

Chairman, Senator Ayer and Vice Chair, Senator Lyons and Senators

Madam Chairwoman and members of the committee, I am pleased to be here with you today to address the proposed ASC regulation bill. I'd like to introduce myself, I'm Juli Larson, an ophthalmologist in private practice in S. Burlington VT. I am the founder and Medical Director of the Eye Surgery Center, and its governing body president. I am the past president of the Vermont Ophthalmologic Society, and a former associate professor of Ophthalmology at the University of VT.

As I begin my remarks I'd like to suggest one goal to keep in mind that we all can agree on; "the only loyalty or allegiance we should have in this process is to the citizens and patients of Vermont. Despite our different and unique roles, we should all agree that reducing the cost of health care while maintain or improving quality and increasing access to healthcare should always be first and foremost in our minds and in our actions. I believe this proposed legislation significantly endangers this very goal.

10 years ago I was granted the first CON for a private ASC in VT. At that time, only Vermont out of the 50 states had no ASCs ...so we were the last to offer this to our citizens and patients, a viable tool to help lower the cost of healthcare that had been more than proven across the US.

First, it should be obvious that I am not an orator, nor am I a powerful debater, what I am is a simple community eye doctor who specializes in cataract and refractive surgery. As a physician and surgeon I have worked hard to earn the respect not only of my peers but also my patients and the community I serve. ... I believe that an ASC is a more efficient and a more effective way to deliver my services that actually lowers cost and improves the quality of health care while creating even greater access.

For 15 years I operated at the hospital and tried to be part of the solution in making cataract surgery more efficient. Unfortunately, I could not bring

about the changes necessary to operate efficiently in a hospital setting. In 49 other states my colleague's had the option of an ASC for their cataract surgeries and it had proven an invaluable option in reducing cost and increasing access for cataract surgery, (as a side note, the vast majority of cataracts in the US are performed in an ASC setting). Prior to the opening of the ASC it was not unusual to have a three+ month wait to get a patient in for surgery at FAHC (now UVMHC) but now I can usually get a patient in within two weeks at the Eye Surgery Center.

Some ophthalmologists choose to stop performing cataract surgery, in part, because it just isn't possible to stay financially viable spending an entire day performing 6-8 cataracts in a hospital setting when you could stay in your office and see patients which yielded a higher return. With increasing insurance, labor, rent and benefit's cost it was an understandable decision, but not one I was willing to make.

Across the country the national average is 3 cataract surgeries performed per hour and I was only able to perform one case every 45-50 mins at FAHC. In recent years Medicare has pushed cataract surgeons to be more efficient reducing surgeon surgical fees from \$3,000 to less than \$500 of which I receive only 80% from Medicare. I should tell you that we do not set our fees, they are set by Medicare and roughly run about 50% of what the hospital is reimbursed for the same surgery. Patients that have Medicare only, with no secondary insurance, **save** over \$300 per eye, and \$600 for both eyes in out-of-pocket expenses at an ASC. This is huge for our patients, most of which are elderly and on fixed incomes and these are the very people that would be hurt by this bill! While patients and the state of Vermont enjoy real savings, our margins are paper thin and there is little room for inefficient operation of the ASC and each owner has significant risk, adding needless reporting, taxes and fees threatens our very existence.

As I look back I'm a bit overwhelmed as to the CON process and I recall opposition (both at the governmental level and at the medical/personal level). I naively marched forward with what I perceived as a positive addition

to health care for the patients of VT.

It was a very challenging time for me with many personal attacks directed at my motives and character, something that still hurts today almost 11 years later. So I can tell you, along with a substantial financial investment came a very deep and real personal investment, but in my heart I knew it was right for my patients and worth the personal cost. One of the reasons I became a physician was to provide the best quality experience possible and I could no longer do this in a hospital setting.

You should know that Vermont's CON regulations heavily favor the hospitals of Vermont because they are allowed to submit a "Conceptual Application" if it is over 25 million dollars. Make no mistake, the Hospital lobby is very strong in Vermont and they threw everything they could at my application!

So a small applicant like myself put it all at risk, not knowing if I would lose my investment if I was turned down, or if my investment of nearly \$250,000 would prove to be a good one. In the summer of 2007 we received a 10-2 vote in favor of our application after testimony by Monsignor Ball, former Lt. Gov. Barbara Snelling and both democratic and republican state representatives and many other community and civic leaders on our behalf. Incidentally, Senator Snelling received a last minute attempt to stop her testimony which she did not heed from one of the opposing parties which I think only served to strengthen her resolve for our approval. I smile today as I fondly remember her congratulations after our approval and my promise not to betray her trust.

During the CON committee's debate, it was suggested that we were a perfect test for Vermont to see if this would serve the people and patients of Vermont by reducing health care cost while maintaining or possibly increasing the quality of care. I can tell you that I have always taken this trust placed in me very personally and I am proud to report that in the 10+ years we have never stepped out of line and for the first 7 years we had special reporting to BISHCA that we never violated. It is estimated that we have saved Vermont Medicare over 10 million dollars. As one national

publication showed in just 2014 alone we saved 1.1 million and since that time more surgeons have brought their cases to the center and our volume has risen. However, we are still operating at less than full capacity.

It is important to note that numerous national studies actually show that “eye only” ASC’s have achieved a higher quality of care than is possible in a hospital setting. It should also be noted that when a brand new ASC goes for Joint Commission accreditation that they can be granted a 6 month, 1-year, 2- year or 3-year approval. We received a 3-year approval for our first inspection and each subsequent approval, something the Joint Commission inspectors told us was very rare and I am proud of the men and women who continue to make our ASC one of excellence.

These facts, I think, are important for this committee to hear,

We have a perfect record with the state of Vermont with no sanctions or violations.

We have a perfect record with Medicare and the federal government with no sanctions or violations.

And we have the highest of approvals from the accreditation organizations who have inspected our center, our results and our records

And most importantly our patients give us a 98% approval rating with the most frequent complaint being the fact that coffee is not available at the center, unfortunately if a patient forgets and has a cup we cannot do their surgery.

Today, I would like to suggest to you proven by the evidence provided that the “test” has been a phenomenal success! All the fear mongering that was done by opposing parties, not one of their dire forecasts has come true, **no not one!** In the first year of the Eye Surgery Center’s operation FAHC reported a 5% increase in profits as noted in a recent Burlington Free Press

Article. I believe that FAHC actually benefited from our approval and the loss of many cataract procedures, which were low profit, and were replaced with far more profitable ones. I believe their strong protest was not so much against us but the precedence we would set for a future ASC that could rival their monopoly, which I believe we are now seeing.

The regulatory bill proposed tries to imply that the ASC is like the hospital... it is not, there are many important differences! The eye ASC is very focused... excuse the visual reference... and only does eye surgery. We are very efficient with 2 OR's where we can go between doing surgery in one and preparing the next patient in the other. This minimizes "down time" between cases, allows us to treat more patients, and reduces cost by providing services outside the expensive walls of the hospital. I've already stated the ESC is reimbursed at a rate that is about 1/2 of the hospital. In addition, we cannot charge for extra supplies or devices needed at the time of the surgery, like a hospital, we are given one global fee which also saves the patient and the system significant dollars.

As this point, I'd like to draw a distinction between public and private oversight.

Say for example there is a hospital in Vermont which we will call *Fairview* and it's over 80 miles to the next closest hospital. One day the hospital decides to purchase a 3.4-million-dollar imaging system and despite their best research and analysis they just can't produce the patients to pay for it so they amortize their loss by increasing fees on all imaging services. Months later they find that they are threatened financially and may need a bailout from the state to maintain services. Certainly in this "public situation" the citizens of Vermont need to be protected and an oversight budget process is called for, not only because their purchase has resulted in all imaging service fees being increased but they could very well need state monies to balance their budget becoming a liability to their community and the tax payers of Vermont. So I would be the first to agree that public institutions need oversights.

In a private ASC we have no ability to raise our fees so if we decide to buy the most expensive microscopes known to man then we have to live with it and if it means there is a loss of revenue we cannot depend upon any public bailout.

Therefore, the requirements that this legislation attempts to implement on a private ASC are inappropriate and obtrusive and in no way benefits or protects the citizens of Vermont and represents no more than an overreach that benefits only the hospitals by potentially eliminating competition.

So my first question of this proposed legislation is; what evil or sin does this bill seek to correct? What problem or liability has the Eye Surgery Center created for the state of Vermont and the citizens of Vermont in light of our proven success? Frankly, with our outstanding record and with cost savings in excess of 10 million dollars, what have we done wrong? How has the existing regulatory process failed the people of Vermont? **It hasn't, it has worked perfectly to the benefit of all Vermonters!**

I understand that the legislature has many priorities, typically resolving problems like Opioid addiction, or the lack of viable housing for working Vermonters, which need real solutions, but what is fixed in this situation? With the prospect for only two ASC's for years to come does it really pay to add to the state's cost to develop a bureaucracy to oversee two entities that are already heavily regulated by the state and federal government? I believe there are far more important areas of concern that more than justify regulation and oversight and the passage of this legislation would do nothing more than eliminate cost saving and quality competition.

I believe the Eye Surgery Center has made a significant contribution to the patients of Vermont and serves as an effective tool in a state's arsenal to reduce and control healthcare cost. This proposed legislation could eliminate ASCs and actually drive up healthcare costs and ultimately increase insurance premiums and the state's attractiveness for new businesses because of these higher costs. One has to ask who really

benefits from this legislation. In my opinion, certainly not the patients of Vermont nor the employers of Vermont. It seems to me this gives all power to the hospitals by reducing competition and prevents Vermont from effectively reducing healthcare cost with a tool that 49 other states will continue to have at their disposal!

Today's hospitals have to be prepared to re-engineer themselves to meet the current demands of today's healthcare needs. The status quo is not an option anymore. There is no open checkbook to pay for healthcare services.

I would like to read an excerpt from an article recently published last Sunday in the New York Times and I have a few copies for you;

Studies have shown that patients with heart failure, pneumonia and some serious infections can be given intravenous antibiotics and other hospital-level treatments at home by visiting nurses. These "hospital at home" programs usually lead to more rapid recoveries, at a lower cost.

As these trends accelerate, many of today's hospitals will downsize, merge or close. Others will convert to doctors' offices or outpatient clinics. Those that remain will be devoted to more elaborate needs (in the interest of time I paraphrased this sentence). Meanwhile, the nearly one billion annual visits to physicians' offices, imaging facilities, surgical centers, urgent-care centers and "doc in the box" clinics will grow.

"Special interests in the hospital business aren't going to like this. They will lobby for higher hospital payments from the government and insurers and for other preferential treatment, often arguing that we need to retain the "good" jobs hospitals offer. But this is disingenuous; the shift of medical services out of hospitals will create other good jobs — for home nurses, community health care workers and staff at outpatient centers.

Hospitals will also continue consolidating into huge, multihospital systems.

They say that this will generate cost savings that can be passed along to patients, but in fact, the opposite happens. The mergers create local monopolies that raise prices to counter the decreased revenue from fewer occupied beds. Federal antitrust regulators must be more vigorous in opposing such mergers.

Instead of trying to forestall the inevitable, we should welcome the advances that are making hospitals less important. Any change in the health care system that saves money and makes patients healthier deserves to be celebrated.

Senators, I believe that the Eye Surgery Center ASC should be celebrated!

So how is it fair to amend our CON and add the burdens of fees and taxes and additional reporting that were never part of our CON application at this point in time 10 years later? Personally, I feel it is grossly unfair and these changes could be devastating to the financial solvency of the center.

We have negotiated contracts for staffing, rent and equipment leasing, all based on financials that did not include these burdensome taxes and regulations and now these proposed changes could close our doors. It's almost as if we are being punished for doing too good a job! May I remind you that any profits distributed to the owners are taxable in Vermont as "ordinary income" which is actually higher than 6%.

The Eye Surgery Center has no paid management or bureaucracy, every employee, including our administrator, actually performs duties on surgery days. I believe strongly that if the legislature desires to make changes to the CON process it should not be **retroactive** and that we should be "**grand fathered**" in, especially in light of our outstanding performance for the last

10+ years. Conceptually this bill is just wrong and is an earmark of over regulation that the citizens and patients of Vermont will pay dearly for in the coming years. **While the entire country is going in the other direction why would Vermont go backwards when we have been the leaders in so many other areas?**

If the state is going to place this burden on us after the fact will they allow us to be paid on par with the hospitals? Will the state and federal government allow us to pass on these additional fees and taxes on profits that are already taxed at a higher personal rate?

These are just a few of the points that I would suggest need some very serious soul searching and why I stand 100% in opposition to this bill and to the powerful that would benefit from it's passage.

Ironically, the very thing that makes us a huge success in reducing healthcare cost is the fact that we are private, with no safety net, and yet this legislation seeks to hold us accountable to public policy with undue reporting and additional taxes to the point where the cost savings we provide is threatened. Can Vermont really afford to have 10-15 million dollars added to Vermont's Medicare over the next 10 years if we close? Keep in mind that cataract surgery is the most often performed procedure in the United States and Vermont is the second oldest state per capita behind Maine!

I am here today to ask you to stop this legislation before it goes any further, you really don't need to fix what isn't broken. The proof is indisputable and no one has even suggested any problem or potential problem it solves.

My attorney, also advises me that it is against federal law to pass legislation that is aimed at only one party or organization and that is exactly what this legislation would do.

Remember we are a small state and it is often more economical to use outside services rather than to develop our own. We do this with prisoners

so that we don't have to build new prisons. We do this with bridge reconstruction, rather than state department of transportation workers we hire outside companies. Recently Gov. Scott decided to sell the state airplane and the few times we need one it is more economical to rent one. It's also true for ACS's, we are already regulated by the state, Medicare and the Federal government, the IRS and private insurance companies and the accreditation organizations that Medicare and the state of Vermont require of us! To setup additional state bureaucracy to manage one and maybe two ASC's for the foreseeable future is foolish and poor use of tax dollars that could be spent on more important issues that face real financial challenges like mental health services or the Opioid epidemic.

Again, I would follow the money and ask who stands to benefit from this proposed legislation and if it isn't the citizens or patients of Vermont it's just plain wrong and I ask you to vote NO!

Thank you for your time and I have 2 handouts, one the NY Times article, and one listing TESC current regulations.