

WILLIAMS MULLEN

Direct Dial: 804.420.6407
jbmartin@williamsmullen.com

November 1, 2024

VIA ELECTRONIC DELIVERY

Mr. Erik O. Bodin, III, Director
Division of Certificate of Public Need
Virginia Department of Health
9960 Mayland Drive, Suite 401
Richmond, Virginia 23233

**Re: Response to Letter from Dominion Plastic Surgery
Regarding COPN Request No. VA-8778
Eisenhower, LLC
Establish an Outpatient Surgical Hospital with Two Operating Rooms
in Planning District 8**

Dear Mr. Bodin:

I write on behalf of Eisenhower, LLC, a wholly-owned subsidiary of Virginia Hospital Center Arlington Health System d/b/a VHC Health (collectively, "VHC Health") in response to the letter submitted by Dominion Plastic Surgery ("Dominion") on October 23, 2024, regarding the above-referenced application. In that application, VHC Health proposes the establishment of a general-purpose outpatient surgical hospital, the VHC Health Ambulatory Surgery Center—Alexandria (the "Alexandria ASC"). The facility will be located squarely in Virginia Hospital Center's ("VHC's") primary service area and will improve access to general-purpose outpatient surgery for existing VHC Health patients who currently seek outpatient surgical services on the busy VHC hospital campus.

As a preliminary matter, it is unclear whether Dominion's letter is predicated on concerns over any impact that the VHC Health project may have on its own facility or rather is intended as general commentary on the delivery of health care services in Planning District ("PD") 8. In either case, Dominion's letter is utterly surprising, perplexing, and unfounded.

By way of background, earlier this year, Dominion obtained Certificate of Public Need ("COPN") approval to establish an outpatient surgical hospital by converting its physician office operatory in Falls Church to a licensed ASC with two restricted-use operating rooms ("ORs") for plastic surgery.¹ Those ORs were framed in Dominion's application as being used for reconstructive surgical care, including debridement of open wounds, skin grafts of wounds, repair and manipulation of broken bones, including installation of k-wires, and repair of damaged tendons

¹ COPN No. VA-04881 issued 3/6/2024.

WILLIAMS MULLEN

in upper and lower extremities, and specialized limb reconstruction and sternal reconstruction. Dominion has long furnished most of those procedures in its procedure rooms – the same rooms now converted to OR status with the issuance of the COPN – while performing some of the more complicated procedures at Inova Fairfax Hospital.² In its COPN application, Dominion argued that the scope of services proposed for its ASC reflected specialized services not otherwise offered in PD 8 and available only at two other facilities in the Commonwealth.³ Indeed, in its application, Dominion argued that “[w]hile there are a number of plastic surgeons in the area, we believe that none can offer the combination of services that this office could provide.”⁴ For the most part, Dominion’s patients were not anticipated to compete for resources in PD 8;⁵ the Dominion ASC’s “goal is to drive . . . the business with patients located outside of this planning district rather than patients relying upon commercial insurance, Medicare/Medicaid, or workers compensation.”⁶

HSANV recommended denial of Dominion’s project, noting, among many other reasons, that “authorization of specialty medical facilities in the absence of a clear, compelling need or other justification, essentially to permit a service provider to enhance its revenue stream, conflicts with the principles that underlie Virginia COPN regulation.”⁷ DCOPN likewise noted that the proposal would “expand Dominion’s access to certain payment sources.” DCOPN recommended approval of the project.⁸ The Commissioner approved Dominion’s application, finding that it would, inter alia, “expand access to specific services with scarce availability statewide, specifically limb and sternal reconstruction for which the applicant claims national recognition,” and that it was “unlikely to impact existing providers significantly,”⁹ as Dominion claimed that no existing PD 8 provider offers those types of services.

That context makes any alleged concerns over VHC Health’s project’s impact on the Dominion ASC plainly confounding. The proposed Alexandria ASC will not provide the same services that Dominion offers at its ASC (at least some of which are, per Dominion, allegedly not offered anywhere else in the PD). In fact, VHC Health’s application does not list plastic surgery services as contemplated for the Alexandria ASC, and VHC Health does not anticipate providing any plastic surgery procedures at the proposed facility, much less the specialized reconstructive procedures that undergirded Dominion’s COPN approval. Further, VHC Health’s project seeks to serve existing VHC Health patients who reside in the Alexandria ASC service area and who already go to VHC for surgical care. The Dominion ASC is outside of the projected primary service area for the Alexandria ASC and is 13 miles (20-30 minutes) away from the proposed Alexandria ASC. There is thus hardly any risk that the Alexandria ASC would take any patients away from Dominion, much less deprive Dominion of, as it claims, “significant patient volumes.”¹⁰

² Division of Certificate of Public Need (“DCOPN”) Staff Report re COPN Request No. VA-8688 at 14.

³ *Id.* at 2.

⁴ COPN Request No. VA-8688, Application at 10.

⁵ *Id.* at 11.

⁶ Health Systems Agency of Northern Virginia (“HSANV”) Staff Report re COPN Request No. VA-8688 at 8.

⁷ *Id.* at 4.

⁸ DCOPN Staff Report re COPN Request No. VA-8688 at 6, 14.

⁹ Letter from Shelton to Glynn dated March 7, 2024, re COPN No. VA-04881.

¹⁰ Letter from Dominion to Shelton dated 10/23/2024 re COPN Request No. VA-8778 at 2.

WILLIAMS MULLEN

It is also somewhat ironic that Dominion would worry about the competitive impact of the project proposed by VHC Health, which it characterizes as “a large hospital system,” on Inova facilities. As noted, VHC Health does not currently operate a general-purpose ASC and operates only one specialty ASC (a joint venture with local orthopedic surgeons). It operates only one general hospital. VHC Health is the only remaining independent community hospital in PD 8 and one of only three in the entire Commonwealth. All other hospitals in PD 8 are operated by far larger systems. Inova, for example, is authorized for a total of six hospitals and five ASCs in PD 8.¹¹ Per the 2022 Virginia Health Information data, Inova has five times as many ORs as VHC; in the same time period, it reported seven times as many surgical procedures as VHC (93,963 vs. 13,184) and nearly seven times as many surgical hours (179,234 vs. 27,077). Inova’s overall 2022 average surgical utilization was 113%. Indeed, less than a year ago, Dominion itself argued, and the Commissioner recognized, that Inova’s ORs were well utilized and that Dominion’s project had the “potential to free operating room time at Inova Fairfax Hospital.”¹² Suffice it to say that Dominion’s purported concern about the impact of VHC Health’s proposal on Inova, and its framing of VHC Health as a “large hospital system” is not supported by the facts.

To the extent Dominion’s letter is to be viewed more broadly as an opinion piece on the impact of the project on the costs of health care in PD 8, it is equally puzzling and misguided. First, the proposed Alexandria ASC will operate, and will be reimbursed, as a Medicare-certified ASC, exactly like the Dominion ASC. More pointedly, VHC Health’s reimbursement from Medicare will be exactly the same as Dominion’s. Second, VHC Health’s project is designed to reduce the overall costs of care for patients by moving care from the hospital setting to the less-costly, lower-reimbursed ASC setting. And, while private payor rates have not yet been established for the proposed facility, VHC Health is one of the lowest-cost providers in PD 8 and anticipates commercial reimbursement rates consistent with that historical trend.

Finally, Dominion’s outcry over the purportedly “astronomical” capital costs of the proposed Alexandria ASC is uninformed at best and misleading. A comparison between VHC Health’s project and Dominion’s approved project simply compares apples to oranges. As Dominion’s application touted, at the time of the application, the building, including the surgical suite to house the ASC, was already fully built out and all the equipment had been purchased.¹³ As HSNV recognized, implementation of Dominion’s project was a mere “paper exercise.”¹⁴ Conversely, VHC Health has, consistent with longstanding COPN practice, included in its capital costs the costs of remodeling an existing building and the complete outfitting of two ORs from the ground up. Moreover, a review of COPN precedent indicates that the capital costs associated with VHC Health’s proposal – approximately \$9 million – are appropriate and significantly below those of recently approved ASC projects.¹⁵

¹¹ Of these five ASCs, one – the Inova Oakville Ambulatory Surgery Center – is not yet operational.

¹² Adjudication Officer’s Recommendation re COPN Request No. VA-8688 at 7.

¹³ COPN Request No. VA-8688, Application at 4, 6

¹⁴ HSNV Staff Report re COPN Request No. VA-8688 at 2.

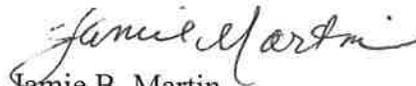
¹⁵ See, e.g., COPN No. VA-04846 issued 6/12/2023, authorizing Richmond Eye and Ear Healthcare Alliance d/b/a MEDRVA Healthcare to establish a two-OR ASC with capital costs of \$15,355,061; COPN No. VA-04867 issued 12/15/2023, approving St. Francis Ambulatory Surgery Center, LLC, to establish a two-OR ASC at \$17,453,466; COPN No. VA-04892 issued 7/16/2024, approving Middle Virginia Surgicenter, LLC, to establish a three-OR ASC at \$20,836,808.

WILLIAMS MULLEN

In short, VHC Health believes that Dominion's surprising opposition to the Alexandria ASC project is unfounded. The project seeks to meet a public need well demonstrated in the underlying application and fully warrants approval.

Thank you for your consideration of this information. Please let me know of any questions.

Sincerely,



Jamie B. Martin

cc: Ms. Sharon K. Honaker, Project Analyst, Division of Certificate of Public Need
Mr. Dean Montgomery, Executive Director, Health Systems Agency of Northern
Virginia
Daniel Glynn, Esquire, Counsel to Dominion Plastic Surgery
Mr. Adrian Stanton, Vice President, Real Estate Acquisition and Development,
VHC Health