NHOH) has been involved in the planning for the medical oncology space as the intended tenant. Dr. Peter Crow stated that NHOH has been participating in weekly meetings concerning the consolidation of cancer services, and is committed to being a part of the project, but that the business arrangements have not yet been detailed. Mr. Bridgham noted that 2 floors are planned for shell space, and asked if both are committed to cancer-related services. Mr. Woodward replied that the space will be for clinical services but that the Master Facility Plan will aid in determining the full use of the space.

Further discussion took place on charges and negotiated rates and the need for the recommended condition relative to the lease for medical oncology space. Mr. Bridgham pointed out that the Board cannot levy a condition that won't be met until after project completion.

There was no public testimony on the proposal; therefore, Chair Grabowski closed the public hearing at 11:58 a.m. Ms. Fox made a motion to approve the project with the 3 conditions as recommended by HSPR staff on the 4/14/15 Checklist. Chair Grabowski seconded the motion. Discussion on the motion then took place. Mr. Brannen stated that due to his concern that the price point is not right for this project, he cannot vote for approval. Mr. Bridgham noted that 3 votes are required for project approval, and offered an amendment to the motion to remove the first listed condition relative to the lease of medical oncology space. After some discussion, Ms. Fox accepted the amendment. Chair Grabowski then called for the vote. Ms. Fox, Mr. Bridgham and Chair Grabowski voted in favor; Mr. Brannen opposed. Therefore, on a vote of 3 to 1 in favor, the project was approved with 2 conditions.

## 11. OTHER BUSINESS:

### ➤ Committee Reports:

➤ State Health Plan: Chair Grabowski asked Mr. Brannen to provide the Board an update on this topic. Mr. Brannen provided a recap of the 3/27 meeting and stated that the goal is to do as much as possible with existing resources. He stated that there will be no 4/24/15 meeting –the group will meet on 5/15/15 instead.

➤ Rules Subcommittee: Chair Grabowski asked Mr. Bridgham to provide an update on this topic. Mr. Bridgham provided a recap of the 4/9/15 meeting that included a conference call with surgeons to ascertain more information on robotic surgery. He noted that the group will also meet on 5/15/15 ahead of the State Health Plan meeting.

### ➤ 2015 Statutory Thresholds

- Mr. Peck stated that, due to a publisher error, the 2015 statutory thresholds have been corrected as follows:

- \$3,050,117 for acute care hospitals
- \$2,033,411 for other health care facilities

Ms. Carrier stated that these new figures will be distributed electronically to all interested persons.

### ➤ Next Meeting Dates

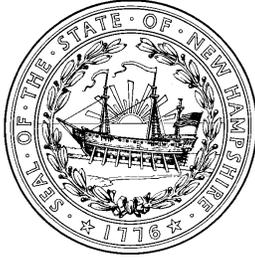
Ms. Carrier stated that the next Board meeting is scheduled for Thursday, May 21, 2015, 9:30 a.m. at the NH Hospital Association, Concord, NH.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 12:21 p.m.

Signature: \_\_\_\_\_

Debra Grabowski  
HSPR Board Chair

\_\_\_\_\_  
Board Approval Date



## HEALTH SERVICES PLANNING AND REVIEW

May 21, 2015

9:30 a.m.

Board Meeting

NH Hospital Association

Conference Room 1

125 Airport Road

Concord, NH 03301

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Robert Bridgham, Ms. Katja Fox, and Ms. Debra Grabowski

**Excused:** Mr. Tyler Brannen

**Staff Members:** Ms. Cindy Carrier, Mr. Paul Lakevicius, and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:33 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day; Ms. Carrier did so.

### CONSENT AGENDA:

1. **Approve April 16, 2015 Board Meeting Minutes**
2. **Approve Findings of Fact, CON AC 14-07, Elliot Hospital, Manchester, NH, Construction at River's Edge Campus for Relocation of Radiation Therapy Services, \$31,311,840**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. Mr. Lakevicius stated the consent agenda includes two items: the minutes of the April 16, 2015 meeting, and the Findings of Fact for CON LTC 14-07. Ms Grabowski asked members if any items needed to be removed from the consent agenda for discussion; none were removed. Ms. Fox then made a motion to approve the consent agenda. Mr. Bridgham seconded the motion. All members voted in favor and the consent agenda was approved.

### OLD BUSINESS

3. **Board Update – NSR Outstanding Conditions**

**Discussion:**

- **NSR 14-23, NSR 13-05 Fairview Nursing Home Hudson, NH**

Ms. Carrier stated that Fairview Nursing Home submitted the final costs for NSR 13-05 as required by the condition placed on NSR 14-23. She stated that the total cost of the two projects is \$2,008,762, which is under the threshold in effect at the time of

approval of \$2,034,428. Ms. Fox asked what the original proposed cost of NSR 13-05 was. Ms. Carrier stated that it was approximately \$1.4 million. Mr. Richard Leboeuf, Administrator of Fairview Nursing Home, came forward and stated that the reasons for the overage were (1) high ground water at the project site requiring a drainage system; (2) poor winter weather conditions; and (3) more site work than anticipated. No further Board action is required on this matter.

➤ **NSR 14-09, ClearChoiceMD, Pittsfield, NH**

Ms. Carrier stated that ClearChoiceMD has informed the HSPR office that it will not be pursuing this project; thus, no further extension was requested. Therefore, no further Board action is necessary.

## **NEW BUSINESS**

### **4. CON AC 12-02, Mary Hitchcock Memorial Hospital, Change of Scope Request of Laboratory Project, \$6,671,298 (Increase)**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. He stated that Mary Hitchcock Memorial Hospital (“MHMH”) submitted a Change of Scope request for needed additional renovations relating to its laboratory project, CON AC 12-02. The original approved amount was \$20,000,000; MHMH seeks an additional \$6,671,298 for renovations to the existing laboratory space determined as a result of a quality improvement assessment (LEAN). Mr. Peck stated that the proposal is likely eligible for a Change of Scope based upon the information provided.

Mr. Steve Marion and Ms. Gail Dahlstrom, representing MHMH, came forward to discuss its request with the Board. Mr. Marion stated that MHMH originally thought the changes resulting from the LEAN review could be completed within the allowed 15 percent plus inflation, but later realized it would be more expensive; therefore MHMH is requesting a Change of Scope. Mr. Bridgham asked what the public benefit of the project would be. Ms. Dahlstrom replied that the benefits include (1) operating efficiencies from redeploying staff; (2) improved quality control; and (3) furthering MHMH’s academic and research missions. Mr. Marion added that about half of MHMH’s lab revenue comes from referrals from other facilities, and the LEAN improvements will allow MHMH to remain competitive with the commercial labs in terms of price, quality and turnaround time.

Mr. Bridgham then made a motion to approve MHMH’s request for a Change of Scope. Ms. Fox seconded the motion. All Board members voted in favor and the request was approved.

### **5 NSR 15-04, Catholic Medical Center, Manchester, NH, Level E Renovation, \$2,712,531**

**Discussion:** Mr. Peck was asked to introduce this agenda item. He stated that Catholic Medical Center (CMC) of Manchester, NH submitted an NSR request for renovations to establish a 10 bed private room unit at the hospital. These will be the first private rooms at CMC. He stated that an amended request was submitted to include \$60,000 in financing costs since CMC has decided to finance the project with a bond issuance. Mr. Peck stated that the proposal is likely eligible for an NSR determination with condition, subject to additional information as noted in the staff evaluation of the request.

Ms. Sue Manning, VP of Strategy, Ms. Jennifer Torosian, Executive Director of Nursing, and Mr. Mark Yerrick, General Manager of Facilities and Environmental Services came forward to

discuss CMC's request with the Board. Ms. Manning provided some background on the project and responded to the issues raised by stating that (1) the \$15,000 in moving costs is earmarked for relocating the people currently in the space to be renovated; (2) this project is separate from the previous projects undertaken within the past 36 months; and (3) all project costs are considered capital expenditures according to GAAP. Ms. Torosian stated that the private rooms will reduce waiting time in the ED and help with isolation patients. Board discussion ensued relative to occupancy rates, patient charges and the long term plans for more private rooms. The CMC representatives stated that occupancy is at 85 percent of staffed beds; the private room differential is covered if medically necessary but if not the patient pays the difference; and that CMC would eventually like to achieve 95% private rooms but its landlocked location presents a problem.

Ms. Fox then made a motion to approve CMC's request at the amended cost of \$2,772,531, with the condition that CMC provide a copy of the construction contract prior to commencement of the project. Mr. Bridgham seconded the motion. All Board members voted in favor and the request was approved with condition.

**6. NSR 15-05, Southern NH Health System (Foundation Medical Partners), Medical Office Building and Non-Emergency Walk-In Care Center, \$812,979.96/\$72,769 Non-Regulated Equipment**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that Foundation Medical Partners, an affiliate of Southern NH Medical Center (whose parent is Southern NH Health System), submitted an NSR request for the development of a Medical Office Building (MOB) and related space for a non-emergency walk-in care center. She stated that while MOB's do not fall under CON review per se, space that is allocated for an otherwise reviewable service or program is scrutinized to determine CON review. Such is the case with the proposed Immediate Care facility. Accordingly, SNHHS has submitted an NSR application showing the allocation of costs that pertain to this facility, which is some 31% of the overall cost of the larger project. Ms. Carrier stated that the proposal is likely eligible for an NSR determination. She also referred to the addendum to the staff evaluation regarding other immediate care facilities established by SNHHS. Although SNHHS did not present these facilities to the Board, at the time they were established (4-5 years ago) they would have qualified for NSR determinations.

Mr. Scott Cote, VP of Facilities and Emergency Management, came forward to discuss SNHHS's request with the Board. He stated that this is the fifth site in New Hampshire, and that there is also a site in Pepperell, MA. He also stated that the NSRs from the past 36 months are not related to this project. Board discussion ensued relative to the floor plans, ratio of exam rooms to provider offices, expected patient volume, staffing and billing. Mr. Cote stated that the public benefits of the facility are (1) continuity of care; (2) lower cost of care; (3) convenient locations; and (4) connection to the SNHMC system.

Mr. Bridgham then made a motion to approve SNHHS's request. Ms. Fox seconded the motion. All Board members voted in favor of the motion and the request was approved.

**7. Adopt He-Hea 1600, Megavoltage Radiation Therapy Services Rule**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that this rule was approved by JLCAR at its April 17, 2015 meeting. The Board must now adopt the rule for filing and use. Mr. Bridgham made a motion to adopt the rule. Ms. Fox seconded the motion. All Board members voted in favor and the rule was adopted.

**8. Approve Initial Proposal – He-Hea 900 Long Term Care Services Rule (re-adoption)**

**Discussion:** Ms. Carrier was asked to introduce this item. She explained that this rule returns from the April 2015 meeting with further amendments for clarity. HSPR staff included a cross-walk of section changes, along with a working annotated copy of the standards and criteria section that has received the most attention. A vote to approve the initial proposal will allow this rule to enter the rulemaking process, and also extend the life of the existing rule (set to expire June 24, 2015) in order to allow any review of repair/refurbishment projects in accordance with the statute. Ms. Carrier noted that the standards for emergency applications are addressed in He-Hea 302, which should be amended as well.

Mr. Bridgham pointed out some minor edits on pages 33 and 34 of the rule. Ms. Fox then made a motion to approve the initial proposal with the edits as noted. Mr. Bridgham seconded the motion. All Board members voted in favor and the initial proposal was approved.

**9. Determine June 1, 2015 Mobile PET RFA**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. He referred to the HSPR staff evaluation regarding the issuance of this RFA and stated that to date, no letters of interest have been received. Therefore, HSPR staff concludes and recommends that no RFA be issued effective June 1, 2015 unless a request is received by May 26, 2015 (allowing sufficient time for posting of the public notice). Ms. Fox asked if utilization has been steady. Ms. Carrier replied that HSPR staff would perform a trend analysis on PET volumes.

Ms. Fox made a motion to not issue an RFA unless a request is received by May 26, 2015. Mr. Bridgham seconded the motion, and all Board members voted in favor.

**10. Determine June 1, 2015 Acute Care Bed Need**

**Discussion:** Chair Grabowski asked Mr. Lakevicius to introduce this agenda item. He referred to the HSPR staff evaluation regarding the need for additional acute care beds in the state. This analysis is required to be completed and approved effective June 1, 2015 pursuant to He-Hea 1006.01(d). Mr. Lakevicius stated that, based upon HSPR staff's analysis, a need of 88 beds is indicated. The RFA is scheduled to be issued on August 1, 2015. If the Board approves the need as calculated, this would pave the way for the issuance of the 8/1/15 RFA for new beds. Ms. Carrier added that HSPR staff would put out a notice to the acute care hospitals to see if there is any interest in responding to this RFA. She also noted that the RFA for acute care construction and renovation projects is due to be issued on 8/1/15, and HSPR staff would seek letters of intent for this RFA as well.

Ms. Fox reminded the Board that the need formula needs to be reviewed. Mr. Bridgham agreed, and stated that it is on the list of rules to review. He then made a motion that, based on the current formula, there is a need for 88 acute care beds. Ms. Fox seconded the motion, and all Board members voted in favor.

**11. OTHER BUSINESS:**

➤ **Committee Reports:**

- **Rules Subcommittee:** Chair Grabowski asked Mr. Bridgham to provide an update on this topic. Mr. Bridgham stated that the subcommittee has been working on the robotic surgery rule. The subcommittee had a discussion with several hospitals that

provide the service, and has developed a draft rule which is close to being finalized. The subcommittee will meet following today's Board meeting. Mr. Bridgham stated that he would like the initial proposal of the robotic surgery rule presented at the June 18, 2015 Board meeting. He also noted that Ms. Carrier has provided an agenda for future rulemaking.

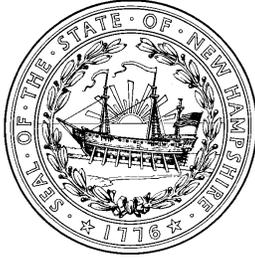
- **State Health Plan:** In Mr. Brannen's absence, Chair Grabowski asked Ms. Carrier to provide the Board an update on this topic. Ms. Carrier provided a recap of the 5/15 meeting, which included presentations by Neil Twitchell of the Division of Public Health Services on Public Health Networks and by Shawn LaFrance of the Foundation for Healthy Communities on New Hampshire's Hospital Community Benefits and Needs Assessment. The group then had a short discussion on non-emergency walk-in care centers. HSPR staff will be doing further research on that topic. Meetings are currently scheduled for June 25 and July 24 at 2:30 p.m. at the Department of Insurance.
- **Next Meeting Dates:** Ms. Carrier stated that the next Board meetings are scheduled for Thursday, June 18, 2015, Thursday, July 16, 2015 and Thursday, August 20, 2015. Mr. Bridgham will not be available for the June meeting and Ms. Fox will not be available for the July meeting. It was decided to hold the June meeting as scheduled and make a decision on the July meeting at that time. Ms. Carrier stated that she doesn't anticipate any major issues if the July meeting is skipped.
- **Update on Legislation:** Ms. Carrier referred to an amendment to HB 2 to tie the moratorium on nursing homes and rehabilitation facilities to the licensing statute upon repeal of RSA 151-C. From the audience Ms. Paula Minnehan of the New Hampshire Hospital Association stated that an amendment had been added to exclude CCRCs from the moratorium. She said she would follow up and provide a copy.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Mr. Bridgham and seconded by Ms. Fox to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 10:53 a.m.

Signature: \_\_\_\_\_

Debra Grabowski  
HSPR Board Chair

\_\_\_\_\_  
Board Approval Date



## HEALTH SERVICES PLANNING AND REVIEW

June 18, 2015

9:30 a.m.

Board Meeting

NH Hospital Association

Conference Room 1

125 Airport Road

Concord, NH 03301

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**Meeting called by:** Ms. Debra Grabowski, Chair      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Mr. Tyler Brannen, Ms. Katja Fox, and Ms. Debra Grabowski

**Excused:** Mr. Robert Bridgham

**Staff Members:** Ms. Cindy Carrier and Mr. Jeffery Peck

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Chair Grabowski brought the meeting to order at 9:32 a.m. and requested that Staff member Ms. Carrier perform a swear-in for those persons intending to testify before the Board that day; Ms. Carrier did so.

### CONSENT AGENDA:

#### 1. Approve May 21, 2015 Board Meeting Minutes

**Discussion:** Chair Grabowski asked the other Board members if there was any issue with the consent agenda; there were none. Ms. Fox then made a motion to approve the consent agenda. Mr. Brannen seconded the motion. All members voted in favor and the consent agenda was approved.

### OLD BUSINESS

#### 2. Board Update – NSR Outstanding Conditions

**Discussion:**

- **NSR 13-32, Catholic Medical Center, Manchester, NH, ED Renovations, \$2,132,241**

Ms. Carrier stated that Catholic Medical Center's 2013 project for Emergency Department renovations was slated for a status update, per the NSR Outstanding List. She then stated the hospital had notified HSPR staff via email that it was not going to pursue the project; thus, it has been withdrawn. No action was required by the Board as a result.

## NEW BUSINESS

### 3. **NSR 15-06, Frisbie Memorial Hospital, Rochester, NH, Replace Cardiac Catheterization Equipment, \$1,504,724 (\$1,301,359 Equipment)**

**Discussion:** Chair Grabowski asked Mr. Peck to introduce this agenda item. He stated that Frisbie Memorial Hospital (FMH) of Rochester, NH has submitted an NSR request for the replacement of its cardiac catheterization equipment, and referred the Board to the HSPR staff evaluation of this request. He noted that HSPR staff had asked the applicant to clarify whether the new equipment will be purchased or leased; in response, FMH submitted a revised page 3 of the application indicating that the equipment will be purchased. Mr. Peck then stated that HSPR staff concludes that the request is likely eligible for a Not Subject to Review determination.

Representing FMH were Mr. Andrew Eills, Esq., legal counsel; Mr. Joe Shields, Senior Vice President, and Ms. Kitty Smith, Director of Cardiovascular Services. Mr. Shields provided a brief description of the project, and noted that the purchase of the equipment will result in financing costs and resulting interest expense estimated at \$340,777. After a brief discussion, the Board determined that such costs are not capital costs and will not therefore be added to the total project costs.

Ms. Smith noted that the equipment has reached its end of life and is no longer supported by the manufacturer. Through discussions with surgeons, the hospital will shift from 2 procedure rooms to 1 procedure room, and utilize the second room with a mobile C-arm to better respond to patient needs and necessary resources. She also noted that the new equipment provides a lower dose of radiation than the old equipment, which is better for the patient.

Ms. Fox inquired as to whether utilization is anticipated to increase with the replaced equipment. Ms. Smith stated that no increases are projected. Mr. Brannen noted that the replaced equipment costs less than the original equipment, and asked what the market is like with different manufacturers. Mr. Shields replied that it does cost less, and explained that the market varies widely. He noted that because the hospital has chosen the same equipment manufacturer, there are not additional infrastructure costs.

Mr. Brannen then made a motion that the request to replace the cardiac catheterization equipment is not subject to CON review. Ms. Fox seconded the motion. All Board members voted in favor and the request was approved.

### 4. **NSR 15-07, Frisbie Memorial Hospital, Rochester, NH, Renovations to White Mountain Medical Center of Wakefield, NH, \$255,631**

**Discussion:** Mr. Peck was asked to introduce this agenda item. He stated that this facility is owned by the Frisbie Foundation, a direct affiliate of the hospital. The HSPR staff evaluation concludes that the proposal is likely eligible for a Not Subject to Review determination at this time. Mr. Joe Shields, Senior Vice President, remained at the table to discuss this request with the Board. He explained that the facility is part family practice and part walk-in clinic. The practice is staffed with 1 physician, 1 physician assistant and 1 nurse practitioner; they also staff the walk-in clinic. The clinic had 4,500 visits last year and 5,500 visits this fiscal year. Renovations will be made to the walk-in clinic. Mr. Shields explained that patients are seeking to establish and maintain relationships with the providers, creating the need for more space. Mr. Brannen noted the advantages of the arrangement, especially consumer preference and

cost control. He then made a motion that the request is not subject to CON review. Ms. Fox seconded the motion. All Board members voted in favor and the request was approved.

**5. Adopt He-Hea 1200 Transfer of Ownership Rule**

**Discussion:** Ms. Carrier was asked to introduce this agenda item. She stated that the He-Hea 1200 Transfer of Ownership rule was approved by JLCAR at its May 15, 2015 meeting. The Board must now formally adopt this rule for filing. Ms. Fox made a motion to adopt the rule. Mr. Brannen seconded the motion. All Board members voted in favor of the motion and the rule was adopted for final filing with JLCAR.

**6. Approve Initial Proposal – He-Hea 2200 Robotic Assisted Surgery System Rule**

**Discussion:** Chair Grabowski asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the He-Hea 2200 Robotic Assisted Surgery System rule is presented as an initial proposal for approval by the Board. She noted that this initial proposal is the work of the CON Rules Subcommittee that met in April and May to draft the rule. She stated that she had spoken with committee chair Mr. Bridgham, who expressed his hope that the Board would approve this rule so that it can move forward in the rulemaking process. Ms. Carrier noted that the committee was asked to provide comment on the rule draft, but that some comments were received after the rule was prepared for the Board meeting; comments were received from Elliot Hospital and Wentworth-Douglass Hospital that still must be considered. She stated that Mr. Bridgham expects to address such comments in a meeting later this summer and before the public hearing to be held on the rule, which is expected to be held in August.

Some Board discussion ensued on the timeframe for the public hearing on the rule, both before the Board and also before JLCAR. Mr. Brannen then made a motion to approve the initial proposal of the rule. Ms. Fox seconded the motion. All Board members voted in favor and the initial proposal of the rule was approved. Ms. Carrier noted that the next step in the process is to obtain a fiscal impact statement from the Legislative Budget Assistant (LBA); this takes between 7 and 10 business days before the rule can be filed with JLCAR.

**7. Determine Issuance of August 1, 2015 Acute Care RFA for New Beds**

**Discussion:** Mr. Peck was asked to introduce this item. He stated that in order to support a finding of need to issue this RFA, letters of intent must be received by acute care hospital providers indicating potential interest in adding new inpatient beds per the need formula approved by the Board at its May 21, 2015 meeting. Following our customary procedure, HSPR staff mailed a notice to all hospital administrators informing them of this process and the deadline for submission. In addition, a notice was sent to the HSPR electronic mailing list, and is also posted on eStudio. Mr. Peck stated that, at this time, no letters of intent have been received. He recommended that the Board thus not issue the RFA unless or until a letter is received by July 28, 2015 to allow time for posting of the notice to the newspaper. Ms. Fox made such a motion, and Mr. Brannon seconded. All Board members voted in favor and the RFA will not be issued unless or until a letter of intent is received by July 28, 2015.

**8. Determine Issuance of August 1, 2015 Acute Care RFA for Facility Renovations**

**Discussion:** Chair Grabowski asked Mr. Peck to also introduce this agenda item. He stated that, similar to the RFA for new beds, letters of intent must be received by acute care hospital providers indicating potential interest in initiating construction/renovation projects in excess of \$3,050,117. HSPR staff mailed a notice to all hospital administrators informing them of this

process and the deadline for submission. In addition, a notice was sent to the HSPR electronic mailing list, and is also posted on eStudio. Letters of intent have been received from Catholic Medical Center, Elliot Hospital, Mary Hitchcock Memorial Hospital, and Wentworth-Douglass Hospital. Thus, the Board can make a finding of need upon which to issue the RFA. Ms. Fox asked whether such issuance would prevent other interested hospitals who had not responded to the RFA from submitting an application. Mr. Peck responded that this is not the case and that the RFA is open to all hospitals.

Mr. Brannen then made a motion to issue the RFA based upon the letters of intent. Ms. Fox seconded the motion, and all Board members voted in favor. Thus, the RFA for acute care hospital renovation project will be issued effective August 1, 2015.

## 9. OTHER BUSINESS:

### ➤ Committee Reports:

- **State Health Plan:** Chair Grabowski asked Mr. Brannen to provide the Board an update on this topic. Mr. Brannen stated that the group is next slated to meet on Thursday, June 25, 2015 at 2:30pm at the NH Insurance Department. He stated that the group needs to discuss what it can do with no resources, and try to get as far as it can. Ms. Carrier noted that HSPR staff will provide a short presentation on its research regarding the regulation of urgent care centers.
- **Rules Subcommittee:** In Mr. Bridgham's absence, Chair Grabowski asked Ms. Carrier to provide an update on this topic. She stated that the committee will meet later this summer to continue the discussion on the robotic surgery rule comments, and also to begin work on expiring practice and procedure rules that need to be re-adopted in order for the Board to continue its business.
- **Update on Legislation:** Ms. Carrier referred to an amendment to HB 2 that still lists the sunset date for the Board at June 30, 2016. The amendment deals with the processing of administrative fees upon sunset.
- **Other Administrative Business:** Ms. Carrier referred the Board to the updated report on PET data, as requested by Ms. Fox. She then noted that HSPR staff member Mr. Paul Lakevicius, who produced this report, has tendered his resignation with HSPR, although he will continue in state service.
- **Next Meeting Dates:** Ms. Carrier stated that the next Board meetings are scheduled for Thursday, July 16, 2015 and Thursday, August 20, 2015. Ms. Fox noted that she is unavailable for the July meeting. Ms. Carrier also noted that she will be out of town that day. It was then decided to skip the July meeting. Therefore, the next meeting will be held on Thursday, August 20, 2015.

Chair Grabowski then asked for a motion to adjourn the meeting. A motion was made by Ms. Fox and seconded by Mr. Brannen to adjourn the meeting. All members voted in favor and the meeting was adjourned at approximately 10:03a.m.

Signature: \_\_\_\_\_  
Debra Grabowski  
HSPR Board Chair

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Board Approval Date