



**Waterbury Regional Chamber**  
*driving business to business*

December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

Dear Assistant Attorney General Hawes and Ms. Martone:

The Waterbury Regional Chamber of Commerce appreciates the opportunity to provide comments on the Office of Health Care Access and the Office of the Attorney General's proposed final decisions on the Waterbury Hospital/Tenet Healthcare Joint Venture. Our chamber serves 13 towns in the Greater Waterbury region and represents the collective interests of nearly 1,000 businesses in matters of public policy and economic development.

From the outset, we have supported this Joint Venture, recognizing that the investment and expertise that Tenet brings to both the Hospital and the region will strengthen healthcare services, quality of life and economic development in our City and region. However, as the advocacy organization for businesses in our region, we are very concerned about the nature of the conditions proposed within the draft final decisions, in particular those included in the OHCA decision.

While we respect that all businesses, including healthcare providers, are subject to regulations to protect consumers, the proposed conditions impose a burdensome new layer that would hinder the ability of Waterbury Hospital to effectively manage its day-to-day operations. Requirements related to staffing levels, services changes, and pricing freezes are particularly problematic as they would make it impossible for the hospital to adapt to the rapidly changing healthcare environment. These regulations would effectively tie the hands of any business working to provide high quality, cost-effective services to their customers.

**(Continued)**



Waterbury Regional Chamber  
*driving business to business*

**(Page 2)**

These conditions, in essence, seek to micromanage hospital operations in an unnecessary, burdensome way—and appear to be duplicative of the extensive regulations to which hospitals are already subjected. Not only would they impact the efficiency and effectiveness of the hospital, it would add an additional layer of cost to an organization that is already struggling to survive in a changing marketplace. In addition, they set a dangerous precedent for all businesses in Connecticut and could impact the decision of new business coming to this state.

Waterbury Hospital is critically important to the health, quality of life, and economy of our region and its long-term viability is in jeopardy without the Tenet Healthcare Joint Venture. Waterbury Hospital has been a strong leader in development and implementation of the Community Health Needs Assessment which Tenet has agreed in writing to continue. We look forward to Tenet becoming a member of our community. We urge you to reconsider the onerous conditions in the draft final decision.

Thank you for your consideration.

Sincerely,

Lynn Ward  
President & CEO

December 8, 2014

Ms. Kimberly R. Martone  
Director of Operations  
Office of Health Care Access  
410 Capitol Avenue  
Hartford, CT 06134

**Re: Docket No. 13-31838-486  
Greater Waterbury Health Network, Inc.  
and Vanguard Health Systems, Inc.  
Proposed Final Decision**

Dear Ms. Martone:

Tenet Healthcare Corporation (“Tenet”), for itself and on behalf of Vanguard Health Systems, Inc., (“Vanguard”), hereby provides its response to the Proposed Final Decision dated December 1, 2014, in the above-referenced matter. These comments are not necessarily intended as a detailed and comprehensive commentary on every aspect of the Proposed Final Decision, but rather as a general overview of Tenet’s concerns as to the 47 conditions that OHCA has placed on its approval of the CON application (the “Conditions”).

While the intent of the Conditions should be to protect access to healthcare for citizens of Waterbury, these Conditions would result in the state exercising a level of operational control and monitoring over Waterbury Hospital that far exceeds (1) what it has now; (2) what it exercises over any other hospitals in the State of Connecticut (including not-for-profit hospitals that receive tax exempt status in return for providing community benefit), or any other private business for that matter; or (3) what has been imposed on conversion transactions in any other state. The majority of the conditions do not contribute to improving quality of or access to healthcare services in the community, and in fact impose a rigid set of reporting and operational rules that would result in the opposite. In addition, many of these conditions were specifically rejected by the legislature during the enactment of the applicable legislation

### **General Conditions**

Tenet objects to the requirement of a separate annual report on the basis that it is unnecessary, burdensome, intrusive and potentially requires the disclosure of trade secrets and competitive information without creating any greater assurance of compliance with the Conditions or, more importantly, improvement in the delivery of health care on a local or state-wide basis. Tenet notes that the proposed reporting requirement is in addition to an already comprehensive data collection scheme imposed by OHCA on all Connecticut acute care hospitals, the mere listing of which would require several pages. See *Hospital Regulation in Connecticut*, OLR Research Report 2013-R-0266, Table 2: OHCA Acute Care Hospital Reporting Requirements. The State already collects the data deemed relevant by the appropriate legislative body, making this requirement unnecessarily burdensome. Other data that would be collected is proprietary and no needed to preserve quality and access; almost no other states impose a similar requirement.

Furthermore, such an annual report was not required by the Revised Final Decision of OHCA in the Sharon Hospital matter (Docket No. 01-486-01R), nor is it in any way a customary requirement. Based on a recent nationwide survey of the nonprofit hospital conversion laws in other states prepared by the Connecticut General Assembly's Office of Legislative Research (2014-R-0229), only *two states* require such reports, while in three other states the imposition of the requirement is in the discretion of the Attorney General or Department of Health. In the 17 remaining states other than Connecticut that have hospital conversion statutes, there are no statutory reporting requirements, and of course the same is true for the 27 other states that do not have a conversion statute. While not denying that OHCA may have the statutory authority to impose such a requirement where necessary, Tenet submits that there is nothing in the record to suggest that the imposition of such a requirement is in any way warranted.

### **Independent Monitor**

Tenet also objects to the requirement of an independent monitor on the basis that it is costly, burdensome, intrusive, and may lead to the unwarranted disclosure of trade secrets and competitive information. Moreover, it is simply unnecessary. The regular scrutiny of hospital operations by the Connecticut Department of Public Health, CMS, OHCA, The Joint Commission, and the many other local, state and federal agencies having access and purview, as well as Hospital employees and GWHN's representatives on the JV Board and physicians and community representatives on the Board of Trustees, all make it highly unlikely that any

noncompliance in the conditions of approval would not come to OHCA's attention in short order. In addition, GWHN also will be monitoring Hospital operations to insure compliance with the Contribution Agreement and Operating Agreement, and it has contractual rights of enforcement.

Nor is an independent monitor a customary requirement. The same OLR Research Report referred to above indicates that in the 22 states other than Connecticut that were found to have hospital conversion statutes, only *four states* were found to have specific post-transaction monitoring provisions. It is difficult to understand why OHCA believes it is necessary to adopt such an infrequently used approach with all of the oversight that already is in place.

### **Services**

Tenet believes that Condition 13, which would prohibit for five (5) years following the Closing Date, the reduction or relocation of any inpatient or outpatient services by VHS Waterbury from those that exist at the Waterbury Hospital on the date of OHCA's Final Decision, is unnecessary and counter-productive to the completion of this transaction and to the efficient delivery of healthcare in the Waterbury area, for a number of reasons:

- As part of the regulatory approval process with the Federal Trade Commission (FTC), - for the GWHN and St. Mary's Hospital transactions, Tenet will be demonstrating that a rationalization of services between the two institutions is required to generate significant efficiencies and cost savings to ensure the long-term success in the delivery of healthcare in Waterbury. Condition 13 renders achievement of that requirement impossible, and thus makes it doubtful that the transaction will be permitted to proceed.
- In addition, it is critical to the long-term future of the two Waterbury hospitals, to their financial well-being and their ability to provide up-to-date, quality services, that they be operated as components of an integrated system. In many cases it would simply make no sense to continue to offer duplicative, underutilized services at each institution rather than to consolidate the services at one hospital or the other. How and when this would take place has not been determined, but Condition 13 would make rationalization of services impossible, and thus it represents an unacceptable impediment to the financial health of these institutions.
- The pace of change in healthcare is as rapid and dynamic as it has ever been. Hospital operators must be able to exercise their discretion as to the best way to providing quality

services to a community without being hamstrung by requirements such as Condition 13. OHCA cannot possibly be in a position today to determine appropriate hours for a particular service, or whether it is better provided in an inpatient rather than an outpatient setting, let alone etch these determinations in stone for the next five years.

Condition 14, which would prohibit the termination of certain Essential Services and certain women's services for a period of seven years, is unnecessary, as such terminations are already subject to a CON requirement.

### **Staffing**

The determination of appropriate clinical work force staffing is critical to the operation of a hospital, and staffing requirements and literally change hour by hour. They change with the size and make-up of the patient population. They change with the acuity of the services being provided. They change with the training and experience of the individual members of the staff. They change with the technology being utilized. They change with the departure of retiring staff members and with the pace at which their replacements can be hired. Accordingly, Condition 15, which requires that there be *no reductions* in staffing levels or changes in staffing composition for a period of five years from those set forth in the projected Staffing Level Exhibits, eliminates all flexibility and ties hospital operators a structure that will almost certainly prove to be more costly and less efficient. This condition places OHCA's judgment, today, as to the appropriateness of staffing levels over the judgments of experienced operators as they respond to local healthcare demands in an ever-changing healthcare environment. . In addition, Tenet believes that the state imposing a level of clinical work force staffing would be unprecedented and an inappropriate exercise of authority by OHCA.

### **Governance**

Tenet objects to Conditions 17 to 26 on the grounds that the imposition of this additional, superfluous layer to the JV Hospital's governance structure (1) goes beyond that which might be seen as reasonably related to the purposes of the hospital conversion statute, as required by C.G.S. §19a-486b(b), and (2) is absolutely unnecessary. The local constituencies of the JV Hospital's Board of Directors and Board of Trustees, as well as the Foundation's own Board of Directors and community advisory board (CAB), combined with VHS Waterbury's commitment to work with local groups in conducting the community health needs assessment, will result in an abundance of input by members of the local community. Other grounds for objection include: (3) organizing and paying for a CAB is not a requirement that is imposed on Connecticut

hospitals generally; (4) the CAB is proposed as a permanent alteration to the JV Hospital's governance structure; (5) allowing the Chair of the CAB serve as a member of the Board of Directors, even with the limitations proposed, is an unreasonable intrusion into the Board's deliberations; (6) Tenet's demonstrated commitment to diversity makes unnecessary the requirements set forth in Condition 26. CABs of the type described are just as likely to constitute a source of frustration and friction for both the hospital and the members of the CAB than a source of useful guidance. Tenet will consider, however, adding a representative of a community organization to the Board of Trustees.

### **Community Benefits**

Tenet readily agrees with Condition 27 given that it is nothing more than a confirmation of Section 2.6 of the Operating Agreement. Tenet also is in agreement conceptually with Conditions 28 and 31, although not with all of the details or the execution of a Community Benefits Agreement.

Tenet objects to Condition 29 on the grounds that tying financial assistance and community building activities for seven years to line-by-line amounts from the Waterbury Hospital 2013 Form 990, with or without the one-percent annual increment, fails to recognize that increases in Medicaid patients as a result of the ACA and new, risk-based reimbursement approaches, are likely to render these historical measures obsolete and inappropriate. That is, this type of financial assistance may not be possible given changing the changing healthcare environment. Tenet is committed to conducting a community needs assessment and addressing the needs that are identified but objects to attempting to link the amount that will be spent to historic numbers.

Tenet is opposed to Condition 30 inasmuch as: (a) it is not related to Community Benefits, and (b) imposing a five-year freeze of all itemized pricing levels for medical services (including the cost of medical supplies and pharmaceuticals) at current pricemaster levels:

- (1) is unwarranted in view of the fact that current levels are among the lowest in the state;
- (2) is discriminatory inasmuch as it is a requirement not borne by other hospitals in the state;
- (3) appears to exceed OHCA's statutory authority in this matter; and
- (4) will interfere with management's ability to operate the JV Hospital and improve its financial condition.

### **Quality Improvement**

Tenet is in general agreement with the requirements of Conditions 32 and 33, except that: (1) all submissions should be made to OHCA rather than to an independent monitor; (2) Condition 32(b) is much too vague and would likely call for the submission of proprietary information; and (3) rather than registering and participating in LeapFrog, Tenet believes that utilizing the measures reported to HospitalCompare.gov is more useful and appropriate.

### **Capital Commitment**

Tenet objects to the specific requirements of Conditions 34 to 36. In today's ever-changing healthcare environment, it is unrealistic, if not impossible, to assemble a seven-year Strategic Plan for the expenditure of the \$55 million, as such a time horizon goes well beyond what is appropriate given the evolving needs of the hospital and the community. Tenet is, however, willing to provide OHCA with a rolling 3-year capital spending plan, along with a report on actual expenditures over time. Tenet see no basis for having such plans approved by OHCA and is opposed to any such requirement as an unnecessary intrusion into the operation of the business.

### **Financial Conditions**

As noted above, the financial reporting that OHCA statutorily requires of all Connecticut hospitals is already extensive, and Tenet see no basis for adding addition reports that would be uniquely applicable to the JV Hospital. Moreover, (1) the manner by which cost savings would be determined for Condition 37(a) is vague and undefined, (2) the Monthly Financial Measurement/Indicators are meaningless for an investor-owned hospital due to the use of daily cash sweeps and similar cash management practices, and (3) the requirement in Condition 39 for the provision of operating and capital expenditure budget plans is both unwarranted on the basis of the seven-year duration and the fact that it would require the disclosure of confidential, competitive information that would negatively impact the operations of the Hospital.

### **Charity Care**

Tenet has no objection to the requirements of Conditions 40 and 41 other than the provision of such copies of policies or changes thereto to a CAB or independent monitor, given Tenet's previously expressed objections to both such entities. Condition 42 is problematic

inasmuch as the concept of Uncompensated Care is evolving with increasing Medicaid patient populations as the result of the ACA and the shift to risk-based reimbursement arrangements. Any commitment to specific dollar amounts is inappropriate.

**Miscellaneous**

Condition 43 is acceptable to Tenet only if it is a requirement that is applicable to all Connecticut hospitals, not just Tenet-affiliated or for-profit hospitals. Nonetheless, Tenet operates a number of hospitals in culturally diverse communities where English is a second language and is confident that its expertise and experience in operating hospitals in such markets will inure to the benefit of local communities in Connecticut. Condition 44, requiring an annual town hall meeting, is acceptable as long as it is held in conjunction with the duties of the Board of Trustees.

Tenet objects to Condition 45 regarding the provision of a Physician Recruitment Plan to an independent monitor due to its views on the lack of a need for an independent monitor and the fact that such a Plan would contain confidential, competitive information that would put the Hospital at a significant disadvantage to its competitors. Moreover, physician recruitment plans tend to be very fluid and can change materially from quarter to quarter. Finally, disclosure of such a Plan appears unrelated to the purposes the hospital conversion statute, and is not a requirement that is generally applicable to all Connecticut hospitals.

Tenet similarly objects to Condition 46 on the grounds that (1) such documents would contain confidential, competitive information, and (2) disclosure of such documents appears unrelated to the purposes of the hospital conversion statute.

Tenet has no objection to Condition 47 except to the extent that it applies to the provision of such documents to an independent monitor.

As noted above, with respect to reporting requirements, Tenet believes that it should not be required to submit any reports or information not required of other acute care hospitals in Connecticut and certainly should not be required to submit proprietary information that will place Tenet at a competitive disadvantage. To the extent that any such additional reporting is required by OHCA, Tenet should be permitted to submit summaries of any reports or information that is proprietary which, if reported in full, would place Tenet at a competitive disadvantage.

In general, Tenet believes it should not be held to higher standards with regard to outcomes or reporting than the other acute care hospitals serving communities in Connecticut. That said, Tenet understands OHCA's need to assess performance at Waterbury Hospital for a period of time following the closing and is open to reporting certain information to assist OHCA in that effort. However, Tenet believes that it should not be required to submit proprietary information that will place Tenet at a competitive disadvantage without reasonable assurance the information will be kept confidential. To that concern, Tenet proposes that with regard to any such additional reporting required by OHCA, Tenet should be permitted to submit summaries of any reports or information that is proprietary which, if reported in full, would place Tenet at a competitive disadvantage.

On behalf of Tenet, I would like to thank you for all of your efforts in ensuring that this process meets not only all statutory requirements but also in keeping the public fully informed while addressing not only the concerns of the intervenors, but also of Tenet.

Very truly yours,



Collin P. Baron

Counsel to Tenet Healthcare Corporation

cc: Gary Hawes, AAG  
Steven Lazarus, OHCA  
Nykole Roche, MNA  
James Rawlings, CSC/NAACP  
Henry Murray

December 8, 2014

Gary W. Hawes, Esq.  
Assistant Attorney General  
Office of the Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford Connecticut 06106

**Re: Docket No. OAG 13-486-01  
In re Application for Joint Venture Between Greater Waterbury Health  
Network, Inc. and Vanguard Health Systems, Inc.**

Dear Mr. Hawes:

Tenet Healthcare Corporation (“Tenet”), for itself and on behalf of Vanguard Health Systems, Inc. (“Vanguard”), hereby provides its response to the Proposed Final Decision of the Office of the Attorney General (“OAG”) dated December 1, 2014 in the above-referenced matter.

- Condition No. 4 should indicate that Vanguard/Tenet will pay 80% of the purchase price for GWHN’s assets as adjusted pursuant to the terms of the Contribution Agreement from its cash holdings. The other 20% of the adjusted purchase price is the responsibility of GWHN.
- Condition No. 5 that requires the \$55 million capital commitment to be expended exclusively on projects that relate directly to the JV Hospital is too restrictive. There should be some latitude to permit capital projects that have a greater breadth.
- Condition No. 6 should be deleted. The provision in the Operating Agreement that releases Tenet from its commitment to expend not less than \$55 million on capital items in the event of certain changes in federal or state law was bargained for by the parties in an arms-length transaction and is an important component of Tenet’s consideration. The inclusion of Condition No. 6 deprives Tenet of an important contractual right that GWHN agreed to.

- Condition 17 also should be deleted. If the JV Hospital is in need of additional capital, and should cash from operations and borrowings from the Line of Credit or other lenders not be adequate, the manager has no other option but to initiate a capital call in accordance with Section 3.2 of the Operating Agreement. While no member is obligated to contribute capital, the Operating Agreement provides that the percentage interest of the members shall be adjusted based on future capital contributions. This is a standard and necessary provision of a limited liability company operating agreement and, without it, no member would ever make additional capital contributions, thus putting into jeopardy the viability of the limited liability company. In the case of the JV Hospital, if additional capital is needed and the line of credit or other borrowings are unavailable and additional capital contributions are not made by the members, the organization is doomed to failure.
- On page 19 of the Proposed Final Decision, it is stated that the Harold Leever Regional Cancer Center, Inc. (“HLRCC”) and the Heart Center of Greater Waterbury, Inc. (“HCGW”) will not be transferred to JV Hospital but will be retained by the WH Foundation. This is not accurate. As was disclosed in the footnote on page 3 of the Applicant’s Responses to OHCA Interrogatories dated September 10, 2014, Tenet and GWHN have agreed that HLRCC and HCGW will be transferred to the JV Hospital.

On behalf of Tenet, I would like to thank you for your time, attention and care in this complex and important transaction.

Very truly yours,



Collin P. Baron  
Counsel to Tenet Healthcare Corporation

CPB:dmb

cc: Kimberly Martone, OHCA  
Steven Lazarus, OHCA  
Nykole Roche, MNA  
James Rawlings, CSC/NAACP  
Henry Murray



**State of Connecticut**  
**HOUSE OF REPRESENTATIVES**  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06106-1591

**REPRESENTATIVE LARRY B. BUTLER**  
SEVENTY-SECOND ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING  
HARTFORD, CT 06106-1591

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**CO-CHAIR**  
HOUSING COMMITTEE

**MEMBER**  
FINANCE, REVENUE AND BONDING COMMITTEE  
HUMAN SERVICES COMMITTEE

December 5, 2014

Kimberly Martone  
Director of Operations  
Office of Healthcare Access  
410 Capitol Avenue  
Hartford, Connecticut 06134

Dear Mrs. Martone,

I want to respond to your recent position on the joint venture of the Greater Waterbury Health Network (GWHN) and Tenet. I support your ruling and hope your final decision mirrors that which you have shared with the public. The community benefit portion, maintaining all of the current women's health services, the parameters on a potential future sale of the hospital and the clinical staffing levels are all very important.

Thank you,

Larry B. Butler  
State Representative

cc: Gary W. Hawes, Office of the Attorney General



December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

Dear Assistant Attorney General Hawes and Ms. Martone:

The Greater Waterbury Health Network Board (GWHN) of Directors is very appreciative of the time spent by both the Office of Attorney General (AG) and the Office of Health Care Access (OHCA) in conducting an extensive review of the proposed Joint Venture between GWHN and Tenet Healthcare. After submitting thousands of pages in the CON/conversion applications, repeated requests for additional information over the course of the past 18 months, and a more than eight-hour long public hearing we were quite disappointed with the prescriptive conditions included in the proposed final decisions, in particular those included in the OHCA document.

It's important to note that many of the conditions proposed by OHCA reflect legislative proposals that were rejected by members of the General Assembly after their own informational sessions and debates. We believe our elected public officials rejected these proposed items because they recognized they were burdensome and unnecessary given their own examination of hospital conversions and the proposed Tenet Healthcare acquisitions, in particular.

As the Chairman of the GWHN Board of Directors, I will specifically comment on the oversight of and governance for the proposed Joint Venture. As recognized by the AG report, our Board exercised "reasonable and prudent due diligence in an effort to serve the best interests of Waterbury Hospital and the provision of healthcare in the Waterbury community." This comprehensive process included the critical oversight role to ensure that the Joint Venture fulfills its operational and financial obligations.

As part of our contractual agreement with Tenet Healthcare, three governing bodies will be established. The Hospital Board is charged with overseeing the daily operations, financing, and credentialing process, while the Joint Venture Board is charged with overseeing the strategy and the budget. And, the Foundation Board will also play a role in ensuring that the Joint Venture lives up to its obligations, particularly since it will have an interest as an investor. The Foundation Board will be advised by a Community Advisory Committee that identifies and advocates for unmet healthcare needs. These four bodies work in concert to fulfill their fiduciary responsibilities, which includes holding the Joint Venture accountable for all contractual and regulatory obligations. These boards act as checks and balances and will play an extensive role in ensuring that our Joint Venture strengthens access to the critical and ever-evolving services needed by our community. In fact, they negate the need for an "independent monitor" as proposed by OHCA.

I should also point out that the Foundation, as detailed in the CON/Conversion application, establishes a Community Advisory Board to advise the Foundation Board of Directors on community needs. Its members will be drawn from many sectors of the Greater Waterbury Community. The proposed condition calling for *another* community advisory board is both duplicative and unnecessary.

Our agreement with Tenet Healthcare includes provisions for action in the event of a breach of contract, yet another avenue to ensuring accountability of the Joint Venture.

This Joint Venture is vitally important to the sustainability of Waterbury Hospital and the continued access to high quality healthcare for all those in the Greater Waterbury region. With this in mind, I urge you to reconsider the duplicative and burdensome conditions in the OHCA conditions.

Thank you for your time and consideration.

Sincerely,



Carl Contadini  
Chairman, Board of Directors  
Greater Waterbury Health Network/Waterbury Hospital



December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

Dear Assistant Attorney General Hawes and Ms. Martone:

Thank you for the opportunity to comment on the proposed final decisions of the Office of Health Care Access (OHCA) and the Attorney General's office regarding the Greater Waterbury Health Network/Tenet Healthcare joint venture.

I am a practicing pulmonary and critical care physician at Waterbury Hospital, and serve as the Medical Director of Performance Improvement who manages and oversees the hospital's quality of patient care and patient safety. I read the quality conditions proposed by OHCA in its draft decision and have some serious concerns about having yet another regulatory review by another regulatory body on top of the numerous organizations—state and federal, accrediting and regulatory—to which we already report quality, safety and performance metrics—without any expectation that this will help us to improve or strengthen our quality and safety.

At Waterbury Hospital, providing high quality, safe patient care is a top priority. Along with other Connecticut hospitals, through a Connecticut Hospital Association initiative, we are working toward becoming a Level Three High Reliability Organization. As part of this endeavor, we began daily safety huddles this year. ). These initiatives are part of our overall performance improvement plan, which is governed by a committee of our Board of Directors and updated annually. Each year, in concert with the Board Committee on Quality and Safety, we establish targets and goals for improvements in quality and safety and hold ourselves accountable by sharing data on our progress with this Committee and the full Board of Directors. Often times, as we learn about new innovations or best practices in quality or safety, we refine

our goals or our processes for meeting goals. This is a very stringent, accountable internal process for continuously improving our performance and holding ourselves to the highest standards. For example, over the past year, we have decreased our hospital-associated infections specifically central line-associated blood stream infections and catheter-associated urinary tract infections to below the national benchmark. In addition, over the past five years, we have developed multidisciplinary safety teams in each of our clinical areas that focus on quality and safety issues specific to the area.

There are also myriad agencies and organizations that review or accredit the hospital's quality and safety performance. We are accredited by The Joint Commission which conducts triannual on-site surveys and are surveyed by the DPH for licensure. . We submit quality and infection data to CMS, The Joint Commission, and the Centers for Disease Control and Prevention(CDC) , and are subject to on-site, unannounced surveys. If an issue is discovered by a surveying agency, we work tirelessly to address it by developing corrective action plans. In addition to reporting back to the regulatory agency, we conduct internal audits to ensure ongoing compliance and these results are reported to the Performance Improvement and Safety Committee.

As noted, we provide data to CMS, The Joint Commission and the CDC , some of which is publicly reported on sites such as CMS' Hospital Compare. This holds us publicly accountable for our quality of care as well.

Today, we have four full-time and three part-time staff members just to proactively develop, implement, and track our progress on our quality and safety plan, meet all the data reporting requirements, and comply with all the federal and state mandates for hospital quality and safety. Frankly, we are stretched to capacity. At Waterbury Hospital, we have very limited resources and consider each new proposed initiative within the context of how much it actually will or can contribute to strengthening patient care—there are certainly numerous quality initiatives, organizations, and programs in which hospitals can participate. We need to keep our focus on those that best serve our organization and our patients. That's why we disagree with OHCA's condition that we participate in Leapfrog and attain a Leapfrog Safety Score—we do not believe that this is the best use of our limited resources since this will not, in any way, help us to bolster our quality and safety, it's just another "rating" organization that does not contribute to patient care quality.

Thank you for this opportunity to submit comments. I am happy to discuss the quality and patient safety plan and initiatives at Waterbury Hospital. For the above mentioned reasons, I'd encourage you to substantially change your proposed conditions.

Sincerely,

A handwritten signature in cursive script that reads "Joey Cosgriff".

Joey Cosgriff, MD, MPH  
Medical Director, Performance Improvement  
Medical Director, ICU

Dear Attorney General

I read with interest the Hartford Courant's Dec. 2, 2014 article titled "Agencies Support Waterbury Purchase", ref (a), which brought up some interesting issues for consideration and/or debate in light of the Hartford Courant's Dec. 4, 2014 article titled "Hospitals Defend Facility Fees", ref ( b). Ref (b) discusses the losses at Hartford Hospital due to free medical care, charity care and under-reimbursed care for governmental payers. In this case, and the purpose of the article, the subject of fees passed to patients for mitigation of the losses were discussed.

After reading the two articles the following thoughts and issues surfaced.

1. Will a "for profit hospital"
  - a. Accept or deny patients in the "free care category"?
  - b. Accept or deny patients in the "Charity care category"?
  - c. Accept or deny patients in the "Medicaid care category"?
  - d. Accept or deny patients in the "Medicare category"?
  - e. Pass on Higher fees to maintain "Profit"
2. Will the surrounding non-profit hospitals see an increase in patients in the 1a-d categories thus worsening their balance sheets?

I am writing to you in hopes that these issues have or will be considered in the best interest of patients.

Robert DiRusso  
34 Fawn Hill Rd  
Burlington, CT 06013

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Mr Hawes:

I am an opponent of Tenet Take over for following reasons:

1. Too many conditions placed on Tenet will not allow it to provide quality care.
2. Tenet will resort to many loop holes in order to survive.
3. Will require extensive monitoring re : billing practices, efficient operation, Will need to monitor medical outcomes - reflects quality of MDs provided.
4. Loss of jobs. Minimal opportunities for new hires.
5. Tenet has past history of legal irregularities.
6. Needs a condition that if quality of care deteriorates, Tenet will forfeit the operation and dissolve contract. With this a strong "Whistle Blowing Council" must be put in place.
6. Tenet will monopolize healthcare in this Region as it does in other Regions.
7. Has there been any real time studies made on Tenet's current operation? Have Reports been submitted to CT? Who did studies?
8. Agency needs to be formed to monitor all conditions of operation that are being set. This is costly and time consuming operation.
9. Union demands become fortified as they can strike both hospitals at same time.

Bottom line is : concern for quality of care to CT Residents and trumps all - this action will bring down the quality because of the inherent motive for profit.

Sincerely,  
Nicholas Patsis PE  
[box555@sbcglobal.net](mailto:box555@sbcglobal.net)

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To Who It May Concern:

**MY WIFE DIED AT A MASSACHUSETTS HOSPITAL. FRAMINGHAM UNION HOSPITAL IN FRAMINGHAM, MASS.**

**TENET** owns Framingham Union and Leonard Morse hospital, located in Natick, Mass.

On this terrible night there was not a CT scan operator at the Framingham Union Hospital. The technician was performing similar duties at the Leonard Morse Hospital approximately 5/7 miles away.

Protocol requires that this scan be done within a 45 minute time span. We waited approximately one hour and forty five minutes.

**THE SHARING OF THIS EMPLOYEES TIME HAD BEEN GOING ON FOR 12 YEARS...** We might never know if there were other patients put at risk during that time. (until Tenet took over the hospital was operated by Vanguard).

I worked at Bristol Hospital, in Bristol, CT for 19 years for the last several years as an Assistant Administrator. Had I not know this protocol, this time lapse might not have been an issue.

All of this hospital purchasing by Tenant is happening too quickly. I think the hospital administrators are focusing too much on the purchase price and not on the history of health care provided in these areas. Millions are being promised who know when or how it will be spent.. hopefully there are real time checks and balances built into the contracts.

In Mass. Stewart Healthcare plans on closing Quincy Hospital earlier than projected in the takeover.

Partners Health Care might be putting their expansion on hold.

In Connecticut, **just today** retirees, of Bristol Hospital, have been receiving letters saying that their supplemental insurance will be increased in price the first of the year, 2015,..one example for a man and wife \$170 per month increased to \$240 per month. This was after we all received a letter that this coverage will be dropped in June of 2016.

There was no indication of a price increase..

This move alone puts a lot of money in the for **profit operators pocket.**

The managers of Bristol Hospital have, for years, treated the retirees as a non entity. We have reached out and could have been a positive group to help with this transition.

You folks have an awesome task and I hope you at least consider slowing this purchase process down. At least until more facts about how they will manage health care in the communities affected in the future.

I do not know who will be reading this but I do hope someone does.

Respectfully,

John Beeler  
57 Wagonwheel Road  
Sudbury, Mass 01776      Phone 978-443-9477

PS. I lived in Watertown, Ct. for 32 years. My youngest son was born at Waterbury Hospital.

---



December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

Dear Assistant Attorney General Hawes and Ms. Martone:

I am writing with some serious concerns about the proposed final decisions and conditions related to the Greater Waterbury Health Network/Waterbury Hospital and Tenet Healthcare joint venture. At Waterbury Hospital, we are all grateful for the work you have done and the progress that has been made in moving this transaction forward but some of the conditions proposed by OHCA would negatively impact our ability to provide high quality care based on patient needs.

For the past 30 years, I have been in Nursing Leadership positions, with seven of those years as the Chief Nursing Officer in a hospital setting. One of my responsibilities is assuring appropriate nurse staffing levels—that's three shifts per day in multiple areas of the hospital (e.g., ED, ICU, and Med-Surg) every day of the year. Staffing decisions are based on utilization, patient acuity and volume as well as nursing competencies and experience. We have to be extremely flexible and adaptable, on virtually a daily basis, to best serve our patients' needs. In addition to very thoughtful staffing plans by unit, shift by shift adjustments are required to accomplish this goal. These adjustments also must include changes needed due to staff illnesses or staff's emergent need for time off. For example, on a recent evening shift, we had a sudden surge of six Critical Care admissions, requiring an immediate need for additional highly skilled nurses. In meeting these sudden demands or staffing requirements, we look at the entire organization and, through a critical thinking process, identify the most appropriate manner with which to meet the needs.

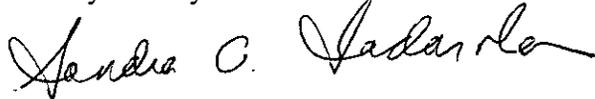
Each year we create a staffing plan that examines historical and recent trends in utilization and patient severity of illness, anticipates volume and/or patient requirement changes for the year ahead, and identifies the number of staff necessary to meet expected patient needs. We also take into consideration quality/risk data as well as benchmark comparisons. For example, we recently changed our care model in one of our Behavioral Health areas, introducing Security in a focused role to support both patient and staff safety. Another example of a recent change was the creation of a location to cluster our observation status patients.

Waterbury Hospital serves many vulnerable patients—those who are frail and elderly, those with behavioral health and addiction problems, and those who are living in poverty or without family support. Over the past few years we have seen a rise in patients with mental health issues. We are seeing increasingly more elderly patients with a multitude of chronic illnesses that require intensive resources, not only for medical care but also to meet their social service needs. This changes the skill sets and the number of staff necessary to provide for the safest care possible.

The shift to more services being delivered on an outpatient basis is also affecting hospital volume and hospital staffing—and this is a trend that we see will continue. Declining volume as well as the new technology being introduced, such as cardiac monitoring systems alarming and displaying rhythms on caregiver phones, also have a direct impact on the number of staff necessary to care for patients. Thus, mandating staffing levels remain the same for the next five years is counterproductive to our organization's goals of making sure we have the appropriate number and mix of staff to provide the highest level of quality care available while doing this most cost effectively. This is particularly true given the seismic and accelerated pace of change in our industry—maintaining the status quo for the next five years is simply unrealistic and would not be in keeping with our mutual goals of making sure patients are well served and ensuring the long-term viability of Waterbury Hospital.

For these reasons, I urge you to substantially change the staffing conditions in the OHCA decision.

Thank you for your consideration.

A handwritten signature in black ink, reading "Sandra A. Iadarola". The signature is fluid and cursive, with the first name "Sandra" and last name "Iadarola" clearly legible.

Sandra A. Iadarola, RN, MBA, CPHQ  
Chief Nursing Officer/Vice President of Patient Care Services  
Waterbury Hospital



December 8, 2014

**VIA E-MAIL AND HAND DELIVERY**

Ms. Kimberly Martone  
Director of Operations  
Department of Public Health  
Office of Health Care Access  
410 Capital Avenue  
Hartford, CT 06134

**Re: Notice of Proposed Final Decision  
Office of Health Care Access  
Docket Number: 13-31838-486**

**A Joint Venture between Greater Waterbury  
Health Network, Inc. and Vanguard Health Systems, Inc.  
which will convert Waterbury Hospital from a  
Not-For-Profit Hospital to a For-Profit Hospital  
under Connecticut General Statutes § 19a-486**

Dear Ms. Martone:

Bristol Hospital respects the Certificate of Need review and approval process established by the State of Connecticut that is being followed by the Office of Health Care Access (“OHCA”) and the Office of the Attorney General (“OAG”) in the Waterbury/Tenet proposed transaction and is submitting this letter in response to the request for comments on the Proposed Final Decision. Bristol Hospital is engaged in a similar Certificate of Need process involving Tenet’s proposed acquisition of Bristol Hospital and HealthCare Group, Inc. and therefore has a strong interest in the conditions being imposed by OHCA in the Proposed Final Decision involving the Waterbury/Tenet transaction.

Bristol Hospital is concerned that the imposition of a number of the conditions in the Proposed Final Decision would severely impact the ability of any healthcare system to operate in a way that would support long-term financial and operational viability. No individual hospital would be able to effectively operate under the same constraints. The imposition of staffing quotas, clinical service decision making restraints and pricing freezes for a five-year period are unreasonable in such an uncertain healthcare environment. In addition, mandatory participation in the LeapFrog System and required public reporting of numerous additional strategic and financial information is both burdensome and requires reporting of non-public, proprietary and competitively sensitive information that no hospital would accept. No other hospital in the State

of Connecticut, either for-profit or not-for-profit is required to operate under these proposed restraints.

Bristol Hospital also recognizes the strong concerns articulated by Tenet about the conditions of the State's approval of their acquisition of Waterbury Hospital. Tenet has consistently and repeatedly expressed its significant opposition to many of the conditions included in OHCA's Proposed Final Decision and clearly indicated that these restrictions and limitations would create a significant obstacle for each of Tenet's proposed transactions in the State. Bristol Hospital is concerned that if the Proposed Final Decision is adopted without changes, Tenet will abandon the Waterbury/Tenet transaction as well as the proposed transaction with Bristol Hospital and other proposed transactions in Connecticut. Moreover, no other potential partner is likely to accept similar conditions. We believe that Tenet's concerns are reasonable and understandable and we urge OHCA's reconsideration of the conditions of the Proposed Final Decision.

### **Staffing Conditions**

The requirement that VHS Waterbury Hospital sustain its clinical workforce for a period of five years does not allow the Hospital to adjust to changes in demand, utilization, payment, medical advancements or improved care delivery models, actions that all other hospitals in the State, both for-profit and not-for-profit, can and must take in order to ensure the delivery of cost-effective care. No hospital wants to lay off staff, even in financially challenging situations. However, the requirement to maintain staffing levels for five years, is not realistic, particularly for an organization in significant financial distress.

No one can predict the impact of changes in healthcare over the course of the next five years with certainty. For example, in 2012 the State of Connecticut cut Medicaid reimbursements to hospitals by more than \$500 million. As a result, hospitals across the State were forced to reduce workforces in order to sustain their financial viability.

Additionally, Connecticut hospitals continue to experience inpatient volume declines. To restrict VHS Waterbury Hospital's ability to make any clinical workforce adjustments over the next five years does not provide them with the flexibility necessary to manage to changes in demand/utilization and to provide cost-effective care.

### **Clinical Service Level Conditions**

The requirement that VHS Waterbury Hospital to maintain all levels of inpatient and outpatient services for five (5) years is unreasonable and is not necessarily in the best interest of the Hospital or its patients. Tenet has agreed to maintain Essential Services at VHS Waterbury Hospital for a period of seven (7) years. Non-Essential Service adjustments have to be considered in the context of changes in demand, utilization, payment, medical advancements and improved care delivery models. Requiring VHS Waterbury Hospital to sustain all current levels does not provide them with the ability to strategically assess the necessity of certain Non-Essential Services, nor does it give them the ability to achieve critical efficiencies by eliminating potential redundancies or implementing changes in care delivery models. Moreover, OHCA's approval is already required for any termination of services through the existing Certificate of Need process.

### **Pricing Conditions**

The requirement that VHS Waterbury Hospital maintain current pricing levels for five years is also unreasonable given the uncertainty of the healthcare environment and the need to adapt to changing health care needs of the community. This requirement will adversely impact VHS Waterbury Hospital and is not a requirement imposed upon any other hospital in the State, either for-profit or not-for-profit.

### **Quality Conditions**

We believe that the decision to participate in LeapFrog should be made by individual hospitals and not be mandated by the State. Many believe that the LeapFrog System is overly subjective and uses outdated information. Hospitals already participate in many quality rating systems that are publicly reported and must implement a quality improvement program as a condition of participation in the Medicare and Medicaid programs. In addition, we are not aware of any other Connecticut hospital that is mandated to participate in the LeapFrog System.

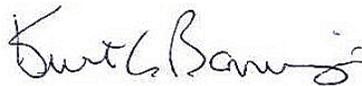
### **Reporting Conditions**

The imposition of an independent monitor for a five (5) year period and the numerous reporting requirements imposed on VHS Waterbury Hospital are burdensome and not mandated for any other Connecticut hospital, either for-profit or not-for-profit. Further, some of the reporting requirements request non-public financial and strategic information and require public posting on the VHS Waterbury Hospital website. We believe that these requirements are unreasonable and unduly disadvantage VHS Waterbury Hospital.

For all of the foregoing reasons, Bristol Hospital urges OHCA to reconsider these conditions in the Proposed Final Decision. If the Proposed Final Decision is not modified and Tenet abandons the four transactions it has currently pending in Connecticut, it will leave these four health systems without the resources, systems, efficiencies and best practice protocols that Tenet brings and that are essential for long-term viability and the ability to best meet the health care needs of our communities in the evolving health care marketplace.

Thank you for the opportunity to provide input in this process.

Very truly yours,



Kurt A. Barwis

President and CEO

cc: Gary A. Hawes  
Assistant Attorney General



December 5, 2014

Gary W. Hawes, Assistant Attorney General, Office of Attorney General

Re: Public Comments on Notice of Proposed Final Decision, OHCA Docket Number: 13-31838-486

Dear Attorney Hawes,

I am writing to support the thoughtful proposed final decision of the Office of Attorney General regarding the conditions to be placed on the conversion of Waterbury Hospital from a nonprofit to a for-profit hospital owned by Vanguard/Tenet. We are pleased to see that the Office of Attorney General has put emphasis on ensuring that the Greater Waterbury community will continue to be well-served by a new, for-profit owner and that there will be community-based accountability factored into future decision-making.

In considering the possibility of hospital conversions, Universal Health Care Foundation of Connecticut has been most concerned about the impact on health care quality and affordability, as well as the need to guarantee equitable access for the people of the community. In addition, we believe transparency of information and accountability to the community are important requirements for such transactions.

We are pleased that the Office of Attorney General's proposed decision has put a stop to the erosion and reallocation of the Waterbury Hospital Foundation's assets as a result of the conversion transaction. In particular, the elimination of the capital call requirement of the proposed transaction will assure that the charitable assets of the Waterbury Hospital Foundation will be preserved to meet the health care needs of the greater community rather than the capital needs of a new, for-profit owner. We believe it is important to preserve and, if possible, expand the assets of the Waterbury Hospital Foundation. At this point, it is unclear how the sale of Waterbury Hospital or changes in the health care payment and delivery system will impact local need. While charitable dollars are never sufficient to fully meet the health care needs of a community, a local foundation resource is a valuable asset to the community.

Further, we are pleased that the Office of Attorney General's decision to eliminate the capital call requirement protects the Waterbury Hospital Foundation's representation on the joint venture board, thereby ensuring continuing community engagement with the joint venture hospital.

In closing, I hope that the Office of Attorney General's and OHCA's proposed final decisions will not be eroded. Despite the proposed requirements, I must reiterate that the Foundation remains extremely concerned about the expansion of for-profit ownership of our state's nonprofit community hospitals. In light of huge shifts in the health care landscape, we continue to urge that the state place a moratorium on such deals until we have a more complete understanding of what Connecticut truly needs from hospitals in the 21<sup>st</sup> century. As far as we can tell, no one has adequately examined that question. While a sound set of requirements for the conversion of Waterbury Hospital, and other nonprofit conversions continuing to be addressed on a case-by-case basis, may appear to be suitable in the short-term, it may not serve the interests of Connecticut residents in the long run.

Thank you for your thoughtful work on this proposed hospital deal.

Sincerely,

Frances G. Padilla, President

**Ann H. Zucker**  
Partner  
Direct: 203.252.2652  
Fax: 203.325.8608  
azucker@carmodylaw.com  
707 Summer Street  
Stamford, CT 06901

December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford CT 06106

Re: OFFICE OF ATTORNEY GENERAL, DOCKET NO. 13-486-01

Dear Mr. Hawes:

On behalf of Greater Waterbury Health Network, Inc. ("GWHN"), we offer comments on the Proposed Final Decision dated December 1, 2014 from the Office of the Attorney General with respect to Docket No. 13-486-0 ("Proposed Decision"). Our comments are general in nature and do not constitute a review of every aspect of the Proposed Decision.

#### **1. CLARIFICATION OF THE CALCULATION OF THE "CHARITABLE NET ASSETS"**

One of the primary goals of the transaction is to provide for the satisfaction of GWHN's liabilities, including its largest liability, the CHCA (nurses) pension liability<sup>1</sup>. Like most nonprofits, GWHN has some liabilities that are due currently (routine payables, such as utility bills, payroll, etc.); it also has liabilities that arise or become due as a result of the transaction (CHEFA bond debt, investment banker's fees, conveyance taxes, attorneys' fees, pension, workers compensation and malpractice claims). Some of the liabilities arising out of the transaction will not be due at the closing (e.g., CHCA pension, surety bond premiums to support Workers' Compensation obligations) or are not sufficiently known or matured to pay at the closing (e.g., RAC audits, Medicaid recoupments). In addition, there will be the expenses of running the post-closing foundation ("Foundation"), such as bank fees, audits, accounting services etc. which are not liabilities or expenses now, but will require cash going forward. Without the changes to the Proposed Decision outlined below the Foundation will not be able to satisfy all of its existing and ongoing liabilities, including the nurses pension obligation, and therefore we strongly urge you to make every change requested herein.

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<sup>1</sup> The CHCA pension liability of \$27.7M is a result of a mass withdrawal from a multiemployer union plan; ERISA permits this liability to be paid over 10 years, but at CHCA's urging, GWHN agreed to pay it over 8 years.

December 8, 2014

Page 2

The Proposed Decision defines “Net Charitable Assets” as “the price paid for the nonprofit hospital’s assets minus its debt obligations and the other liabilities it will address using the proceeds from the proposed transaction, which sum will ultimately be restricted as to use.” GWHN believes that the “Net Charitable Assets” should take into account the satisfaction of all of the Hospital’s liabilities, whether payable at closing or later and permit all of the sales proceeds to be used to satisfy them.

The Proposed Decision also directs the remainder of the indemnification reserve (a part of the purchase price) be considered as part of the Charitable Net Assets. GWHN proposes that the indemnification reserve, to the extent unused for its intended purposes, be available to satisfy the Hospital’s liabilities and Foundation’s expenses. The Foundation plans to satisfy certain of the liabilities over time through the use of funds released from the indemnification reserve. In the event that such funds are not ultimately required for such purposes, they could be included in the Charitable Net Assets.

## **2. USE OF PROCEEDS OF SALE OF JV INTEREST**

The Proposed Decision indicates that the proceeds of a sale of GWHN’s JV interest should be treated as an “endowment” under UPMIFA and cannot be used to settle liabilities or pay administrative expenses. GWHN agrees with this concept. However, if the Foundation finds that its closing liabilities cannot be met through the use of the sales proceeds and the unrestricted funds, the proceeds from the sale of the JV interest should be available to satisfy those liabilities, rather than allowing those liabilities to be unsatisfied.

## **3. CLARIFICATION OF THE PROHIBITION AGAINST BUYING SERVICES FROM THE JV HOSPITAL**

The Proposed Decision prohibits the Foundation from buying services from the JV Hospital from the “net earnings”. In fact, the Foundation will need to purchase from the JV hospital the typical “transition services” that a seller would normally require post closing. In addition, after the closing, it plans to purchase services such as snow plowing and IT services for the Children’s Center of Greater Waterbury Health Network, Inc. Perhaps the intention is that the Foundation shall not use its funds to purchase services that the JV Hospital should be providing as “charity care” or other community benefit services or items. If that is in fact, the case, simply including that statement in the Final Decision would be clearer. The proposed change to the Certificate of Incorporation is an unusual provision and an artifact that could create confusion later when the individuals involved in this transaction are no longer available for consultation.

## **4. CONSTRUCTION ACTION.**

December 8, 2014

Page 3

The Proposed Decision directs the GWHN to prosecute a construction action with respect to certain gift instruments. A construction action would, in fact, be warranted *if* the donor's intent was not clear. However, in each of these instruments, the applicable terms of which are found in the Gift Analysis, the donor's intent at the time of the will is clear:

- Rhoda Hellman's Will provides in pertinent that  
“(d)uring the continuation of this trust the net income arising therefrom shall be divided equally between the WATERBURY HOSPITAL and ST. MARY'S HOSPITAL . . . . If either of the hospitals listed above *is not an organization described in Sections 170(a), 2055(a) and 2522(a) of the Internal Revenue Code or has ceased to exist* when income of the trust is to be distributed to it, the Trustee shall distribute all such income to the remaining hospital. *If neither hospital shall qualify* under such sections the Trustee shall distribute the income *to such other organizations in the health care fields as are described in said Sections 1770(c), 2055(a) and 2522(a) as the Trustee shall select.*” (emphasis added).

The Foundation will continue to satisfy this gift language because it will remain a charitable organization qualified under the Internal Revenue Code and will continue to provide health care. Mrs. Hellman chose to provide for health care in Waterbury through the two benefited hospitals, with other organizations becoming income recipients only if the two beneficiaries abandoned the health care field.

- Charles Hellman's Will provides in pertinent that  
“. . . the remaining yearly income shall be divided equally between THE WATERBURY HOSPITAL, INC. and THE ST. MARY'S HOSPITAL CORPORATION, both of said Waterbury . . . the said income to be used by each hospital as it may deem for the best interests of each hospital. In the event that either hospital *goes out of existence*, the entire income shall be paid to the remaining hospital. If either hospital shall merge with another hospital and my Trustees believe that the corporation so formed *carries out the purposes of the hospital so merged*, then my Trustees shall pay one-half of the income to such amalgamated corporation, but, if my Trustees believe that the amalgamated corporation does not carry out the purposes of the hospital so merged and mentioned herein, then the entire income shall be paid to the remaining hospital.” (emphasis added).

December 8, 2014  
Page 4

Again, the hospital will in fact continue under a different name with many of the same purposes. It is clear that Mr. Hellman's primary focus and purpose was to provide for health care in Waterbury.

Created by a special legislative act in 1800s, Waterbury Hospital was one of the first hospitals organized in Connecticut. It is this entity that existed at the time that *each* will was drawn, that exists today and that will be renamed as the Foundation. It will carry on its long time mission of providing health care in the community. There is no language in the Hellmans' wills that requires that the funds be used for traditional inpatient care; in fact, recognizing that a community's needs change over time, the Hellmans provided *unrestricted* funds to the Hospital. Mr. and Mrs. Hellman's intent to benefit the *Waterbury* community is evidenced by a similar grant to Waterbury's other hospital, Saint Mary's. The Hellmans' commitment to the Waterbury community can, and should, be continued by the Waterbury Hospital Foundation.

- Almon Dayton's Will provides in pertinent that  
"If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to THE WATERBURY FOUNDATION INCORPORATED OF WATERBURY, CONNECTICUT . . ." (the "Dayton Will")
- Harriet Kirk's Will directs the trustee  
"(t)o pay one-tenth of the net income to THE WATERBURY HOSPITAL, INC., an eleemosynary corporation located in said Waterbury, the same to be used for the general purposes of the corporation. In the event that said corporation goes out of existence then said income shall be divided equally among the other corporations and association mentioned in Section B; but if said corporation shall merge with any other corporation and my Trustee believes that the corporation so formed carries out the purposes of The Waterbury Hospital, Inc., the my Trustee shall pay the net income to such amalgamated corporation, but if my Trustee believes that the amalgamated corporation does not carry out the purposes of THE WATERBURY HOSPITAL, INC., then the net income shall be divided equally among the other charitable and eleemosynary corporations and associations mentioned in Section B." (the "Kirk Will")

December 8, 2014

Page 5

The intent of the Dayton and Kirk Wills is similarly clear; the income from each fund should remain in the Waterbury community and be paid to the hospital because it will remain a charitable organization qualified under the Internal Revenue Code and will continue to provide health care.

At the inception of the Foundation, income from these unrestricted funds will be used primarily to satisfy those liabilities that are payable over a number of years (in particular, the CHCA nurses pension which is payable over 8 years and the funding of workers' compensation claims)<sup>2</sup>. These are uses to which the funds could have been put while the hospital was operating as a nonprofit hospital. Later, these funds will be a flexible resource to the Foundation and the community that it serves. Diverting the substantial income from these funds away from the Waterbury community would hinder the provision of healthcare in the community. The wills in questions all clearly and unequivocally state an intent to provide for health and medical care in the Waterbury community; construction actions expose the donors' funds to the risk of diversion away from the community. Rather than proceeding with constructions actions, the Attorney General's office should continue to monitor the uninterrupted distribution of the income from these funds to the Hospital through a close review of the accountings of each of these trusts in the Probate Court, copies of which are always filed with the Attorney General. **If a construction action were required and the court ruled that these funds could not be used by the Foundation, the Foundation would not be able to satisfy all of the Foundation's obligations and anticipated expenses, including but not limited to the CHCA pension obligations.**

##### 5. CORRECTION OF FACTS.

- The interests of the Waterbury Hospital in Leever Center and Heart Center will be acquired by the JV or an affiliate. See Interrogatories filed October 6, 2014.
- The legal name of the hospital is "The Waterbury Hospital" (not Waterbury Hospital, Inc.).
- HAIC is owned by GWHN and a subsidiary of the Griffin Hospital. The Milford hospital affiliate is no longer a shareholder.
- While GWHN urges the Office of the Attorney General not to require the construction actions referenced in the Proposed Decision, such actions may be brought either in probate court or superior court.

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<sup>2</sup> The Waterbury Hospital is the one of the three largest employers in Waterbury. The well-being of Waterbury Hospital's current and retired employees is very important. These employees are members of the greater Waterbury community and their continued economic well-being affects not only themselves and their own families but affects the economics of the Waterbury community as a whole.

December 8, 2014

Page 6

- The Pooled Income Fund terminated in October 2013 when the last participant in the fund died and her interest was distributed as an unrestricted gift to the Hospital.
- The Edith Blakesley fund is not reflected on the books of the Hospital. It operates as a bed fund that provides for payment of uninsured medical expenses of members of four Congregational Churches in Waterbury. Expenses covered are not only those incurred at Waterbury Hospital or its affiliates, but also those incurred at Saint Mary's Hospital and its affiliates, per an order of the Waterbury Probate Court. Excess income is not paid over to the Hospital(s) as with other bed funds, but rather is retained in an accumulated income account by the trustee.

In closing, GWHN thanks the Office of the Attorney General for its thoughtful and thorough analysis of its Application for Conversion.

Very truly yours,



Ann H. Zucker

Counsel to Greater Waterbury Health Network, Inc.

December 8, 2014  
Page 7

cc.

Kimberly Martone, OHCA

Nykole Roche, MNA

James Rawlings, CSC/NAACP

Henry Murray



## WATERBURY HOSPITAL

December 7, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

RE: Comment letter for Greater Waterbury Health Network, Inc. and Vanguard Health Systems, Inc.  
Notice of Proposed Final Decision, Docket Number: 13-31838-486

Dear Assistant Attorney General Hawes and Ms. Martone:

Thank you for the opportunity to provide comments on the proposed final decisions of the Office of Health Care Access and the Attorney General's office regarding the transaction between Greater Waterbury Health Network (GWHN) and Tenet Healthcare. We are very appreciative of the extensive review and time your offices have spent on this matter and have been pleased that the pace of coming to closure on this joint venture has been accelerating. However, I have many concerns about the charity care and community benefit conditions proposed by OHCA in its decision.

I am the Chief Financial Officer of Waterbury Hospital and GWHN. I joined the organization just about a year ago, having served as a financial executive in hospitals around the country. I have worked for both for-profit and not-for-profit hospitals of all sizes and all types. Thus, I have a broad perspective about healthcare and hospital finance. As noted earlier, I specifically want to address the charity care and community conditions contained in the OHCA decision. There are quite a few concerns related to these conditions.

- Condition #29 calls for Waterbury Hospital to continue expending the same level of funding for all the community benefits activities as detailed in Schedule H of the IRS form 990 for FY2013. There appears to be some confusion about how we arrive at these numbers and

what they represent. In matter of fact, not all of these are direct dollars or expenditures, some are in-kind services—the information for this form is derived through the same formulas used for the Connecticut Hospital Association Community Benefit reporting (a voluntary effort). It is based on specific data elements of a software system, which then tabulates the total. These are not actual “expenditures” per se, some are in-kind services, some are estimates of time, for example, thus it would be difficult, if not impossible to set increasing “expenditures” by 1% (compounded or not) each year.

- Maintaining existing pricing levels for the next five years (condition #30) would be a financial hardship as Waterbury Hospital has network agreements that allow for annual reimbursement increases which, in many cases, are based on price changes within our hospital chargemaster. In addition, the costs of medical supplies, such as implants and pharmaceuticals, change on an irregular basis and having a “freeze” on pricing would prevent us from making any adjustments, which would have a negative impact on our hospital reimbursement. Maintaining our pricing for the five-year period would be counterproductive and impact our financial ability to operate. Pricing also is adjusted for inflation on an annual basis. Lastly, this request would impact our competitiveness and create an unlevel playing field as no other Connecticut Hospital will have this requirement.
- There is absolutely no need for a community benefit agreement with our CHNA partners. As the Greater Waterbury Health Improvement Partnership we have worked together for years to identify and address community health needs—and this is something we plan to continue to do as a Tenet hospital. Our agreement with Tenet calls for our continued involvement with the Partnership and implementing the CHNA action plan.
- Condition #42 requiring a 1% increase (compounded annually) in uncompensated care is not in line with the reality of what is happening in Connecticut. We anticipate the amount of uncompensated care will decrease given healthcare reform and the expansion of Medicaid.

As a hospital in one of the most regulated states in the country, we already report a great deal of financial data to the state agencies—and plan to continue under the existing mandates.

I encourage you to reconsider these conditions and make substantial changes given the current realities of what is being done by Waterbury Hospital today, the environment, and our agreement with Tenet Healthcare.

Thank you for your consideration.

Sincerely,



Ed Romero

Chief Financial Officer

[eromero@wtbyhosp.org](mailto:eromero@wtbyhosp.org)

# WATERBURY PULMONARY ASSOCIATES, LLC

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YALE UNIVERSITY SCHOOL OF MEDICINE

JENNIFER OUELLETTE, APRN, FNP  
NURSE PRACTITIONER

December 8, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street  
PO Box 120  
Hartford, CT 06106

Kimberly Martone  
Director of Operations  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue  
Hartford, CT 06134

Dear Assistant Attorney General Hawes and Ms. Martone:

As a physician, ex-Chief of Staff, and a member of the Greater Waterbury Health Network (GWHN) Task Force on Transactions, I'd like to express my grave concern about the multitude of conditions proposed as part of the Office of Health Care Access's draft decision on the GWHN/Tenet Healthcare joint venture. While we are appreciative of the time and attention that your offices have given to reviewing, in great depth, the proposed transaction, we are also very disappointed that the proposed conditions add a new layer of regulation that will hamper our hospital's ability to run an efficient healthcare organization that can adapt to the ever-evolving needs of our patients and community members.

I can assure you, as I did in my testimony during the October public hearing, that our Task Force took its responsibilities very seriously. We were very thorough in defining our goals and the attributes of a strategic partner that could help us continue to meet the healthcare needs of our community and strengthen the long-term viability of our organization. The Task Force also conducted a comprehensive examination of the definitive agreement for our joint venture with a keen focus on ensuring that the hospital would be able to continue providing high quality,

affordable, and sustainable healthcare services—and to do so within the existing state and federal regulatory framework.

As a physician for the past 39 years, I was particularly struck by the conditions being proposed on services and staffing. As drafted, these conditions would make it virtually impossible for the hospital—in fact, any hospital—to adapt to changing patient and community needs. It is critically important for all hospitals to have the flexibility necessary to deliver care in a manner that best serves their unique patient population—this includes the appropriate level and mix of skilled staff members. This cannot be regulated. These are local, “on the ground” decisions that are made within the context of patient acuity, utilization, and prudent stewardship of the organization’s human and financial resources.

The healthcare system, including the role of hospitals, is undergoing an unprecedented and very rapid transformation—like nothing I have ever seen or experienced before in the three plus decades of my career. This makes the service condition of maintaining all levels of clinical services for seven years unrealistic and untenable. The reason that hospitals conduct ongoing planning and research, including through the Community Health Needs Assessment, is to be able to identify and address opportunities to strengthen healthcare services that do, indeed, meet the dynamic needs of our communities while taking advantage of new innovations in the delivery of healthcare. It would not serve our patients or our communities well to hamstring hospitals’ ability in this regard.

I appreciate the opportunity to comment on the proposed final decisions. I urge you to substantially change the conditions as drafted to provide Waterbury Hospital the flexibility it needs to continue delivering high quality care to every member of our community.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Carl Sherter MD". The signature is written in dark ink and is positioned above the printed name.

Carl Sherter, MD



## WATERBURY HOSPITAL

December 8, 2014

Ms. Kimberly R. Martone  
Director of Operations  
Office of Health Care Access  
410 Capitol Avenue  
Hartford, CT 06134

Mr. Gary W. Hawes  
Assistant Attorney General  
Office of the Attorney General  
55 Elm Street, P.O. Box 120  
Hartford Connecticut 06106

Dear Ms. Martone and Mr. Hawes:

During the past two years, representatives from the Greater Waterbury Health Network/Waterbury Hospital, the Office of Health Care Access (OHCA) and the Attorney General's Office (AGO) have engaged in candid and respectful discussions about the financial status of the Waterbury Hospital organization, the dramatic change in the healthcare industry and the pressing need for GWHN to develop a relationship with a partner with significant financial resources as well as clinical excellence.

We are pleased the draft decisions released by OHCA and the AGO recognized that GWHN's board of directors conducted a thorough, thoughtful process with reasonable and prudent due diligence, to protect the best interests of the hospital and the community it serves. As both decisions noted, the result was a partnership that has committed to continue to meet "the community benefit standard" as outlined in Internal Revenue Service Ruling 69-545 and that would honor GWHN's or Tenet's charity care policy, whichever is greater. The OHCA decision noted that the new Tenet/Waterbury Hospital organization would continue a leadership role in the Community Health Needs Assessment.

GWHN's Board of Directors is very proud of the complex and deliberate process that it has undertaken to convert GWHN's assets to a for-profit entity and develop a Joint Venture with Tenet Healthcare. We devoted more than three years and tremendous human effort and financial resources to this worthwhile endeavor. From the very beginning, we set the highest priority to ensuring sustainable, high quality healthcare for the Greater Waterbury community. When our board members look back at this decision and their investment in a lengthy process and effort, they can be proud of the work we have done. No stone has been left unturned, no issue overlooked and no detail has been too small to analyze in the quest to attain high quality, sustainable healthcare for our community. The focus on that legacy and ensuring high quality healthcare has never wavered.

Therefore, it was with disappointment that we read the lengthy list of conditions in the OHCA draft decision. Of particular concern are the additional layers of oversight and regulation in an already highly regulated organization and the elimination of the flexibility necessary to operate a financially-sound, efficient, high quality healthcare organization.

Ms. Kimberly R. Martone  
Mr. Gary W. Hawes  
12/8/14

This is an enormously important transaction for our community and, therefore, as I know you agree, the details of these decisions and the precedents that they set must be the result of healthy discussion and be acceptable for all parties involved. As the healthcare industry experiences sea changes, our state must embrace those changes that will benefit its communities. If one of those changes is investor- owned hospitals, those hospitals must be able to operate on a level playing field with the non-profit hospitals in our state.

### **Independent Monitor**

GWHN collaborates with myriad regulators, all of whom have the laudable goals of ensuring quality healthcare, transparency in financial and governance practices, fairness in employment and patient treatment practices, fair pay, privacy, a safe workplace, and discourage fraud, discrimination, overbilling, unnecessary treatment, private inurement and other important goals. These agencies include OHCA, AGO, Department of Health, CMS, IRS, Joint Commission and other accrediting bodies for laboratories, nuclear medicine, pharmacies, etc., as well as voluntary associations like the Connecticut Hospital Association. The breadth and accessibility of information about the hospitals, their services, financial condition, quality and patient satisfaction has exploded with the advent of the internet. Hiring an additional agency, monitor, auditor or consultant to oversee Waterbury Hospital is unnecessary; existing regulatory agencies currently provide excellent oversight and provide easily accessible information to our public. If the intent is for OHCA to monitor compliance with the terms of the asset purchase agreement, our conversion Foundation's position as an owner with half of the board seats, makes the JV hospital uniquely accountable to the community.

### **Services**

GWHN's agreement with Tenet requires the continuation of core services. OHCA's proposed conditions prohibit the movement or change of any inpatient or outpatient service. As the conditions are written, we couldn't change the hours of operation of a small lab draw station from 8 a.m. to 7:30 a.m.!

The very nature of our deal is to develop efficient, effective healthcare services and attract back market share that has migrated to other communities. Adding additional oversight, decreasing our flexibility and ability to work collaboratively with others to improve services is an impediment to improving our delivery system and responding to the rapidly changing healthcare industry as dictated by the Affordable Care Act.

### **Staffing**

There are several organizations, such as The Joint Commission, Department of Health, and the Centers for Medicare & Medicaid Services (CMS) that oversee our quality. Staffing is a separate issue and is directly related to volumes and therefore cannot be mandated. Utilization of healthcare has changed dramatically in our industry in the past 10 years. The goal of Healthcare Reform is to decrease utilization of "hospital" services while we move our attention to keeping people healthy. Patient care is, by its very nature, dynamic; effective staffing cannot be controlled by government agencies. Secondly, the division of work in our organization is influenced by Collective Bargaining Agreements. All Connecticut hospitals report staffing levels to the state Department of Health. We

Ms. Kimberly R. Martone  
Mr. Gary W. Hawes  
12/8/14

are continually trying to find ways to decrease the expense of healthcare, as our reimbursement continues to be decreased. Finding ways to decrease cost while increasing efficiencies is central to our business and cannot be curtailed.

### **Governance**

This entire issue has been front and center with the GWHN Board of Directors which is comfortable that more than adequate governance has been built into the future of healthcare in Greater Waterbury. As planned, there will be four different boards involved in the Hospital and its legacy Foundation, plus an additional board that will oversee our physician practices. First, is the Joint Venture board which will be chaired by the existing GWHN board chairman for a term of three years. The JV board will have six Tenet-appointed members and six GWHN appointed members. Second, is a community-based hospital board which will oversee the day to day operations of the hospital and its outpatient centers.

The GWHN's surviving Foundation will have a community-based board of approximately 9-12 individuals. Some board members of this new Foundation will have extensive history with Waterbury Hospital as directors. They will be able to bring to bear on the JV the expectations of the transaction that the current board negotiated. Other members will be new to the board but have skills, outlooks and other attributes that will connect the community with the JV.

In addition, the Foundation board will rely on the advice of a community-based council that will include members from all facets of the Greater Waterbury Community, such as those that participate with us on the Community Health Needs Assessment, and from our own Members which we expanded in recent years to reflect more completely the diversity of our community. It will be the work of the advisory council to identify and focus the Foundation's attention on the unmet needs in the community. The larger community will be linked to the JV board through its active participation in the advisory council and on the Board of the Foundation. The Foundation Board will select the GWHN members of the JV Board. Also, the medical foundation will have its own board which will include many members of the local physician community

### **Community Benefits**

The JV's operating agreement requires the JV to adhere to the Community Benefit Standards of IRS Ruling 69-545. In addition, both organizations have agreed to adopt the Community Needs Health Assessment and work plan that is now in its second year, and will continue to participate in the CHNA. The organizations have also agreed to complete the Connecticut Hospital Association Community Benefit Report each year.

### **Pricing levels**

Over 70% of GWHN's volume is based on Medicare and Medicaid fee schedules. Pricing levels are not relevant to that volume, nor to the commercially-insured negotiated contracts in place. Therefore, GWHN pricing levels do not impact the reimbursement levels for the bulk of our business. However, the entire "pricing" discussion of healthcare is very confusing and GWHN and Tenet need flexibility to communicate more effectively with patients, and with businesses or

Ms. Kimberly R. Martone  
Mr. Gary W. Hawes  
12/8/14

agencies that buy healthcare. Our price list does need fixing so flexibility to address that is essential in the years ahead. Healthcare reform is really about taking costs out of healthcare, a very different concept than focusing on pricing levels.

### **Annual forum on Psychiatric care**

We would be delighted and are hopeful state regulators will attend this annual forum.

### **Quality improvement**

Like hospitals everywhere, GWHN – and Tenet – operate their facilities with annual Safety & Quality Improvement plans that are approved by our boards and are part of our board minutes and annual work plan. This is already required and overseen by our JCAHO accreditation process. Additionally, we do not participate in Leapfrog as we don't believe it is the right vehicle for us. Comparable quality results are reported on [www.Healthcarecompare.gov](http://www.Healthcarecompare.gov).

### **Capital Commitment**

The seven year plan to spend \$55 million on capital for GWHN should be developed thoughtfully and be amenable to change. The pace of technology changes in clinical care continues to race forward and capital items contemplated in year one are not likely to be responsive to the needs in year seven. While we have a short-term list that has been developed and shared with OHCA, the organization must have flexibility and be able to update its plan year after year to meet the changing needs of the industry and of our community. Rest assured that in our capital-starved organization there will be no shortage of opportunities to invest \$55 million. However, we are not comfortable sharing that or any other strategic plan in an arena where it can be viewed by our competitors.

### **Financial Reporting**

We agree to continue with the financial reporting we presently provide, along with all other hospitals, but do make note that Tenet, as a for-profit, publicly-traded company, may have different types of reports. We do not believe it is fair add additional reporting requirements for Tenet which are not expected of all hospitals in Connecticut.

### **Charity Care – Free Care**

Tenet has agreed to accept GWHN's charity care policy. As for defining levels of free care and discounted care, Connecticut is a Medicaid expansion state; therefore, the numbers of individuals applying for free care should eventually decline. As I think you know, the way we write down free or discounted care in our reports has changed over the years so comparing one year to the next is not a reasonable test. The charity care policy, however, should accomplish what is intended.

### **Physician Recruitment Reporting**

This, too, is proprietary information and not something we are comfortable sharing with competitors. Secondly, a physician recruiting plan needs to be fluid to meet changing needs of the

Ms. Kimberly R. Martone  
Mr. Gary W. Hawes  
12/8/14

industry and the community. But again, rest assured that a healthcare business cannot be successful without an adequate supply of well-trained physicians which is a central priority to every hospital.

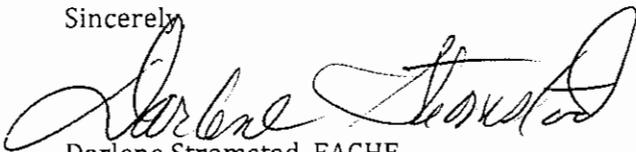
### Summary

The bottom line is this: Two years ago, when we went back out into the market to look for a capital partner, only two companies responded to us. Both were for-profit, out-of-state organizations. No one from Connecticut and not one non-profit hospital responded. We understand then, and now, that the best option for Waterbury Hospital was a larger, nationally-based, well-funded, experienced hospital company that could bring resources – financial, operational and strategic – to provide the foundation for us to meet our goal of providing sustainable, high quality healthcare to our region for years to come.

If these conditions remain in place, no other hospital company will come forward to partner in Connecticut. The loss and impact to us – GWHN/Waterbury Hospital – will be dramatic and **immediate**. Much will be lost. As it already stands, with the \$9.7 million in reductions in reimbursement incurred already in FY2015, we are operating at a loss and actively making plans to curtail expenses once again. There is a point – and it's very close – when there are no more options. And it has been our goal, and I believe yours as well, to not curtail the availability of ALL healthcare services for the people of Greater Waterbury, to include reproductive services which we do.

Thank you for our thoughtful consideration and effort. I look forward to making progress.

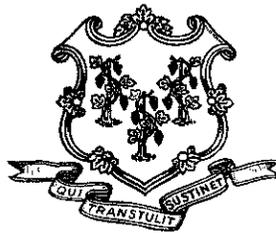
Sincerely,



Darlene Stromstad, FACHE  
President/CEO

**SENATOR MARTIN M. LOONEY**  
**MAJORITY LEADER**

Eleventh District  
*New Haven, Hamden & North Haven*



**State of Connecticut**  
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December 5, 2014

Assistant Attorney General Gary W. Hawes  
Office of the Attorney General  
55 Elm Street, PO Box 120, Hartford, CT 06106

Re: Public Comments on Notice of Proposed Final Decision  
OHCA Docket Number: 13-31838-486

Dear Attorney Hawes:

I would like to thank you for your thoughtful proposed final decision regarding the conversion of Waterbury hospital from a not for profit to a for profit hospital. I believe that your decision strikes a delicate balance between the needs of the community and the reality of the ever changing healthcare system.

The top priority in any healthcare endeavor must be patient access to high quality care. It is also extraordinarily important to preserve the commitment to community service that Connecticut has long required of its hospitals. The draft decision does this in a manner that would not appear overly burdensome to the parties in this transaction.

Among the innovative requirements in your draft decision is the stipulation that the hospital shall be a full participant in the LeapFrog program for five years. This is a positive move toward transparency and will give patients a method of judging quality of care. Hopefully by the end of the five year period the state will make this information available through the APCD.

I am particularly pleased that Vanguard/Tenet must pay for an independent monitor for five years to ensure compliance with the OCHA/AG orders. I would also have been supportive of requiring the monitor for five years with a possible indefinite renewal after five years. In addition, I would have been supportive of a review of the inpatient and outpatient services at five years as well as a review of the essential services at seven years rather than limiting these requirements to five and seven years with no possibility of an extension.

The five year prohibition on reducing the clinical workforce staffing levels is an excellent safeguard for both patient care and for the hospital employees. I trust that you will monitor staffing levels going forward even beyond the five year period. The formation of a community advisory board and the requirement that, for five years, the hospital must increase by 1% per year the financial assistance for free and discounted care ensures a continued commitment to the community.

I would ask that you require diversity in the membership of both the Community Advisory Board as well as the Foundation in order to ensure health equity and cultural competency as an important variable. These entities will best serve the community if their memberships are representative of the Waterbury community.

While I applaud capping the pricemaster pricing levels for five years, I am concerned as to whether this will cap actual prices since those pricing levels are not the actual prices paid for services.

Again, thank you for this most thoughtful proposed decision.

Sincerely,  
  
Martin M. Looney  
State Senator, Eleventh District



**Saint Mary's**  
**HOSPITAL**

*Office of the President*  
*Chad W. Wable, FACHE*

December 8, 2014

Kimberly R. Martone  
Director of Operations  
Office of Health Care Access  
410 Capitol Avenue  
Hartford, CT 06134

**Re: Docket No. 13-31838-486 Greater Waterbury Health Network, Inc. and Vanguard Health Systems, Inc. Proposed Final Decision**

Dear Ms. Martone:

This letter is in response to the Office of Health Care Access December 2, 2014 approval of the proposed transaction between Tenet Healthcare and Great Waterbury Hospital Network.

As you know, Saint Mary's has proposed a similar transaction with Tenet. More importantly, Saint Mary's and Waterbury Hospital share the common goal of caring for the Greater Waterbury Community. While predominantly a competitive relationship, it has also been highly collaborative, as evidenced in our joint participation in the Harold Leever Regional Cancer Center and the Heart Center of Greater Waterbury. These successful projects provide tangible evidence of our ability to develop healthcare solutions for the common good of our community.

In this context, Saint Mary's would like to express our severe concern with the drafted conditions, which we believe are extraordinarily excessive and economically debilitating. The conditions are far-reaching and would prohibit any hospital, regardless of size, location or affiliation, to effectively manage itself.

While the forty seven conditions cover a broad range of issues, I would like to address three specific areas which are of particular concern. These are in no way intended to be a comprehensive summary of our objections, but rather an example of the type of issues which we believe are so troublesome.

### **Changes in clinical services**

The healthcare industry is undergoing sweeping changes at an unprecedented pace. Healthcare organizations must provide services that offer easy and convenient access, integrated and efficient care, and both high quality and high value. In order to successfully meet both the challenges and opportunities we face, hospitals must become more agile and nimble, learning to adapt and change rapidly. The goals of the Affordable Care Act (ACA) mandate not only payment reform, but also *system* reform. Implicit in this is a change to the way healthcare services are offered.

Prohibiting changes in services would stunt innovation and improvement, prevent the shift to lower cost care settings, and ignore patient's preference for convenient access to care in variety of settings throughout the full continuum of care. Further, it would limit the ability to adapt and change to new technologies and systems of care that would improve the patient experience and reduce cost.

Tenet has agreed to maintain essential services at Waterbury Hospital for seven years, and any contemplated termination of service would be subject to OHCA's approval. Any further condition beyond these is unnecessary and will negatively impact Waterbury Hospital's ability to make necessary and appropriate *improvements* to its services.

### **Changes in staffing**

Healthcare staffing is a highly fluid and exacting management task. The primary goal is to provide services that ensure patient safety, high quality outcomes, and a high degree of patient satisfaction. Concurrently, hospitals must be highly efficient, lest the financial condition of the organization is compromised. At Saint Mary's, our staffing levels are continuously monitored and carefully managed to meet the constantly shifting needs of our census and acuity of our patient population. Our vigilance in this area has been one of the key elements of the financial stability we have begun to achieve.

In addition to these day-to-day concerns, hospitals must also adjust for industry-wide trends such as decreases in utilization, growth in outpatient and home based care, and advances of new technology.

Prohibiting any staffing changes for a five year period would effectively hand cuff any hospital from achieving the kind of flexibility and responsiveness needed to proactively manage its staff and the overall strength and financial sustainability of the organization.

### **Changes in pricing**

Maintaining current pricing for five years is unreasonable and would have significant implication for the financial strength of the organization. All Connecticut hospitals function in a dynamic environment and none are subjected to similar restrictions.

### **Independent Monitor**

The condition to include an independent monitor is redundant. Hospitals are already accountable to a vast number of state, federal, and private organizations, including the Centers of Medicaid and Medicare Services, the Department of Public Health, the Office of Healthcare Access, and the Joint Commission. While each of these organizations has a unique and specific focus, they are all fundamentally concerned with maintaining quality and safety for all patients. Hospitals throughout Connecticut and the rest of the country participate in mandatory reporting, audits, and site visits with these organizations. Adding another layer of oversight for Waterbury Hospital would create further cost without offering any additional benefit to the hospital or the people it serves.

Page 3  
Kimberly R. Martone  
December 8, 2014

Further, mandating that Waterbury Hospital participate in LeapFrog is an over-reaching mandate that should be left to the discretion of the hospital versus being a condition of this transaction.

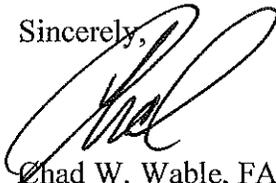
### **Conclusion**

As I stated at the beginning of this letter, this is a partial list of our concerns. While there are others, I hope that these comments convey the type of concerns we have with the proposed conditions.

The proposal presented by Tenet and Waterbury Hospital is an attempt to make positive changes to our local healthcare delivery system. To my great concern, the conditions contained in the draft approval will have the opposite effect; in essence regulating the status quo, and prohibiting the type of proactive change and evolution that is required. These conditions restrict the ability to provide the integrated, efficient, high quality, high value services that healthcare consumers demand. Change, of course, brings with it a degree of fear and uncertainty. However, to mandate that nothing change is a certain path to failure.

I urge you to reconsider the very damaging conditions currently contained in your decision.

Sincerely,



Chad W. Wable, FACHE  
President and Chief Executive Officer

cc: Perry Zinn Rowthorn, Deputy Attorney General  
Gary W. Hawes, Assistant Attorney General



Eastern Connecticut Health Network  
71 Haynes Street  
Manchester, CT 06040  
860.533.3414  
www.echn.org

December 8, 2014

**VIA EMAIL AND HAND-DELIVERY**

Kimberly R. Martone  
Director of Operations  
Department of Public Health  
Office of Health Care Access  
410 Capitol Avenue  
Hartford, CT 06134  
[OHCA@ct.gov](mailto:OHCA@ct.gov)

**Re: *Proposed Final Decision***  
***OHCA Docket Number: 13-31838-486***

***A Joint Venture Between Greater Waterbury Health Network, Inc. and Vanguard Health Systems, Inc. which will convert Waterbury Hospital from a Not-For-Profit Hospital to a For-Profit Hospital under Connecticut General Statutes § 19a-486***

Dear Ms. Martone:

This letter responds to the request by the Office of Health Care Access (“OHCA”) for comments on the above-referenced proposed final decision (the “*Proposed Decision*”). Eastern Connecticut Health Network, Inc. (“ECHN”) has serious concerns that the Proposed Decision, if adopted as a final decision without change, will have severe consequences for hospitals in Connecticut, including possible abandonment of this and similar transactions in the State, which would reduce care available for Connecticut residents.<sup>1</sup> We believe the extent of those consequences may have been unforeseen, and we therefore submit these comments to explain our concerns and to urge OHCA to reconsider and revise the Proposed Decision.

<sup>1</sup> As OHCA is aware, ECHN is an applicant in OHCA Docket Number 14-31926-486 and Attorney General Docket Number 14-486-01, seeking approval to sell certain of its assets to a joint venture to be formed by Tenet Healthcare Corporation and Yale-New Haven Health Services Corporation. As such, ECHN has a specific interest in the precedent that may be set by the Proposed Decision.

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ECHN appreciates that the Proposed Decision, along with the Proposed Final Decision of the Attorney General, would permit the proposed transaction between Greater Waterbury Health Network, Inc. (“*GWHN*”) and Vanguard Health Systems, Inc. (“*VHS*”) to proceed, as those decisions represent the recognition on the part of Connecticut’s regulators of the critical need for Connecticut’s hospitals and health care systems to innovate and reform. However, the far-reaching scope and consequences of the conditions set forth in the Proposed Decision are in conflict with OHCA’s overall mission and with the very reasons that OHCA proposes to allow the transaction to go forward.

ECHN recognizes OHCA’s significant and important role in “ensur[ing] that the citizens of Connecticut have access to a quality health care delivery system.” (OHCA statement of mission as set forth on the OHCA website.) OHCA cannot fulfill that role if the conditions it imposes jeopardize the continued operation of community hospitals or prevent innovation and evolution of care. In fact, Connecticut law specifies that in placing conditions on the approval of hospital conversion applications, the Attorney General and the Commissioner of the Department of Public Health are to follow “the purposes of sections 19a-486a to 19a-486h” of the Connecticut General Statutes. For OHCA, the specific guidance is found in Section 19a-486(d), and more specifically subsection (a), which states:

[OHCA] shall deny an application filed pursuant to subsection (d) of section 19a-486a . . . unless [OHCA] finds that: (1) the affected community will be assured of continued access to high quality and affordable health care after accounting for any proposed change impacting hospital staffing; (2) in a situation where the asset or operation to be transferred provides or has provided health care services to the uninsured or underinsured, the purchaser has made a commitment to provide health care to the uninsured and the underinsured; (3) in a situation where health care providers or insurers will be offered the opportunity to invest or own an interest in the purchaser or an entity related to the purchaser safeguard procedures are in place to avoid a conflict of interest in patient referral; and (4) certificate of need authorization is justified in accordance with chapter 368z.

In its recitation and review of the facts of record, OHCA acknowledged that *GWHN* and *VHS* have effectively met all these requirements, along with every specified requirement in the statutory Certificate of Need guidelines and principles set forth in Section 19a-639 of the Connecticut General Statutes. It acknowledged *VHS*’s substantial capital commitment of \$55 million and the fact that the transaction would resolve *GWHN*’s precarious financial condition, both of which would ensure continued access for a hospital system otherwise in serious danger of failing. It also acknowledged that *VHS* has already committed to maintain the provision of care to the uninsured and underinsured (Finding of Fact (“*FF*”) 49), will offer employment to all *GWHN* employees (*FF* 75) and proposes no anticipated changes to nurse staffing levels or numbers of hours worked for three (3) years (*FF* 76), among many other factors, and that certificate of need authorization was justified.

Instead of relying on those very real and substantial commitments, however, the Proposed Decision imposes costly, intrusive regulatory monitoring and oversight for at least five (5) years. In fact, the conditions of the Proposed Decision, taken as a whole, require the continuation of an operating status quo that Waterbury Hospital (the "*Hospital*"), like other hospitals in Connecticut, has clearly established is untenable. By freezing all services, staffing and pricing, without allowing the Hospital to adapt to the changing health care needs of the community, the Proposed Decision will cripple the Hospital, eliminating the very flexibility in delivering services that it needs to survive. Indeed, in today's fluid and rapidly changing health care environment, no hospital could succeed if straightjacketed by the conditions imposed by the Proposed Decision.

For example, Order Number 13, which would prohibit any reduction or relocation of any inpatient or outpatient service, is counter to many health care reform efforts, and is inconsistent with OHCA's own statutory mandate to avoid unnecessary duplication of services. (Connecticut General Statutes Section 19a-639(a)(9)). As technology advances, services are shifting to outpatient sites and even the patient's home. These shifts provide for care in the most cost-efficient site of service, with maximum convenience to the patients. It would be hard to imagine that OHCA would want to prevent such reform. We note also that OHCA already has authority to review reductions in beds and terminations of services under specific standards. Given that authority, there is no need for the Proposed Decision to prohibit any changes in advance or to dictate continuation of the status quo down to the reduction or relocation of any inpatient or outpatient service, let alone the current hours of operation.

The conditions in the Proposed Decision also contradict the findings of fact made by OHCA. For example, OHCA found that "Tenet's extensive experience and expertise will allow the Hospital to take advantage of practices that will reduce costs and improve care by sharing Tenet's best practices." (FF 12). Yet the conditions proposed would prohibit any of those best practices from being implemented. Similarly, despite the Hospital's identified need to invest in an outpatient service strategy (FF 43) and commitment to ensuring access to Medicaid recipients by expanding ambulatory access points in the region (FF 54), the proposed conditions would prevent reallocation of staff and assets to meet increased demand for outpatient care. In fact, most of the support programs that Tenet sponsors in order to improve the financial performance of its hospitals (listed in FF 57 and further described in FF 66) could not be implemented if the constraints set forth in the Order remain. Perhaps most striking are the clear findings of fact relating to the Hospital's precarious financial condition and failure to meet bond covenants (FF 27-35). Freezing prices and prohibiting efficiencies that might result in savings conflicts with those factual findings and would exacerbate an already dangerous financial situation.

Finally, several of the conditions are over-reaching and go well beyond what is required to ensure continued access to quality care. Specifically:

- Order Number 15 freezes staffing for five (5) years, not only in terms of overall numbers, but also with respect to the proportion of clinical work force members holding various

licenses/certifications. As care needs shift, the Hospital should have the ability to appropriately adapt staffing in ways that ensure, and enhance, cost-effective care.

- Despite the fact that the new joint venture (the “JV”) will have a fiduciary Board (the “JV Board”) that has committed to work with an appointed Local Board of Trustees, the Proposed Decision would impose an additional layer of oversight by a Community Advisory Board (“CAB”). (Orders 17-26) Moreover, it would require that the JV Board consider all matters raised by the CAB, provide all requested information to the CAB, and permit a member of the CAB to attend all meetings of the JV Board. These requirements raise significant concerns about conflicts of interest, protection of proprietary information, and the integrity of the governance structure generally. They also have the potential to usurp the fiduciary obligations of the JV Board, as the JV Board is obligated to “use its reasonable best efforts to incorporate recommendations made by the CAB into its planning efforts and strategies” (Order 23), regardless of what those recommendations may be or how they may fit in with the JV’s overall strategic plans. Of note, the obligations to the CAB are not time limited; they appear to extend indefinitely and well beyond the five (5) to seven (7) year oversight proposed generally by OHCA.
- The CAB is also tasked with ensuring that “conflicts of interest in patient referrals” do not arise. It is unclear, however, how the CAB would manage this responsibility (or that it would be qualified to do so) or why its oversight in this area would be necessary. Federal laws, including the Antikickback Statute (42 U.S.C. §1320a-7b and regulations promulgated thereunder) and the Stark Law (42 U.S.C. §1395mm and regulations promulgated thereunder) already provide for robust protections against improper referral relationships.
- Hospital strategic plans, by definition, include competitively-sensitive, proprietary information that is closely protected. The requirement in Orders 34-36 to submit a detailed seven (7)-year strategic plan for approval by OHCA raises concerns that the plans might become publicly available, competitively harming the Hospital.<sup>2</sup> Beyond this risk, requiring OHCA to approve such plans – and presumably requiring the JV Board to incorporate OHCA’s recommendations – effectively provides OHCA with operational control of the Hospital that is inappropriate and outside its authority. In other applications for changes of hospital ownership, OHCA has required only that savings be achieved, or that high-level strategic plans be provided, and has committed to protecting such plans from disclosure under the Freedom of Information Act as protected trade secrets. That approach is consistent with OHCA’s statutory role and authority, has been successful, and should be followed here. The need to submit a detailed Physician Recruitment Plan raises similar concerns (Order 45).

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<sup>2</sup> Orders 34 and 36 focus on the post-closing capital commitment. If the intent is not to require the filing and approval of a complete strategic plan, but to confirm that the capital commitment is satisfied, there are likely mechanisms for obtaining such confirmation without placing a hospital’s strategic plans and operations at risk.

- In light of the detailed reports required to be submitted by the JV to OHCA and the contractual commitments made by the parties, the expense of an Independent Monitor is unnecessary and will divert funds that could be better directed at programs to improve patient care.
- Finally, Order Number 33 obligates the JV to participate in the LeapFrog program. Mandating participation in a specifically identified, commercial program seems an unnecessary and potential waste of resources and time that could be better directed to patient care. Most hospitals, in order to have “deemed status” for federal reimbursement, are already required to be accredited by The Joint Commission. Among other accreditation requirements, The Joint Commission requires hospitals to plan, develop and implement a quality improvement and patient safety program. These and other conditions of participation with federal and state programs already ensure that hospitals meet certain established standards for quality care.

OHCA may argue that the certificate of need (“CON”) modification procedure provides a means of gaining relief from the Proposed Decision’s forty-seven conditions over time. The mere imposition of the conditions, however, and the necessary delays that will result from the CON modification process, will prevent the Hospital from adapting to changes in any timely manner and will significantly harm operations. In addition, such micro-management of hospital and health care operations and services by a state agency is unprecedented and inappropriate, and cannot be mitigated by relegating the Hospital to further micro-management through ongoing CON modification efforts. Subjecting a health care organization, whether for-profit or nonprofit, to public comment and intervention and state agency approval for the most basic and fundamental business decisions is tantamount to having the state run the organization, an outcome that is inappropriate and statutorily unauthorized. The overall effect of these conditions will be to severely hamper the Hospital’s ability to respond to rapidly changing market conditions and jeopardize both further reform efforts and Tenet’s plans for coordinated care in Connecticut. Accordingly, ECHN urges OHCA to revise the Proposed Decision to eliminate or substantially alter the proposed conditions.

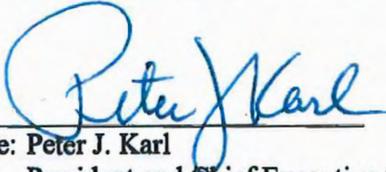
Although each certificate of need application is decided on its own merits, ECHN hopes that a revised decision here will pave the way for appropriate and beneficial changes to the health care landscape in Connecticut. The risk of moving forward with the Proposed Decision without modification is that Tenet and other potential acquirors will be driven to abandon transactions in Connecticut, leaving hospitals and health systems like ECHN with few options, if any, to achieve sustainability over the next few years. We think OHCA would agree that such a result is to be avoided and would be counter to its mandate.

Kimberly R. Martone  
December 8, 2014  
Page 6

Thank you for this opportunity to participate in this important process affecting the future of health care in Connecticut.

Sincerely,

EASTERN CONNECTICUT HEALTH NETWORK, INC.

By 

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cc: Perry Zinn Rowthorn, Deputy Attorney General  
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