IN RE CERTIFICATE OF NEED APPLICATION BY A JOINT VENTURE OF GREATER WATERBURY HEALTH NETWORK, INC. AND VANGUARD HEALTH SYSTEMS, INC.	STATE OF CONNECTICUT DEPARTMENT OF PUBLIC HEALTH OFFICE OF HEALTH CARE ACCESS DOCKET NO. 13-31838-CON OFFICE OF ATTORNEY GENERAL DOCKET NO. 13-486-01 SEPTEMBER 23, 2014

OBJECTION TO REQUEST OF MASSACHUSETTS NURSES ASSOCIATION FOR INTERVENOR STATUS

Vanguard Health Systems, Inc. ("Vanguard") and Greater Waterbury Health Network, Inc. ("GWHN") (together, "Applicants"), hereby object to the request of the Massachusetts Nurses Association ("MNA"), made via an unsigned letter dated September 5, 2014, that it be given "the opportunity to participate in the . . . proceedings as an intervenor with full procedural rights." ("Petition").

MNA seeks to participate pursuant to Conn. Gen. Stat. § 4-177a(a) and (b), and §§ 19a-9-26(a) and 19a-9-27 of the Regulations of Connecticut State Agencies. Petition at 1. MNA has not, however, presented "facts that demonstrate that [its] legal rights, duties or privileges shall be specifically affected by the decision in [this] contested case," as required for intervenor status under Conn. Gen. Stat. § 4-177a(a). Nor may MNA be granted intervenor status pursuant to Conn. Gen. Stat. § 4-177a(b), because it fails to state "facts that demonstrate that [its] participation is in the interests of justice and will not impair the orderly conduct of the proceedings," as required under subsection (b)(2) of the statute. To the contrary, MNA's participation is likely to "impair the orderly conduct of the proceeding." Conn. Gen. Stat. § 4-177a(b)(2). Nor will MNA's "participation . . . furnish assistance to the

agency in resolving the issues," as required pursuant to § 19a-9-27 of the Regulations of Connecticut State Agencies.

I. Background

In operating regional integrated health delivery networks in urban areas across the United States, Vanguard's management team has successfully partnered with 28 community hospitals and the communities they serve. In late 2013, Tenet Healthcare Corporation ("Tenet") acquired Vanguard. As a subsidiary of Tenet, Vanguard remains a separate corporate entity and remains the Applicant in these proceedings.

Tenet is a for-profit, investor-owned health care services company founded in 1976. Among other interests, Tenet owns and operates 80 acute-care hospitals in 14 states and 198 outpatient centers in 16 states. Tenet's acquisition of Vanguard created the third largest investor-owned hospital company in the United States in terms of revenue, and the third largest in number of hospitals owned. Tenet's business model is to employ new care delivery approaches in hospitals and outpatient settings and attract the best talent in health care so as to deliver superior performance in clinical quality and safety and to realize the economies of scale that result from having a larger platform. Tenet implements this model by using its capital to invest in the infrastructure of the hospitals it acquires and the communities it serves, improving the quality of health care delivered at its hospitals while decreasing costs.

Under the proposed transaction that is the subject of these proceedings, 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. The

transaction terms also provide that GWHN will use the proceeds of the transaction to retire all of its debt, and Vanguard will implement charity care and uncompensated care policies that are at least as favorable to patients as those GWHN currently maintains.

Through the application process for the Certificate of Need for the conversion ("CON"), the Office of Health Care Access ("OHCA") (Docket No. 13-31838-CON) has extensively investigated the pertinent details of the contemplated transaction. In addition, pursuant to the requirements of the Conversion Statute, Conn. Gen. Stat. § 19a-486 et seq., as amended by Public Act 14-168, the Office of Attorney General (the "OAG"), in coordination with OHCA, has undertaken its own exhaustive investigation and due diligence (AG Docket No. 13-486-01). Since the CON Application was filed on May 3, 2013, Applicants have provided under oath nearly 2000 pages of written materials, addressing more than 150 separate questions and requests for production posed by the OAG and OHCA, including more than 70 exhibits, with an additional 13 interrogatories to be answered by October 6th. These materials have provided extensive, specific information regarding the Applicants, their operations, corporate organizations and finances; the details of Tenet's acquisition of Vanguard; the background, compelling reasons for and terms of the proposed transaction, including the events leading up to it; the fairness of the financial terms of the sale; the anticipated impact of the transaction on The Waterbury Hospital and its healthcare professionals, as well as on the delivery of health care services in Waterbury and the surrounding area; and a myriad of other matters raised as the OAG and OHCA have diligently carried out their statutory duties in connection with the pending Application.

II. MNA's Petition

MNA purports to be an organization of Massachusetts nurses. It does not claim to include in its membership any Connecticut nurses, or any nurses with an affiliation with a Connecticut hospital. Not surprisingly, neither the Petition nor the attachment thereto, a seven-page submission titled "Massachusetts Nurses Association: Evidence for Intervenor Status Petition" ("Attachment to Petition"), includes anything that addresses specific concerns of anyone who might be affected by the transaction.

In fact, MNA fails to address *any* specific portion of the pending Application. MNA does not challenge a single specific representation the Applicants have made to OHCA; the City of Waterbury, the Governor, the OAG, or anyone else. Nor does MNA address any of the details of the financial structure of the transaction or the Applicants' financial statements. Most tellingly, not only does MNA have nothing to say about the Waterbury community's hospital and patient care needs, it does not identify any specific shortcoming concerning the patient care commitments Vanguard makes in the Application. Indeed, it is not even clear that MNA has read the Application.

Instead, MNA goes down a quite different path by offering a series of allegations concerning unrelated events in other states. MNA attempts to insert itself into these proceedings by raising collateral matters for the sole purpose of impugning the integrity of Vanguard through inference and speculation, while paying no attention whatsoever to the concrete details of the Application.

The "evidence" MNA submits in support of its Petition is no more than a set of subjective "concerns" and various allegations concerning Tenet and/or Vanguard operations in four other states, along with MNA's allegations about fines and settlements

Tenet has paid, some of which relate to conduct alleged to have occurred many years ago, under a substantially different management regime at Tenet.

III. Petitioner Has No Interest that Justifies Status Pursuant to Conn. Gen. Stat. § 4-177a(a)

MNA claims that its interest in this proceeding is "multifold." Petition at 1. But nowhere in either its Petition or in the Attachment to Petition does MNA identify any "legal right, duty, or privilege" pertaining to it that is at issue in these proceedings, much less any such interest that might be "specifically affected" by the decision in the matter. *See* Conn. Gen. Stat. § 4-177a(a) (granting of party status requires that petitioner "state[ ] facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case"). In fact, regardless of whether OHCA and the OAG grant or deny the CON Application, none of the interests to be adjudicated in the consideration of the Application implicate any "legal right, duty or privilege" of the nurses MNA claims to represent, who apparently neither live nor work in Connecticut and who do not treat or care for Connecticut patients.

The only "interest" MNA articulates in its Petition is entirely speculative. MNA expresses "concern" that as Tenet and Vanguard acquire more hospitals, they "will assume the debt burden of each facility," thereby reducing their ability to meet capital commitments. Petition at 2. It also contends that the "impacts" the Tenet acquisition of Vanguard will have on Massachusetts hospitals, and the communities that rely on them, "are still unknown." Petition at 2. As for the first concern: it reflects MNA's complete failure to consider or address any of the specifics of the proposed transaction. Had MNA bothered to read the Application, it would have learned that not only will Vanguard take on *none* of the hospital debt, but the transaction is structured so that all of GWHN's existing debt will be paid off

from the sale proceeds. In fact, MNA does not identify, much less analyze or otherwise address, any of Vanguard's financial obligations in connection with the GWHN transaction. Accordingly, MNA fails to provide any substantive basis for its speculative assumption that taking on obligations here will have a negative effect on Vanguard's operations in Massachusetts or elsewhere. As for the second concern, MNA does not even attempt to explain how potential "impacts" that "are still unknown" could possibly be construed as "facts that demonstrate that [its] legal rights, duties or privileges" might be "specifically affected," as required for party status under Conn. Gen. Stat. § 4-177a(a).

MNA has failed to sustain its statutory burden of stating facts that demonstrate it has a *legal* right that a decision here *shall specifically affect.* Status under Conn. Gen. Stat. § 4-177a(a) is therefore inappropriate and must be denied.

IV. Petitioner States No Facts Showing that Its Participation Is in the Interests of Justice as Conn. Gen. Stat. § 4-177a(b) Requires for Intervenor Status

The Uniform Administrative Procedures Act provides that intervenor status may be granted when "the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceeding." Conn. Gen. Stat. § 4-177a(b). The pertinent "interest of justice" at issue here is whether the Application pending before OHCA and the OAG meets the requirements for a CON. Rather than address the terms of the transaction, MNA instead challenges the nature of the purchaser. Not only does the Petition fail to indicate how the participation of MNA is "in the interests of justice," the unreliable "evidence" it cites makes it abundantly clear that MNA's primary goal is *to impair* "the orderly conduct of the proceeding." Given the focus and tenor of MNA's Petition, it seems quite clear that MNA wants nothing more than to turn the

hearing into a series of mini-trials concerning various matters unrelated to the instant Application.

A. MNA's "Evidence" Is Not Reliable

MNA's submission consists primarily of (1) a litany of subjective and speculative "concerns" about the prospective effect of the Tenet acquisition of Vanguard, *see e.g.* Petition at 2 ("Tenet's acquisition of Vanguard Health Systems has caused concerns in Massachusetts as it is still unclear what the effects of the purchase will be. . . . There are also concerns that the acquisition could impact Vanguard's relationship with other facilities."); Attachment at 6 ("Anxieties over the Tenet takeover extend beyond the Massachusetts border."); and (2) MNA's claims about the supposed failings of Tenet and/or Vanguard in connection with hospitals and health plans in other states. In other words, MNA does not seek to intervene so that it may make a substantive contribution to the discussion of the merits of Vanguard's plans in Waterbury, Connecticut, as articulated in the Application and extensive documentation submitted in support of the Application.

Significantly, MNA's supposed "evidence" is unreliable, inaccurate, incomplete and out of date. Applicants will not attempt to address every instance of unreliable information in the Petition and Attachment to Petition, but point to three examples to illustrate the deficiencies in MNA's "evidence."[1]

1. MNA repeats, word-for-word, a claim it made in a nearly identical intervenor petition filed in this proceeding and dated September 26, 2013: that is, up through 2012

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[1] In addition, as noted above, MNA asserts that Tenet and Vanguard's assumption of hospital debt will "weigh[] the system down," Petition at 2, an assertion that ignores the fact that in this transaction, Vanguard will not take on GWHN's debt, which GWHN will be retiring.

Vanguard failed to meet pledges concerning capital commitments made in connection with hospital acquisitions in the Detroit, Michigan area. Attachment to Petition at 2-3 (citing VHS of Michigan, Inc. 2012 Annual Report). Had MNA bothered to update the information on which it relies, it could have reviewed the 2013 Annual Report to the Michigan Department of Attorney General by Legacy DMC, the entity designated to report annually on, among other things, the status of Vanguard's capital commitments. Had it done so, MNA would have discovered that in connection with its Detroit acquisitions, Vanguard has now fully met, and is on track to exceed, its obligations for capital expenditures on specified projects, and also is up to date in meeting its obligations for routine capital expenditures. MNA also would have learned that at least a portion of the spending delay was the result of factors beyond Vanguard's control because updates to hospital strategy led to substantial building design changes from the original project, with resulting delays to the start of construction.[2]

2. Discussing Vanguard facilities in Massachusetts, MNA suggests that different staffing levels at St. Vincent Hospital and MetroWest Medical Center somehow reflect Vanguard's lack of commitment to safe staffing levels, and that "conditions and interest in patient safety vary widely from one hospital to another." Attachment to Petition at 1. Once again, MNA cites no authority for either proposition. Instead, it ignores publicly available information that refutes its contention that the hospital conditions "vary widely," data that

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[2] In its 2013 Annual Report, Legacy DMC reported that in Michigan, construction is well underway on Vanguard's specified projects building commitments, with seven of 15 projects completed, and seven more scheduled to be complete in 2015.

shows little to no difference between the two hospitals over numerous care metrics and outcomes.[3]

3. MNA's reference to an Arizona Health Care Cost Containment System ("AHCCCS") ranking of Vanguard on a renewal application also is misleading. Attachment to Petition at 4-5. The AHCCCS scores that MNA describes at length are neither measures of the quality of patient care or hospital services nor evidence of a failure to be transparent with state overseers, but reflect only AHCCCS's assessment of the adequacy of Vanguard's narrative answers as compared to those in other applications. The application was a competitive bid that Vanguard turned out not to win. The fact that Vanguard submitted an unsuccessful response to a payor's RFP in another state is immaterial to the merits of the proposed transaction and will not advance OHCA's consideration of the Application.

MNA's claims are not accurate, and its various assertions amount to nothing more than an attempt to impugn Vanguard with collateral attacks. Connecticut courts do not allow alleged "prior bad acts" to be used to collaterally impeach someone, and such collateral attacks should not be permitted in this proceeding. See Conn. Code of Evidence § 4-5(a) ("**General Rule.** Evidence of other crimes, wrongs or acts of a person is inadmissible to prove the bad character propensity or criminal tendencies of that person except as provided in [a subsection not relevant here]").

Consideration of MNA's so-called "evidence" will not advance the consideration of the merits of the Application. MNA does not even once address, much less challenge,

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[3] The website www.medicare.gov provides an easily accessible method for comparing hospitals.

what GWHN and Vanguard have submitted about their respective finances in the substantial documentation in support of the CON and in response to questions from OHCA and the OAG. And it says nothing regarding the conditions that underlie the proposed transaction; the rationale for the transaction; or the capital commitments Vanguard has agreed to make as part of its contractual obligations, all of which are spelled out in the Application and supporting documentation.

Certainly it is not "in the interests of justice" to grant intervenor status so that an unrelated third party from another state will have a forum in which to do nothing more than impugn the corporate character of the would-be purchaser when the issue to be determined is whether the Application for a CON has met the requirements of the conversion statute.

B. MNA's Participation Will Not Facilitate the Orderly Conduct of the Hearings or Furnish Assistance to OHCA or the OAG in Resolving the Issues

MNA's mudslinging agenda will frustrate, not facilitate, the "orderly conduct of the proceeding," and is almost certain to disrupt, if not derail, the proceeding. Its "evidence" submission focuses on events having nothing to do with the Application, and does not, for the most part, reflect the actual experience of any nurses, much less any Connecticut nurses, but relies instead upon speculation and multiple levels of hearsay about events in other states. For example, for the proposition that "there are also concerns that the acquisitions could impact Vanguard's relationship with other facilities," MNA relies on nothing more than a newspaper report. Attachment to Petition at 1. MNA has nothing to add to the investigation that OHCA and the OAG have not already undertaken or that they could not readily consider or investigate without the intervention of MNA. Examining

circumstances in other states will shed no light on the transaction terms, or the community hospital needs addressed in the Application.

Using inaccurate and outdated stories about hospitals and health plans in other states, and speculation based on those stories, MNA attempts to paint Vanguard as being somehow unworthy of owning a health care facility.[4] If OHCA and the OAG were to grant MNA intervenor status, each set of MNA's allegations will become its own separate sideshow, leading the hearing far afield from its purpose and misdirecting the public's attention.

Moreover, granting intervenor status to MNA is not necessary to further the investigation. The participation of an uninvolved third party that is uninformed about the transaction and relies on hearsay evidence (some of it double and triple hearsay) will do nothing to further the inquiry. If OHCA or the OAG believes the matters MNA raises in its Petition warrant further investigation or questioning, either is able to obtain the facts directly, and each is fully competent to do so without the assistance of MNA.

To the extent MNA believes it has something to add to OHCA and the OAG's consideration of the Application, it is free to raise any such issue as a *speaker* at the public hearing that will follow the technical hearing. If it raises a meritorious issue that OHCA or the OAG determines should be further explored, either can pursue the issue. But, as it stands, the Petition fails to address in any way the substance of the Application and offers only MNA's version of unrelated events in other jurisdictions.

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[4] Notably, a substantial portion of the "evidence" on which MNA relies in seeking intervenor status concerns events that occurred prior to the time the current management team took over Tenet's operations in 2004.

MNA submits nothing to indicate that its participation would materially improve the record on this Application. Its presence, even as an intervenor, seems much more likely to "impair the orderly conduct of the proceedings" with a series of attacks having no bearing on the matter at hand. As such, intervenor status under Conn. Gen. Stat. § 4-177a(b) would be inappropriate and must be denied.

V. Intervention, if Allowed, Should Be with Only Limited Rights

If, despite the foregoing, OHCA and the OAG determine that MNA's participation as intervenor serves the "interests of justice," such status should be permitted only under specifically defined parameters. The hearing officer "may limit [an] intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross examine on those issues." The hearing officer may also limit the intervenor's participation "so as to promote the orderly conduct of the proceeding." Conn. Gen. § 4-177a(d).

As discussed above, the Petition does not identify any legitimate "interest" that might serve to define the scope of MNA's participation as intervenor. Based on the submissions included with the Petition, the only possibly appropriate level of participation for MNA might be by presenting prefiled testimony, subject to cross-examination by OHCA, the OAG and the Applicants, on the topic of MNA's direct experience with Vanguard. To allow MNA to do more will not advance the interests of justice or promote the orderly conduct of the proceeding.

And whatever the scope of intervention, the "full procedural rights" MNA requests are unnecessary, undesirable and likely to be unproductive and disruptive. Since MNA does not raise any issue addressed to the merits of the Application, or any issue that OHCA cannot pursue on its own authority, it offers no legitimate basis on which it should be granted any right to inspect and copy documents, cross-examine witnesses, or present argument.

VI. Conclusion

For the foregoing reasons, the Applicants respectfully submit:

1. MNA should be denied status pursuant to Conn. Gen. Stat. § 4-177a(a) because it has failed to state facts demonstrating that its legal rights shall be specifically affected by OHCA and the OAG's decision in these proceedings.

2. MNA should be denied intervenor status pursuant to Conn. Gen. Stat. § 4-177a(b) because it has made no showing that it will add anything to the record that would advance the interests of justice, and because any incremental benefit of its participation is outweighed by the resulting impairment of the orderly conduct of the proceeding. If it is granted any rights at all as an intervenor, it should only be to present prefiled testimony, nothing more.

3. MNA's role should be limited to that of a speaker at the public hearing.

Respectfully submitted,

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CERTIFICATION

This is to certify that on September 23, 2014, a copy of the foregoing was sent via e-mail and/or first class U.S. mail to the following:

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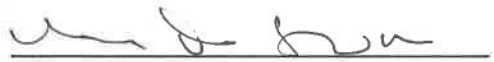

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