

Good afternoon, Assistant Attorney General Hawes and Mr. Hansted (Office of Health Care Access).

My name is Mike Fadel. I am the Director of Strategic Campaigns for the Massachusetts Nurses Association (MNA). I am here today as a representative of the MNA and its 23,000 members, including nearly 1,000 nurses who work at St. Vincent Hospital and Metrowest Medical Center, hospitals owned by Tenet Healthcare in Massachusetts.

As you know, more than a year ago, Vanguard Health Systems (VHS) set out to purchase Greater Waterbury Health Network (GWHN). Since that time, VHS has been acquired by Tenet Healthcare, whose holdings now include 79 acute care hospitals and 193 outpatient centers.¹ This new entity has commenced an aggressive acquisition strategy in Connecticut that only begins with Waterbury Hospital, and if history is any indicator, the impacts of which may include service consolidation, shifting capital priorities, more hospital sales to finance fraud settlements, ongoing problems with safe staffing for patient care, and so on.

Here in Connecticut, you have the opportunity to consider what Tenet/Vanguard's acquisition of Greater Waterbury Health Network will mean for the corporation's market influence in the state and the region, and how the GWHN affiliation with Tenet/Vanguard may pose a danger to Waterbury Hospital's continued provision of high-quality and comprehensive services to 280,000 people in the several communities it serves.

I will offer just a few examples of how Tenet and Vanguard's historical approach to healthcare in Massachusetts and elsewhere has impacted patients and communities, and how this affiliation may affect the quality, accessibility, and cost-effectiveness of healthcare delivery in Connecticut:

Unsafe Staffing

At St. Vincent Hospital in Worcester, Massachusetts, the MNA has a collective bargaining agreement with the hospital that contains language requiring staffing standards that offer both a manageable workload for nurses and access to safer care for patients. Significantly, the patient safety and staffing protections were won only after a nearly two-month nurses' strike with the Tenet. However, staffing levels at both campuses of MetroWest Medical Center (where there has not been a strike yet) remain among the lowest in the Boston metro west area. The differences between these two operations suggest that, absent the threat of a strike, the corporation will not act on its own to ensure safe nurse staffing levels. But Connecticut patients deserve a healthcare provider who does not need to be pressured into providing safe staffing.

Service Cuts

In 2012, the MNA was forced to intervene in Vanguard-owned Saint Vincent Hospital's attempt to eliminate fifteen beds from its Worcester site. The plan was to maintain few geriatric-psychiatric beds in Worcester and move some beds forty miles out of town to Athol Memorial, a rural hospital. The Vanguard operation made this decision despite year after year of annual surpluses in the tens of millions and, more importantly, a critical and growing need for mental health services in Worcester. Without the intervention of the MNA nurses on behalf of that community, a patient with mental illness needing inpatient care would be forced to go nearly an hour from home for care, if a bed was even available at

¹ Matthew Sturdevant. "Saint Mary's Hospital To Be Acquired By Tenet Healthcare," *The Hartford Courant*. July 08, 2014

all. Again, Connecticut patients and communities must be afforded the healthcare services they need by a hospital system that does not need to be pressured to provide them.

Cost and Competition

In recent years, both state and federal agencies have begun to take a closer look at healthcare mergers, as unfettered growth in healthcare costs has had significant impacts on patients and communities. The Federal Trade Commission (FTC) has successfully challenged healthcare mergers in four states as violations of the Clayton Antitrust Act of 1914, which prohibits activities that diminish competition. In Massachusetts, the FTC waged a five-year probe of a nonprofit healthcare organization's anticompetitive behavior. And the Massachusetts Attorney General, Healthcare Policy Commission, and federal judges have also reviewed – and often intervened – in the planned expansion of large providers due to concerns over anticompetitive behavior and increasing healthcare costs for patients.

Allowing Tenet to secure GWHN and possibly St. Mary's, two hospitals that your Department of Public Health has called "intense competitors," will effectively eliminate the need for these hospitals to compete with one another to provide quality care at reasonable costs.² This deal will mean that insurers will negotiate, not with a single hospital or local healthcare organization, but with the large corporate entity that is Tenet Healthcare. Insurers will be pressured to provide higher and higher rates to the practices and facilities owned by or contracting with Tenet hospitals and insurance companies will pass those costs on to patients. Tenet's operation of the Waterbury hospitals will also mean that residents in this community will not only be paying more for their healthcare, but will have fewer options as the corporation makes strategic decisions about service provision that may not be in the best interests of patients.

While the acquisition of GWHN would be only the beginning of its expansion into Connecticut, Tenet has also initiated new acquisitions in other states. Tenet/Vanguard already has difficulties meeting existing financial obligations, as in Michigan, where Vanguard failed to fulfill its capital commitments to Detroit Medical Center by tens of millions of dollars, repeatedly delayed building projects, and refused to comply with requests for information.

In Connecticut, Tenet claims that it will "take on none of the hospital debt . . . the transaction is structured so that all of GWHN's existing debt will be paid off from the sale proceeds."³ But Tenet/Vanguard and GWHN have promised the following with regard to its near-term financial commitments to GWHN:

GWHN will transfer substantially all of its assets to a Vanguard affiliate in consideration of, among other things, \$45 Million and the commitment to spend no less than \$55 Million on capital items and improvement of services in the Greater Waterbury, Connecticut market"

Tenet/Vanguard cannot reasonably expect the Office of the Attorney General or the Office of Health Care Access to believe that the acquisition of another hospital, and the millions of dollars it has pledged in capital commitments are cost-neutral, have no bearing on the healthcare organization's bottom line, and will not impact Tenet's capital decisions in other states. Tenet's acquisition of GWHN may, in fact, impair its ability to invest in the Massachusetts hospitals it already owns. And Tenet's aggressive acquisition plans do not stop with GWHN; new ventures put financial promises to Connecticut patients

² Office of Health Care Access (OHCA). *The Health of Connecticut's Hospitals*. January 16, 2001

³ James T. Shearin, Marcy Tench Stovall (Pullman & Comley); Kristin Connors, Ann H. Zucker (Carmody Torrance Sandak & Hennessey LLP). *Objection to Request of Massachusetts Nurses Association for Intervenor Status*. September 23, 2014

and communities on even more unsteady ground. In addition to being financially overextended as a result of ongoing acquisitions, Tenet also has a history of fraud that has further impacted its financial health and the hospitals it operates.

History of Fraud

In 2013, Moody's Investors Service placed the ratings of Tenet under review for downgrade, including the company's B1 Corporate Family Rating and B1-PD Probability of Default Rating. The rating action was precipitated by the announcement that Tenet had signed a definitive agreement to acquire Vanguard for a transaction value of \$4.3 billion, including the assumption of about \$2.5 billion of Vanguard debt. The Tenet-Vanguard affiliation has resulted in increased leverage and the assumption of a considerable obligation for future capital spending. Additionally, Tenet's history of Medicare fraud has repeatedly cost the company hundreds of millions of dollars and impacted hospitals in several states.

In 2003, Tenet Healthcare paid a \$54 million fine to settle allegations that two doctors working at Redding Medical Center in a Redding, California, hospital performed unnecessary cardiac procedures. The payment settled claims that the hospital billed Medicare, Medicaid and the military's Tricare program for unnecessary procedures between 1997 and 2002.⁴ In follow-up settlements related to the case, Tenet sold Redding Medical Center and paid millions to the California Department of Insurance and two whistleblowers involved in the case, and hundreds of millions to the patients impacted by unnecessary surgeries.⁵

In 2006, Tenet Healthcare agreed to pay the U.S. government more than \$900 million (the largest pay-out to date) for allegedly overbilling Medicare by manipulating the program's payment rules and paying kickbacks to physicians who referred patients to its facilities. As a result, Tenet was forced sell 11 of its hospitals to cover the costs. The following year, Tenet paid another \$10 million to settle an SEC investigation of Medicare billing and fraudulent accounting practices.⁶

In 2012, Tenet agreed to pay over \$42.75 million to settle another round of Medicare fraud allegations. Between 2005 and 2007, Tenet billed Medicare for treating patients at inpatient rehabilitation facilities when these patient stays did not meet the standards to qualify for inpatient care, in violation of the False Claims Act.⁷

And last summer, it was revealed that a former healthcare CFO filed a whistleblower charge in 2009 alleging that Tenet Healthcare paid kickbacks to clinics that directed undocumented pregnant women to give birth in its hospitals, and then filed fraudulent Medicaid claims on those patients. The lawsuit had been sealed by the Department of Justice pending the completion of its own investigation.⁸ In year after year and state after state, Tenet Healthcare has demonstrated its willingness to defraud the government

⁴ Dorsey Griffith, Sam Stanton and Denny Walsh. "Tenet to pay in heart cases; The \$54 million deal avoids some civil, criminal actions in the Redding probe," *Sacramento Bee*. August 7, 2003.

⁵ Sam Stanton and Denny Walsh. "Redding doctors won't be charged; But millions in civil penalties will be levied in medical fraud case," *Sacramento Bee*. November 16, 2005; Julie Appleby. "Tenet accused of \$1 billion Medicare fraud," *USA Today*. March 3, 2005.

⁶ Bob Moos. "Tenet to pay to end SEC probe Dallas-based hospital operator was accused of Medicare scheme," *The Dallas Morning News*. April 3, 2007.

⁷ Jim Landers. "Tenet settling overbill case," *The Dallas Morning News*. April 11, 2012; Jeffrey Young. "Tenet Healthcare 'Proud' To Settle Medicare Fraud Charges For \$43 Million," *The Huffington Post*. April 11, 2012

⁸ Kate Brumback. "Whistleblower suit: Hospitals defrauded Medicaid," *USA Today*. August 1, 2013.

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and taxpayers to reap financial rewards, and the real costs have been shouldered by its hospitals, which have been sold off or undercut to cover the costs of legal settlements.

In closing, I ask the Office of the Attorney General and the Office of Health Care Access to consider whether Tenet/Vanguard's history of cutting services, financing legal settlements through the sale of its hospitals, and resisting efforts to provide patients with safe nurse staffing will benefit Connecticut patients and communities who need high-quality healthcare services. I also ask that you consider how allowing Tenet to gain a larger foothold in the Connecticut healthcare market will invite federal scrutiny and impact healthcare costs, quality, and access for consumers.

Thank you for your time.

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