

IN RE CERTIFICATE OF NEED : STATE OF CONNECTICUT
APPLICATION BY A JOINT VENTURE :
OF GREATER WATERBURY HEALTH : DEPARTMENT OF PUBLIC HEALTH
NETWORK, INC. AND VANGUARD : OFFICE OF HEALTH CARE ACCESS
HEALTH SYSTEMS, INC. : DOCKET NO. 13-31838-CON
: :
: OFFICE OF ATTORNEY GENERAL
: DOCKET NO. 13-486-01
: :
: NOVEMBER 3, 2014

**APPLICANTS' MOTION TO STRIKE INTERVENORS' TESTIMONY OUTSIDE
THE PARAMETERES OF OFFICE OF THE ATTORNEY GENERAL AND OFFICE OF
HEALTH CARE ACCESS' GRANTS OF INTERVENOR STATUS**

The Greater Waterbury Health Network, Inc. ("GWHN") and Vanguard Health Systems, Inc. ("Vanguard") (collectively the "Applicants") hereby move that no weight be given to any written or verbal testimony presented on behalf of Connecticut Health Care Associates ("CHCA") and Massachusetts Nurses Association ("MNA") (collectively, the "Intervenors") that falls outside that which the Office of the Attorney General ("OAG") and the Office of Health Care Access ("OHCA") expressly defined as the limited scope of testimony CHCA and MNA could present in this proceeding on GWHN and Vanguard's joint application for a Certificate of Need ("CON Application").

I. The Express Limitation of OAG and OHCA's Grant of Intervenor Status

By notice dated September 29, 2014, the OAG issued its Ruling on a petition filed by CHCA to be designated as an intervenor. The OAG designated CHCA an intervenor with full rights, including that CHCA has the right to cross-examine the Applicants' witnesses and may be cross-examined by the Applicants. Similarly, by notice dated September 29, 2014, the OAG

issued its Ruling on a petition filed by MNA to be designated as an intervenor. The OAG designated MNA an intervenor with limited rights, including that MNA may be cross-examined by the Applicants but it may not cross-examine the Applicants' witnesses. Both rulings provided that because "OAG's jurisdiction in this matter is limited to the issue set forth in Conn. Gen. Stat. § 19a-496c...the [Intervenor] is not permitted to present written or verbal testimony regarding any matter beyond the scope of the 19a-486c issues identified in § 19a-496c."

By notice dated September 30, 2014, OHCA issued its Ruling on a petition filed by CHCA to be designated as an intervenor, designating CHCA as an intervenor with full rights of cross-examination, including that CHCA has the right to cross-examine the Applicants' witnesses and may be cross-examined by the Applicants. Similarly, by notice dated September 30, 2014, OHCA issued its Ruling on a petition filed by MNA to be designated as an intervenor. OHCA designated MNA as an intervenor with limited procedural rights. The OHCA ordered that MNA may be cross-examined by the Applicants, but may not cross-examine the Applicants' or other intervenors' witnesses. Both rulings provided that "OHCA's jurisdiction in this matter is limited to the guidelines and principles set forth in Connecticut General Statutes §§ 19a-639 and 19a-486."

Both of OHCA's also rulings specifically stated that the Intervenor "...may present written or verbal evidence related to those guidelines and principles as set forth below.

- (1) Whether the proposed project is consistent with any applicable policies and standards adopted in regulations by the Department of Public Health;

- (2) The relationship of the proposed project to the state-wide health care facilities and services plan;
- (3) Whether there is a clear public need for the health care facility or services proposed by the Applicants;
- (4) Whether the Applicants have satisfactorily demonstrated how the proposal will impact the financial strength of the health care system in the state or that the proposal is financially feasible for the Applicants;
- (5) Whether the Applicants have satisfactorily demonstrated how the proposal will improve quality, accessibility and cost effectiveness of health care delivery in the region;
- (6) The Applicants' past and proposed provision of health care services to relevant patient populations and payer mix;
- (7) Whether the Applicants have satisfactorily identified the population to be served by the proposed project and satisfactorily demonstrated that the identified population has a need for the proposed services;
- (8) The utilization of existing health care facilities and health care services in the service area of the Applicants; and
- (9) Whether the Applicants have satisfactorily demonstrated that the proposed project shall not result in an unnecessary duplication of existing or approved health care services or facilities."

Further, both rulings provided that the Intervenor "...is *not permitted* to present written or verbal testimony regarding any matter beyond the scope of the guidelines and principles."

II. No Weight Should Be Given to Testimony that Falls Outside the Permissible Scope of Testimony

In disregard to the orders of the OAG and OHCA, both CHCA and MNA submitted written and verbal testimony outside the permissible scope of testimony that has no bearing on the statutory criteria by which the OAG and OHCA must evaluate the merits of the CON

Application that is the subject of this proceeding, much of which is supported only with hearsay accounts. Examples of testimony presented that is outside the permissible scope of testimony and having no bearing on the statutory criteria by which the OAG and OHCA must evaluate the merits of the CON Applications include:

1. Discussion regarding increase in the number of long-term care hospitals.
2. Discussion of concern regarding a proposed merger in Idaho. That transaction is entirely unrelated to the proposal at issue here and involves a completely different type of transaction. Neither of the Applicants is a party to that transaction.
3. Discussion of concern about a proposed merger in Ohio, of which neither of the Applicants is a party.
4. Discussion regarding the 1993 merger between two hospitals in Massachusetts, of which neither of the Applicants is a party.
5. Discussion of the effects of a transaction in Massachusetts involving a for-profit hospital, of which neither of the Applicants is party.
6. Extensive discussion of the Massachusetts Superior Court Judge's review of an anti-trust settlement regarding a network of affiliated hospitals and physicians in that state. That discussion consists almost entirely of incomplete quotes from news articles and concerns a different type of transaction from the one at issue here, of which neither of the Applicants is a party.
7. Speculation addressed to policy questions outside of the scope of the controlling statutes and regulations concerning private ownership of hospitals.

8. Testimony concerning news articles that were unattributed to and without citations or other references.

In light of the Intervenor's failure to follow the OAG and OHCA's orders, any testimony presented by the Intervenor that falls outside the scope of permitted testimony should be given no weight in this proceeding.

III. Conclusion

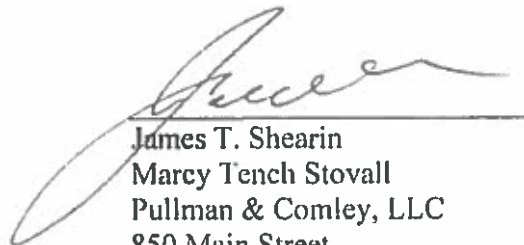
For the foregoing reasons, the Applicants respectfully request that no weight be given to any and all testimony presented by the Intervenor that falls outside the scope of what the OAG and OHCA have expressly defined as the limited scope of testimony the Intervenor may present, that is testimony that falls outside the scope of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d.

RESPECTFULLY SUBMITTED,



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CERTIFICATION

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