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2 **STATE OF CONNECTICUT**
3 **OFFICE OF HEALTH STRATEGY**
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7 **Docket No.: 22-32517-CON**
8 **ADMINISTRATIVE HEARING**
9

10 **In Re: A Civil Penalty Proceeding Concerning**
11 **Windham Hospital Foundation, Inc. d/b/a Windham**
12 **Hospital and its Termination of Obstetric Services**

13 **HELD BEFORE: DANIEL CSUKA, ESQ.,**
14 **THE HEARING OFFICER**

15
16 **DATE: May 25, 2022**

17 **TIME: 10:02 A.M.**

18 **PLACE: (Via teleconference)**
19

20
21 **Reporter: Robert G. Dixon, CVR-M #857**
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1 **A P P E A R A N C E S:**

2 **For WINDHAM HOSPITAL (Petitioner):**

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10 **For the OFFICE OF HEALTH STRATEGY:**

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22

23

24

25

1 (Begin: 10:02 a.m.)

2
3 THE HEARING OFFICER: Good morning. Before we begin I
4 wanted to take a moment to acknowledge the tragic
5 events that unfolded yesterday in Texas.

6 I think I speak for myself and everyone else
7 at the agency in saying that we are shocked and
8 horrified by the loss of so many lives. And as
9 Connecticut residents I think this hit us harder
10 than most people.

11 So with that, I did just want to take a
12 moment of silence as we keep the victims close to
13 our hearts and in our thoughts.

14
15 (Moment of silence.)

16
17 THE HEARING OFFICER: Okay. Thank you. So this
18 hearing for the Connecticut Office of Health
19 Strategy is identified by Docket Number
20 22-32517-CON.

21 Pursuant to Section 19a-653 of the
22 Connecticut General Statutes the Petitioner, in
23 this matter the Connecticut Office of Health
24 Strategy, issued the notice of civil penalty in
25 the amount of \$65,000 to the Respondent Windham

1 Hospital relating to its alleged failure to seek
2 certificate of need approval under Connecticut
3 General Statutes Section 19a-630(a) for the
4 termination of inpatient obstetric services.

5 Thereafter, the Respondent requested a
6 hearing to contest the imposition of the civil
7 penalty and OHS issued a notice of hearing.

8 Today is May 25, 2022. My name is Daniel
9 Csuka. Executive Director Vicki Veltri designated
10 me to be the Hearing Officer, and I will be
11 issuing the proposed final order in this matter.

12 Also present on behalf of the agency today is
13 Yadira McLaughlin. She's a planning analyst with
14 agency who may be assisting me from time to time
15 as needed.

16 Public Act Number 22-3 authorizes an agency
17 to hold a public hearing by means of electronic
18 equipment. In accordance with the public act any
19 person who participates orally and in an
20 electronic meeting shall make a good-faith effort
21 to state his or her name and title at the outset
22 of each occasion on which the person participates.

23 I ask that all members of the public at this
24 time mute the device that they are using to access
25 the hearing and silence any additional devices

1 that are around them.

2 This public hearing is held pursuant to
3 Connecticut General Statutes Section 19a-653, and
4 will be conducted under the provisions of Chapter
5 54 of the General Statutes.

6 The certificate of need process is a
7 regulatory process, and as such, the highest level
8 of respect will be accorded to the Petitioner,
9 Respondent, and OHS staff. Our priority is the
10 integrity and transparency of the process.
11 Accordingly, decorum must be maintained by all
12 present during these proceedings.

13 This hearing is being transcribed and
14 recorded, and the video will also be made
15 available on the OHS website and its YouTube
16 account. All documents related to this hearing
17 that have been or will be submitted to OHS are
18 available for review in our electronic CON portal,
19 which is accessible through our website.

20 Although the hearing is open to the public,
21 as indicated in the agenda only the Petitioner,
22 Respondent, OHS, and their respective
23 representatives will be allowed to make comments
24 unless one of the parties requests the testimony
25 of other individuals. Accordingly, the chat

1 future in this Zoom call has been disabled.

2 As this hearing is being held virtually we
3 ask of anyone speaking, to the extent possible,
4 enable the use of video cameras. And anyone else,
5 as I mentioned before, should mute their device.

6 Lastly, as Zoom hopefully notified you in the
7 course of entering the meeting, I just wanted to
8 point out that by appearing on camera you are
9 consenting to being filmed. If you wish to revoke
10 your consent you can do so at this time.

11 The CON portal contains the table of record
12 in this case. It was uploaded yesterday
13 afternoon. As of this morning exhibits were
14 identified from A to Q. I understand that the
15 Respondent filed a request to strike a portion of
16 Exhibit J which was refiled with Bates numbering
17 and a corrected date as Exhibit P.

18 It appears that the Petitioner at this time
19 has not yet filed a response. So I would just
20 like to address that first.

21 Counsel for the Petitioner, would you please
22 identify yourself for the record and spell your
23 name.

24 MS. MANZIONE: Yes. My name is Lara Manzione; L-a-r-a;
25 Manzione, M-a-n-z-i-o-n-e. I represent the Office

1 of Health Strategy this morning.

2 THE HEARING OFFICER: Thank you.

3 MS. MANZIONE: And I thought we could address the
4 issue, their motion to strike before we proceed?

5 THE HEARING OFFICER: Before we do that I just wanted
6 to have counsel for the Respondent identify
7 herself. And if she had anything else to add to
8 her request to strike, I would ask that she say
9 that at this time.

10 MS. FUSCO: Yes. Good morning, Attorney Csuka.

11 This is Jennifer Fusco, Counsel for the
12 Respondent Windham Hospital. It's Jennifer,
13 J-e-n-n-i-f-e-r; Fusco, F-u-s-c-o. I think we've
14 put into our written submission most of what we
15 want to say -- but you know, my understanding is
16 that the CON application is being introduced for
17 the sole purpose of providing evidence of the date
18 on which it was filed, which is something that the
19 Respondent is willing to concede to, and
20 Ms. Handley will speak to that in her testimony.

21 I think we've made a concerted effort to
22 separate the certificate of need docket from the
23 civil penalty docket, because the issues really
24 are completely different in each. This is more of
25 a procedural hearing, if you will, versus the

1 substantive issues that are arising in the CON
2 proceeding.

3 Here OHS needs to prove that the elements of
4 19a-653 have been met, which is basically whether
5 there was, you know, CON activity for which the
6 applicant willfully failed -- or the Respondent
7 willfully failed to request a CON, and I don't
8 believe that all the information in the CON
9 application in Docket Number -- what is it?
10 232394 is required to do that.

11 It also introduces into the record of this
12 matter a considerable amount of irrelevant
13 information that I think might confuse the issues
14 before the Hearing Officer. So for those reasons
15 we're asking that it be stricken.

16 THE HEARING OFFICER: Okay. Thank you.

17 Ms. Manzione, did you want to be heard?

18 MS. MANZIONE: Yes, please. I disagree with Counsel's
19 position. I think that the underlying docket is
20 not submitted solely for the purpose of the fact
21 that it was submitted on the date of September 3,
22 2020.

23 There are many pieces of information in that
24 complete application that are relevant, and I
25 believe that the Hearing Officer can make his way

1 through without being confused, and without being
2 distracted by anything that may be so-called
3 irrelevant by opposing counsel.

4 There are lots of financial documents there
5 that -- some of which I'm going to rely on or
6 refer to. There are a corporate structure -- if
7 there is corporate structure information, that is
8 useful to understanding this proceeding.

9 There is also general background information
10 about the underlying circumstances that give rise
11 to this penalty hearing this morning. So I think
12 there is no harm that will be generated by keeping
13 the CON application in its entirety as part of the
14 record.

15 I would also note that in terms of
16 information that might be confusing or irrelevant,
17 generally the Hearing Officer takes administrative
18 notice of all sorts of things, other dockets, the
19 APCD database; other kinds of financial filings
20 that are part of the HRS system, the hospital
21 reporting system in the Office of Health Strategy.

22 And I think this is just one more piece of
23 information in the puzzle that will help the
24 Hearing Officer make a complete and fully informed
25 decision about the appropriateness of the

1 imposition of the civil penalty on Windham
2 Hospital today.

3 **THE HEARING OFFICER:** Okay.

4 **MS. FUSCO:** If I can respond just briefly? I will
5 point the Hearing Officer to your May 5th order
6 which does require both parties here to prefile
7 all information that they intend to present at the
8 hearing.

9 And although the CON application itself was
10 prefiled, Mr. Lazarus' narrative testimony does
11 not speak to any of the issues that Attorney
12 Manziona just mentioned.

13 So to the extent that Mr. Lazarus is going to
14 be offering substantive prefile on issues around
15 financials and various things, I would object to
16 that given that that was not prefiled as required
17 by your order.

18 **THE HEARING OFFICER:** I think I'm going to allow it to
19 stay in for the time being. I don't see the harm
20 in keeping it in at this point, and I am familiar
21 with that entire docket, the CON application
22 because I have been designated the Hearing Officer
23 for that one.

24 So I feel as though I'll be able to keep the
25 two separate, and I do have a very good

1 understanding of what the issues are in both of
2 these different proceedings.

3 To the extent that Ms. Manzione anticipates
4 asking Mr. Lazarus questions about anything in
5 that, in that what was prefiled, if you have
6 objections we can deal with those as they arise.

7 MS. FUSCO: Understood.

8 THE HEARING OFFICER: So with that in mind, are there
9 any other objections to the exhibits that have
10 been identified in the table of record at this
11 point?

12 MS. FUSCO: The Respondent has no objections. I assume
13 you're going to deal with administrative notices
14 once we handle objections to the record.

15 Or would you like us to discuss those now?

16 THE HEARING OFFICER: I was planning to get to the
17 administrative notice after we identified what was
18 in the record, and dealt with those objections.

19 MS. FUSCO: So the Respondent has no objections to the
20 substantive information in the record. I would
21 just like to point out that the name of the
22 Respondent is incorrect.

23 It's listed as Windham Hospital Foundation,
24 Inc, which is not the entity that operates Windham
25 Hospital. It should be Windham Community Memorial

1 Hospital, Inc. Correct?

2 DONNA HANDLEY: Yes.

3 THE HEARING OFFICER: Okay. Then I apologize for that.

4 That was my error.

5 MS. FUSCO: Yeah, if that could just be corrected to
6 reflect the correct entity.

7 MS. MANZIONE: And can you please repeat that, the
8 official name of the Respondent?

9 MS. FUSCO: Sure. It's Windham Community Memorial
10 Hospital, Incorporated.

11 MS. MANZIONE: Windham Community Memorial Hospital,
12 Incorporated. Thank you. I apologize if I've
13 been one of the ones using the incorrect -- and I
14 will do my best. Sometimes I just say, Windham
15 Hospital, but I will try -- if you prefer I will
16 try to say Windham Community Memorial Hospital.

17 MS. FUSCO: And it's fine just to say Windham Hospital,
18 but the Windham Hospital Foundation is a separate
19 legal entity. So we just wanted to make sure that
20 that wasn't referenced here, but feel free to call
21 it Windham Hospital.

22 THE HEARING OFFICER: Okay. Thank you.

23 Ms. McLaughlin, are there any additional
24 exhibits to enter at this time?

25 MS. McLAUGHLIN: No, not that I'm aware of.

1 THE HEARING OFFICER: Okay. Thank you.

2 MS. MANZIONE: If I may? I would like to thank my
3 opposing counsel and the Hearing Officer for your
4 flexibility in accepting the documents that
5 weren't Bates filed, and then that were Bates
6 filed -- and for accepting an update, a correction
7 of one of the pieces of testimony that had a
8 significant typo in it.

9 And so thank you for pointing that out, and
10 for allowing us the flexibility to resubmit those.
11 And so we have hopefully a cleaner and a more
12 easily referable set of documents.

13 THE HEARING OFFICER: Thank you. And for anyone
14 watching, I think the main documents that are
15 going to be referred to in this hearing are
16 Exhibit I, Exhibit K, Exhibit O, and Exhibit P. I
17 believe those are the final versions of the
18 parties' submissions that were put on the record.

19 Moving onto administrative notice, in
20 accordance with Connecticut General Statutes
21 Section 4-178, the parties are hereby noticed that
22 I may take administrative notice of the following
23 documents; the statewide healthcare facilities and
24 services plan; the facilities and services
25 inventory; the OHS acute care hospital discharge

1 database; hospital reporting system, that's HRS
2 financial and utilization data; all payer claims
3 database claims data.

4 I don't expect to have to refer to any of
5 those in the course of these proceedings because
6 as Respondent's counsel noted, this is more a
7 procedural issue than it is a substantive one, but
8 it is possible that those will come up in the
9 course of these proceedings. So I just wanted to
10 note that on the record.

11 I am also taking administrative notice of the
12 following OHS dockets. These are all listed in --
13 well, either the Respondent's or the Petitioner's
14 filings. I believe they are mostly in the
15 Respondent's filings, the hospital's filings.

16 So it's Docket Number 20-32394-CON. That's
17 Windham Hospital's application to terminate OB
18 services; Docket Number 15-31998-CON, that's
19 Milford Hospital's termination of OB services.
20 Docket Number 15-32014-CON, which is Sharon
21 Hospital's termination of its sleep center.

22 Docket number 04-30297-DTR, which relates to
23 Lawrence + Memorial Hospital's suspension of
24 angioplasty; Docket Number 04-30272-DTR, that is
25 John Dempsey Hospital's suspension of its bone

1 marrow transplant program.

2 Docket Number 03-23013-DTR, which is Yale New
3 Haven Hospital's suspension of its liver
4 transplant program; and finally Docket Number
5 12-31707-CON, which is the civil penalty
6 proceeding regarding Greenwich Hospital's dental
7 clinic.

8 Certainly, if there are any others that I
9 missed that are either of the parties' filings, I
10 will also be taking administrative notices of
11 those as well. It's probably not necessary that I
12 take administrative notice of those, given that
13 they are part of the record, but I just wanted to
14 put that on the record as well.

15 So do either of the parties have any
16 additional exhibits they would like to enter onto
17 the record at this time? Or is there anything
18 else that I should be taking administrative notice
19 of that either of you are aware of?

20 I'll start with you, Ms. Manzione.

21 Is there anything else? Okay.

22 MS. MANZIONE: No, thank you.

23 THE HEARING OFFICER: Just I was going to say the
24 transcriptionist can't pick up facial nods and
25 things.

1 So how about for the Respondent?

2 Is there anything else?

3 MS. FUSCO: There's nothing to add at this time. I did
4 just want to note that we are reserving our right
5 to submit a post-hearing legal brief, which I know
6 you said we would discuss before the end of the
7 hearing.

8 THE HEARING OFFICER: Yes.

9 MS. FUSCO: But other than that, nothing.

10 THE HEARING OFFICER: Okay. So with that we will
11 proceed in the order established in the hearing
12 agenda which was published, I believe, about a
13 week ago.

14 So we'll start first with the Petitioner,
15 OHS. Is there an opening statement, Ms. Manzione?

16 MS. MANZIONE: Yes, there is, Attorney Csuka. I am
17 just getting ready. I try to be as paper-free as
18 possible -- but I have paper in the back because
19 sometimes my technology does not agree with me.

20 If we're ready, may it please the Court?

21 Good morning, Hearing Officer Csuka, Attorney
22 Fusco, representatives of Windham Hospital, and
23 the Office of Health Strategy, members of the
24 healthcare community and other interested parties.
25 My name is Lara Manzione and I represent the

1 Office of Health Strategy.

2 This morning I have one task. I am going to
3 present testimony and evidence that proves that
4 Windham Hospital knowingly and willfully
5 terminated its inpatient obstetric services
6 without first obtaining a certificate of need.
7 I'm going to further prove that by not obtaining a
8 CON before terminating these essential medical OB
9 services Windham Hospital broke the law.

10 The consequences for breaking this law are
11 being widely felt throughout the Windham
12 community, a community that can no longer rely on
13 the security of having a local hospital ready when
14 they are to deliver a baby -- but we can't do
15 anything about that this morning, because all that
16 is at issue this morning is the legal consequence
17 for breaking the law, namely the imposition of a
18 \$65,000 civil penalty.

19 Now \$65,000 may seem like a large amount of
20 money to a family that gets by on \$65,000 per
21 year, but the evidence will show that Windham
22 Hospital had a total margin of approximately
23 2 percent in 2020, or \$2.4 million. And in 2021
24 the hospital's total margin was 6.3 percent, or
25 \$8.3 million.

1 A penalty of \$65,000 is only 2.7 percent of
2 2020's total margin, while a penalty of \$64,000 is
3 only 0.8 percent of 2021's larger total margin,
4 less than 1 percent, a tiny blip in comparison.

5 A margin is similar to profits in a
6 for-profit entity. In a nonprofit entity like
7 Windham Hospital a margin is the difference
8 between what it takes in revenue less its
9 expenses. A civil penalty of \$65,000 compared to
10 a total margin of \$8.3 million is less than
11 1 percent.

12 Getting back to the law and the certificates
13 of need, Section 19a-653 of the Connecticut
14 General Statutes states that if a healthcare
15 facility or institution that is required to file a
16 CON under Section 19a-638 willfully fails to seek
17 a CON approval for any of the activities in
18 Section 19a-638, they shall be subject to a civil
19 penalty of up to \$1,000 per day for each such day
20 such healthcare facility or institution conducts
21 any of the described activities without the
22 certificate of need approval as required by
23 Section 19a-638.

24 Now that's quite a mouthful, so I'm going to
25 break it down. And the evidence presented today

1 will show that Windham Hospital broke this law and
2 must pay a penalty, a civil penalty for doing so.

3 So under Connecticut General Statute Section
4 19a-653, the Office of Health Strategy has the
5 burden of proof to show that Windham Hospital was
6 required to file a CON before it terminated an
7 inpatient service, specifically obstetrics.

8 OHS also has the burden of proof to show that
9 Windham Hospital did, in fact, terminate obstetric
10 services, and that Windham Hospital did not file a
11 CON before it terminated the OB services.

12 And finally and most importantly, that
13 Windham Hospital knew it was required to file a
14 CON. In other words, that it willfully failed to
15 file the CON before terminating the inpatient
16 services.

17 Today the evidence will show that, yes,
18 Windham Hospital was required to file a CON.
19 Under Connecticut General Statutes 19a-638, Sub A,
20 Sub 5, Windham Hospital was required to apply for
21 a CON because it was terminating inpatient
22 hospital service, namely obstetric services as of
23 July 1, 2020.

24 The evidence will show that the board of
25 directors of the parent organization of Windham

1 Hospital actually had a meeting where they
2 affirmatively decided to terminate Windham
3 Hospital's obstetric services. The minutes from
4 the board meeting on June 16, 2020, verify that
5 the vote to close Windham Hospital's obstetrics
6 department was made unanimously.

7 The evidence will also show that Windham
8 Hospital sent a letter to its prenatal patients
9 indicating that as of July 1, 2020, that pregnant
10 women will no longer be able to give birth at
11 Windham Hospital, and that they should make
12 alternative plans by delivering at Backus Hospital
13 in Norwich, or at a different hospital of their
14 choice.

15 The evidence will further show that Windham
16 Hospital did not file a CON before July 1, 2020,
17 the date Windham Hospital terminated obstetric
18 services -- but rather the hospital filed a CON on
19 September 3, 2020, more than two months after it
20 actually terminated the obstetric services.

21 And finally, as to the question of whether
22 Windham Hospital knew it was required to file a
23 CON, or in other words, did it willfully fail to
24 file a CON? The evidence will show that, yes,
25 Windham Hospital knew that it was required to file

1 a CON.

2 The evidence will show that the President of
3 Windham Hospital was specifically told by the
4 Department of Public Health that Windham Hospital
5 would need to file a CON before terminating the
6 inpatient service of obstetrics. And the evidence
7 will show that Hartford HealthCare/Windham
8 Hospital circulated a flyer for a virtual public
9 meeting to be held on August 10, 2020, that would
10 discuss Windham Hospital's proposal to discontinue
11 childbirth services.

12 The flyer also stated that this proposal is
13 subject to regulatory approval, and that the
14 hospital plans to submit a CON application,
15 indicating that Windham Hospital knew that it
16 needed to submit a CON -- and yet it still hadn't.

17 Now let's return to the statutory language
18 once more and break down what's required to impose
19 a civil penalty under CGS Section 19a-653. Once
20 again the Office of Health Strategy has the burden
21 of proof to show what date to use to begin and end
22 counting for the imposition of the daily penalty.

23 CGS Section 19a-653 reads in pertinent part
24 that the institution shall be subject to a civil
25 penalty of up to \$1,000 per day for each day such

1 healthcare facility or institution conducts any of
2 the described activities without certificate of
3 need approval, as required by Section 19a-638.

4 Since the evidence will show that the first
5 date Windham Hospital began operating after
6 terminating the OB services without CON approval
7 was July 1, 2020, that is the date the penalty
8 should begin. And since the evidence will show
9 that the CON application was filed on September 3,
10 2020, that is the date when the violation should
11 end. Therefore, the penalty should be assessed
12 for that entire time period of 60 days -- I'm
13 sorry. Excuse me, 65 days.

14 In summary, the Office of Health Strategy has
15 the burden to prove, and the evidence will show
16 that Windham Hospital terminated its obstetric
17 services as of July 1, 2020. The evidence will
18 show that Windham Hospital knew that it needed to
19 file a CON to terminate these services, and it
20 willfully did not seek a CON until more than two
21 months later.

22 The evidence will show that OHS correctly
23 imposed a civil penalty of \$1,000 per day for each
24 day after July 1, 2020, until the hospital filed a
25 CON with the Office of Health Strategy on

1 September 3, 2020, for a total of 65 days and
2 \$65,000. We ask that the Hearing Officer uphold
3 this penalty. Thank you.

4 **THE HEARING OFFICER:** Thank you. Can you please
5 identify all the individuals by name and title who
6 you plan to have testify on behalf of OHS today?

7 **MS. MANZIONE:** I only plan to have Steven W. Lazarus
8 testify.

9 **THE HEARING OFFICER:** Okay.

10 **MS. MANZIONE:** He is here. He can spell his name and
11 anything else you need to have about him.

12 **THE HEARING OFFICER:** Okay. Mr. Lazarus, it looks like
13 you're muted -- there you go. Can you please
14 state your name and spell it, and your title as
15 well?

16 **STEVEN LAZARUS:** Sure. Good morning. My name is
17 Steven Lazarus; S-t-e-v-e-n, L-a-z-a-r-u-s, and my
18 title at OHS is operations manager.

19 **THE HEARING OFFICER:** Okay. So I'm going to swear you
20 in now.

21 **S T E V E N L A Z A R U S,**

22 called as a witness, being first duly sworn
23 by the HEARING OFFICER, was examined and
24 testified under oath or affirmation as
25 follows:

1 THE HEARING OFFICER: And do you also adopt your
2 prefiled testimony as your testimony here today?

3 THE WITNESS (Lazarus): Yes, I do adopt my prefiled
4 testimony.

5 THE HEARING OFFICER: Thank you. So Ms. Manziona, you
6 can proceed at this time.

7 MS. MANZIONE: Thank you, Attorney Csuka. I would just
8 like to walk Mr. Lazarus through his prefiled
9 testimony -- not reading it, just highlighting a
10 few of the key points and referring to some of the
11 documents that are listed in the prefiled
12 testimony. So bear with us. I think we've got it
13 worked out. We might need to point out which
14 document we're talking about, but we'll go through
15 this.

16 Okay. So good morning, Steve.

17 THE WITNESS (Lazarus): Good morning.

18 THE HEARING OFFICER: I'm sorry to interrupt. I did
19 just want to point out that I am going to allow
20 cross-examination and redirect if necessary, so.

21 MS. MANZIONE: Very good. Okay. We will be prepared
22 for that. Thank you.

1 DIRECT EXAMINATION

2
3 BY MS. MANZIONE:

4 Q. (Manziona) Okay. Steve, good morning.

5 Please tell me a little bit about
6 yourself and your work history at the Office
7 of Health Strategy?

8 A. (Lazarus) I work with the Office of Health
9 Strategy and it's predecessor agencies,
10 including Office of Healthcare Access,
11 Department of Public Health -- for probably
12 now for a total of 26 years, and currently I
13 am acting as the CON supervisor for the CON
14 program.

15 Q. (Manziona) Okay. And where do you fall in
16 the hierarchy at OHS?

17 A. (Lazarus) Well, currently I report to
18 Kimberly Martone who is the Deputy Director
19 of the agency.

20 Q. (Manziona) Okay. And with respect to CON who
21 do you oversee? How does the CON
22 department -- what is it made up of?

23 A. (Lazarus) Sure. The CON program is actually
24 made up of five staff numbers. They range in
25 titles from research analyst, planning

1 analyst, or healthcare analyst.

2 And they also sort of review the
3 applications that come in into the -- into
4 these -- into -- that gets filed with the
5 agency, and they perform their reviews and
6 they also review the CON determinations that
7 come in.

8 Q. (Manziona) Okay. You said that you were
9 operations manager. So that sounds broader
10 than just CON. What else do you do at OHS
11 besides your work with CON?

12 A. (Lazarus) So I also run workgroups,
13 healthcare related workgroups. So I run --
14 currently I'm running and cochairing one of
15 the workgroups that has to do with physician
16 group practices.

17 I've also run groups in the past that
18 have to do with the cardiac guidelines that
19 are present in the -- the OHS's facilities
20 plan, facility and services plan. And I've
21 also ran workgroups for the EMG workgroup as
22 well. Beyond that I'm also -- I also oversee
23 all the portals within OHS. We probably have
24 about six or seven that actually are
25 outwardly facing, including the CON portal.

1 And I have team members that are made up
2 of various members of the different
3 units that are actually admins within that,
4 that we hold -- I hold meetings. I run
5 through those and I see if there's any
6 issues, enhancements, things that that need
7 to be done, and I act as liaison. I worked
8 with -- work with the IT to make sure -- sure
9 that they run smoothly.

10 Q. (Manziona) And you mentioned a CON portal.

11 What is the CON portal?

12 A. (Lazarus) The CON portal is a database that
13 has two faces, one to the outside and one to
14 the inside. And it basically allows
15 applicants to file their applications as well
16 as see all the determinations via the portal
17 as well as payments.

18 We receive them. We accept them. We
19 process them. Most of the communication that
20 takes place, official communication such as
21 completeness letters, decisions,
22 applications, all that including the filing;
23 all the original filings, they must go
24 through the CON portal. And that also acts
25 as an original file holder for the CON

1 program and all the CON files.

2 And the public can access those, but
3 only limited to viewing only and probably
4 downloading the documents, but they cannot
5 change or do anything to the documents. The
6 only person -- person that can do it is the
7 contact person for the entity, and the staff
8 members on this side.

9 Q. (Manziona) Okay. Great. I've made lots of
10 use of the CON portal, and I'm sure other
11 people in this room have well -- in this
12 virtual room.

13 What can you tell me about -- or what do
14 you know about Windham Hospital and its
15 efforts or its intentions to terminate its
16 inpatient obstetric services --

17 A. (Lazarus) So I wasn't directly involved --

18 Q. (Manziona) -- if anything?

19 A. (Lazarus) -- but I did hear -- I know that,
20 you know, the application, Windham had
21 terminated its in -- wanted to terminate its
22 OB services when it filed the CON application
23 with the Office of Health Strategy, and that
24 was on September 3, 2020, and that was via
25 the CON portal itself.

1 Q. (Manziona) Okay. And what kind of
2 information can you -- what kind of basic
3 information can be learned from the CON
4 application?

5 A. (Lazarus) Well, the CON application has
6 different components to it. Upfront, right
7 upfront we find out who the applicant is, who
8 the parent corporation is, who the contact
9 person is, their contact information as well.

10 Further along we can have, you know, the
11 questions that every applicant has to address
12 that talks about the specific project and the
13 various criterias that are required under
14 639. And we also have the financial
15 information that's submitted as part of it.

16 The forms do get revised, but one of the
17 application components is the Excel
18 spreadsheet, the financial worksheet that's
19 also submitted. And we did -- the
20 application was updated probably in the past
21 last fall to include some financial
22 indicators.

23 Q. (Manziona) Okay. Does the CON application
24 ask about an applicant's parent corporation?

25 A. (Lazarus) Yes, it does.

1 Q. (Manziona) Do you know who Windham Hospital's
2 parent corporation is?

3 A. (Lazarus) Yes, Hartford HealthCare.

4 Q. (Manziona) Okay. And does it also -- the
5 application, does it also ask about an
6 applicant's tax status?

7 A. (Lazarus) Yes, it does. It asks if you're
8 for profit or not for profit.

9 Q. (Manziona) And do you know what Windham
10 checked off?

11 A. (Lazarus) Windham is --

12 Q. (Manziona) Windham Hospital checked off?

13 A. (Lazarus) Windham is not-for-profit.

14 Q. (Manziona) Okay. And do you know who was
15 named as the contact person on the Windham
16 Hospital application?

17 A. (Lazarus) Barbara Durdy.

18 Q. (Manziona) And do you know what her role is?

19 A. (Lazarus) Well, beyond being contact person I
20 believe she's the VP of --

21 Q. (Manziona) Or what her title is?

22 A. (Lazarus) I believe she's the VP of Planning,
23 and among other things at Hartford
24 HealthCare.

25 Q. (Manziona) Okay. That sounds good. That's

1 all I wanted to know about the CON. So let's
2 go back to the process.

3 So once the CON application is uploaded
4 via the CON portal, what happens to it?

5 A. (Lazarus) It's typically assigned a docket
6 number. In this case we assigned it a Docket
7 Number 20-32B94-CON. The CON application --
8 and the CON indicates that it's a CON
9 application. If it was a DTR, it would be a
10 determination, and "W" for a waiver, so on
11 and so forth.

12 Once the application is submitted its
13 then reviewed by the analyst and within
14 the -- and we have 30 days to then review the
15 initial application from the date of the
16 initial filing.

17 Then a completeness letter, which is a
18 document that's sent out, typically to the
19 applicants requesting any additional
20 information prior to the application being
21 able to be deemed complete.

22 Q. (Manziona) Okay. And was an analyst assigned
23 to this application?

24 A. (Lazarus) Yes, the analyst that was assigned
25 to this application was Lindsey Donston. She

1 knows -- she's no longer with OHS. And so
2 she had done the initial review for this
3 application.

4 Q. (Manziona) Okay. And what was the first
5 communication between the analyst and Windham
6 Hospital?

7 A. (Lazarus) The analyst was -- was the initial
8 CON completeness letter that was put together
9 that was sent out. However, in this case I
10 believe it was also some information that was
11 brought to OHS's attention that prompted it
12 to start the inquiry.

13 Q. (Manziona) So you said that -- was there some
14 letter before even the initial completeness
15 letter? Is that true?

16 A. (Lazarus) There was some communication that
17 prompted some information to OHS, and got OHS
18 to start the inquiry process.

19 Q. (Manziona) And do you know what that trigger
20 was?

21 A. (Lazarus) I don't know what the trigger was,
22 particularly -- particularly in this one.
23 Generally it's either a phonecall to the
24 office, it could be an e-mail, or it could be
25 a letter. I don't know particularly what it

1 was in this case.

2 Q. (Manzione) And would that information
3 generally be included in the file?

4 A. (Lazarus) In -- in the inquiry file if it was
5 an official letter, if somebody had
6 requested/started -- it may be included. I
7 don't know. To be precise, it depends on the
8 person inquiring and what means that it came
9 in on.

10 So I don't know a precise answer.

11 Q. (Manzione) Did you receive some kind of
12 question about this file that caused the
13 earlier inquiry regarding this, this docket?

14 A. (Lazarus) No.

15 Q. (Manzione) Did you personally receive --

16 A. (Lazarus) I did not.

17 MS. MANZIONE: Okay. All right. So let's talk about
18 that inquiry, that inquiry that triggered a letter
19 that OHS sent out.

20 That is in my prefiled documents.

21 I would like you to turn your attention to
22 what has previously been marked as -- well, it's
23 in these, the overall exhibit for -- Roy, can you
24 help me here please?

25 So the overall exhibit for this case, this

1 hearing is -- is it "P?" My prefile with Bates
2 numbering?

3 MR. WANG: Give me one moment. I'm just looking at the
4 inquiry letter itself.

5 MS. MANZIONE: Yeah, the inquiry letter is, I
6 believe --

7 RUONAN WANG: It's Exhibit P beginning on Bates page
8 100, with the cover letter of Exhibit P. And it
9 is a 2-page letter from analyst Lindsey Donston to
10 Windham Hospital and Hartford HealthCare.

11 BY MS. MANZIONE:

12 Q. (Manzione) Steve, do you have that?

13 A. (Lazarus) I do. I do have that.

14 MS. MANZIONE: Attorney Fusco and Windham Hospital
15 folks, are you able to follow along? Can you
16 locate that letter?

17 MS. FUSCO: I do have it, yes. I believe it's Bates
18 101.

19 MS. MANZIONE: Bates 100 -- or 101?

20 MS. FUSCO: Yes, we have it.

21 MS. MANZIONE: So it's a letter dated September 18,
22 2020.

23 MS. FUSCO: Yes.

24 BY MS. MANZIONE:

25 Q. (Manzione) Okay. So Steve, I would like you

1 to characterize the letter, who it's from,
2 who it's to and then read question number
3 three.

4 A. (Lazarus) Sure the letter is actually on
5 OHS's letterhead. It's sent out by Lindsey
6 Donton -- Donston. That was the healthcare
7 analyst assigned to it.

8 And question number three -- you said?

9 Q. (Manziona) Yes.

10 A. (Lazarus) Okay. So if the letter is
11 inquiring additional information regarding
12 the termination of inpatient obstetrical
13 services at Windham Hospital -- question
14 three states, when was the decision made to
15 divert obstetrical services at the hospital?

16 If the date of the decision predates the
17 publication of the notice of hospital's
18 intent to file a CON application to terminate
19 obstetrical services, indicate why the
20 hospital application was not filed earlier.

21 MS. MANZIONE: Okay. And so now we're going to try to
22 find the answer to that question in our records.

23 So the answer to that letter is marked, I
24 believe, letter -- my Exhibit C.

25 RUONAN WANG: And it's on -- Bates page 107 is the

1 response to question three.

2 BY THE HEARING OFFICER:

3 Q. (Manziona) And the response to that
4 question -- thank you, Roy is on page 107.

5 So the response to questions three is on
6 page 7. Okay.

7 A. (Lazarus) Yes, I see it.

8 Q. (Manziona) Okay. So why don't you please
9 read the part after it says, response, colon.
10 It starts out with the decision.

11 A. (Lazarus) Sure. The decision was made on
12 June 20, 2020, to again temporarily interrupt
13 obstetrics services while seeking regulatory
14 approval from OHS to terminate these
15 services.

16 Q. (Manziona) Period. Thank you.

17 A. (Lazarus) Period.

18 Q. (Manziona) I would like you to go a little
19 bit further now down into the next paragraph
20 that said -- that starts public notice --

21 A. (Lazarus) Uh-huh?

22 Q. (Manziona) -- of the hospital's intent, and
23 then there's some dates. And then there's a
24 sentence that begins, the hospital. Would
25 you please read the rest of that sentence

1 that begins, the hospital?

2 A. (Lazarus) Sure. The hospital used the time
3 between June 20, 2020, and July 8, 2020, to
4 contact all community stakeholders including
5 local legislators, to discuss the
6 circumstances at the hospital and the
7 ultimate decision to seek regulatory approval
8 to officially terminate the service.

9 Q. (Manzione) Okay. Great. You can put that
10 document away for now. Thank you. And we'll
11 go back to the regular process.

12 So among other things there that were
13 talked about in that inquiry letter were
14 other questions asked and answered. And then
15 you mentioned something called the
16 completeness letter one. What does the
17 completeness letter one generally do?

18 What is its purpose?

19 A. (Lazarus) The purpose of the completeness
20 letter, whether it's first or second is to --
21 well, the first one is actually based on
22 the -- the application that was sent in
23 initially. And based off that, any
24 information that OHS or the analyst deems
25 important and that's either missing or they

1 need additional clarification, additional
2 evidence on, they would include questions in
3 there. And that would be sent to the
4 applicant to respond.

5 Q. (Manzione) Okay. And was there a
6 completeness letter in this case?

7 A. (Lazarus) Yes, there was.

8 Q. (Manzione) Okay. And I believe that's been
9 marked in the subsection of my entry in the
10 prefiled documents. It's my Exhibit F. I
11 have some questions. And then the response
12 to the questions has been marked Exhibit G.

13 I'd like to ask you about a question and
14 answer from that completeness letter one. It
15 might be easiest just to look at the question
16 and answer together on the response.

17 So on document G, which is Bates
18 stamped -- I believe it's number 126, and
19 it's question two. And before we read the
20 letter -- or read that answer to that
21 question, would you characterize, please, you
22 know, to -- to who/from/what it's about, this
23 document of exhibit G?

24 A. (Lazarus) So this is their completeness --
25 this is the hospital, Windham Hospital's

1 response to OHS's completeness letter one.

2 Q. (Manziona) Okay. And so can you please flip
3 to question number -- I mean, these are long
4 questions with multiple parts. Can you
5 please flip, flip to question number two?

6 A. (Lazarus) Uh-huh.

7 Q. (Manziona) Which I think is marked Bates
8 number 126?

9 A. (Lazarus) Yes, I'm there.

10 Q. (Manziona) Read the question and then the
11 response, please?

12 A. (Lazarus) Sure. Question two, describe --
13 describe the transportation plan the hospital
14 plans -- plans to implement; A, how will the
15 patients access these transportation
16 services, question mark.

17 Response; for the majority of women who
18 received their care at hospitals, prenatal
19 care, parenthesis, which will remain
20 operational, close parentheses, comma,
21 planning for a safe and patient-focused
22 delivery begins with the first visit.

23 Transportation options are discussed
24 with each patient well in advance of the
25 anticipated delivery date to ensure that all

1 patients have information they need including
2 phone numbers and contact information for
3 each transportation service.

4 In addition, patients are coached by
5 their provider to call Backus Hospital and/or
6 911 to ensure patients are -- patients are
7 certain about what they are -- what they need
8 to do when they are in labor, or need
9 immediate medical attention.

10 The hospital will coordinate and provide
11 transportation via local ambulance service at
12 no cost to the patient.

13 Would you like me to continue?

14 Q. (Manziona) Yes, please.

15 A. (Lazarus) Sure. Please --

16 Q. (Manziona) Just one more paragraph.

17 A. (Lazarus) Okay. Please see transportation
18 plan for Windham Hospital's obstetrics
19 patients attached as Exhibit 1.

20 The hospital has made arrangements with
21 American Ambulance to transport patients to
22 either Backus Hospital or another hospital,
23 providing that the patient has made
24 arrangements in advance for the receiving --
25 receiving physician at the other hospital and

1 their admission is expected.

2 The arrangements with other hospitals
3 are made with prenatal clinic patients as
4 they plan for their deliveries over the
5 course of their pregnancies.

6 Q. (Manzione) Okay. Perfect. Thank you. I
7 would like you to now flip ahead in the
8 document.

9 There is something attached to the
10 letter. It's marked Exhibit 2. It's a copy.
11 It's called a copy of the hospital's
12 communications to patients. It is OHS
13 prefiled Bates page number 136.

14 Do you see that?

15 A. (Lazarus) Where is it located again? I'm
16 sorry.

17 Q. (Manzione) So it's still in -- it should be
18 not too far away, because it's an attachment
19 to that letter from which you just read.

20 A. (Lazarus) Okay.

21 Q. (Manzione) It's an attachment to that letter,
22 and if you follow the Bates stamps for OHS
23 prefile --

24 A. (Lazarus) Uh-huh.

25 Q. (Manzione) It's Bates stamp 136. It's a

1 letter that starts, dear patient?

2 A. (Lazarus) Yes, Exhibit 2, page 136.

3 Yes, I have it.

4 Q. (Manziona) You see it?

5 A. (Lazarus) It's on Hartford HealthCare --

6 Q. (Manziona) Okay. Can you please characterize
7 the letter? Describe who it's from, who it's
8 to, the letterhead, and then I'm going to ask
9 you a little bit on it.

10 A. (Lazarus) Sure. It's a letter -- actually
11 it's on Hartford HealthCare and Windham
12 Hospital's letterhead. It's a letter to
13 patients. It's actually a form letter, it
14 appears, and it's like a dear-patient letter.

15 Q. (Manziona) And who's it from?

16 A. (Lazarus) Providing them -- and it's from --
17 it's -- it's signed by Daryl Hurlock, RN, who
18 is the Regional Director of Women's Health
19 Services. And David Kalla, MD, Regional
20 Medical Director Women's Health Services for
21 Hartford HealthCare.

22 Q. (Manziona) Thank you. I'd like you to read
23 the first two sentences of the letter just
24 after the, dear patient?

25 A. (Lazarus) Sure. We want to help -- we want

1 to let you know that birthing services at
2 Windham Hospital will be provided at Backus
3 Hospital's Birthing Center in Norwich
4 starting July 1, 2020.

5 We are sharing this information so you
6 can make plans for delivering your baby at
7 Backus Hospital, or at a hospital of your
8 choice.

9 Q. (Manziona) Okay. So if you're a patient
10 reading this letter -- I know you're a recent
11 dad. So one of my choices, I want to have my
12 baby at Windham Hospital on July 15th.

13 Is that an option for me?

14 A. (Lazarus) From this paragraph it doesn't
15 appear to be, no.

16 MS. FUSCO: I'm going to object to the question for the
17 record. I mean, this is not a letter that
18 Mr. Lazarus received, and his characterization of
19 what it means is not appropriate.

20 MS. MANZIONE: Okay. Let's move on.

21 Okay. We will move on.

22 BY MS. MANZIONE:

23 Q. (Manziona) Now one other point that that
24 letter did make -- what was the point of the
25 letter that was in bold print multiple times?

1 A. (Lazarus) It's directing the patient to --
2 giving them options as to where -- how to
3 proceed if, you know, if they have -- for a
4 delivery at Backus Hospital. It directs them
5 what to do, and it says for delivery at an
6 alternate hospital, and it gives the
7 alternate options.

8 Q. (Manziona) And what about if someone needed
9 immediate medical attention?

10 A. (Lazarus) It says to call 911.

11 Q. (Manziona) Okay. And that's regardless of
12 whether you're doing --

13 A. (Lazarus) Whether it goes to Backus or --

14 Q. (Manziona) -- regardless of your hospital.

15 A. (Lazarus) Right.

16 Q. (Manziona) Okay. So once again, what was the
17 date that the birthing services were going to
18 be provided at Backus Hospital, again in the
19 first sentence?

20 A. (Lazarus) July 1, 2020.

21 Q. (Manziona) Okay. July 1. So, okay. Let's
22 come back to your role at CON. Do you ever
23 talk with hospitals or healthcare facilities
24 that are going through the CON process?

25 A. (Lazarus) Yes, some -- or many reach out to

1 us when they're about to do a proposal.

2 Sometimes they want advice on what to do
3 and how to proceed.

4 Q. (Manziona) Okay. And would you say that if a
5 hospital or a healthcare facility comes to
6 you, that they're going to make a significant
7 change in their services, what advice might
8 you give them in order to make it a smoother
9 transition?

10 A. (Lazarus) Typically we, we know -- we let
11 them know because as far as, you know, we get
12 a lot of concern from the community. It's
13 all the start of the community first, you
14 know, share the information, have a plan in
15 place. And then share that plan with the
16 community either through forums, websites or
17 a combination of those, and just so we
18 educate the community of what the change
19 might be coming.

20 Q. (Manziona) Okay.

21 A. (Lazarus) As is typically part of our advice
22 to generally every major change coming to a
23 hospital.

24 Q. (Manziona) Did you reach out to Windham
25 Hospital, or was Windham Hospital -- did they

1 reach out to you to ask for advice, or to
2 give advice about this proposal of
3 terminating services?

4 A. (Lazarus) To me directly? No.

5 Q. (Manziona) You personally?

6 A. (Lazarus) No.

7 MS. MANZIONE: Okay. I am going to show you a
8 document -- or I'm going to ask you to look at a
9 document. Now this is a document that is -- I'm
10 trying to recall.

11 So it is attached. It's attached to a letter
12 from Attorney Fusco to Executive Director Veltri
13 dated November 9, 2021.

14 I believe it has to do with the Shaw letter.
15 I believe it's in part of Attorney Fusco's
16 submissions. I think it's Bates stamped page 366.

17 Roy, you helped me find where this was
18 before.

19 MR. WANG: It's Exhibit V uploaded to the portal on
20 November 9th of 2021 as part of Docket 32394,
21 which is Windham Hospital's CON application. And
22 it is Bates page 366 -- is the flyer that I
23 believe you are referring to.

24 MS. MANZIONE: Okay. So Attorney Fusco and --

25 MS. FUSCO: Can you give me a moment to find it? It's

1 in the CON application. What page? What Bates
2 Number?

3 MS. MANZIONE: 366.

4 MS. FUSCO: Yeah, we don't have -- these would be your
5 exhibits. What's your Bates number? 366 would
6 have been the application Bates number.

7 MS. MANZIONE: Yeah, the application Bates number.

8 MS. FUSCO: I don't have that here.

9 MS. MANZIONE: No, it's not part of -- I don't believe
10 it's part of the CON application. It's an
11 attachment to a letter sent from Attorney Fusco to
12 Executive Director Veltri on November 9, 2021 --

13 MS. FUSCO: I'm familiar with -- I'm sorry. I'm sorry
14 to interrupt. I'm familiar with the letter. I
15 just don't know where it is in this docket that
16 we're dealing with today.

17 MS. MANZIONE: I'm trying to. I know it's in this.

18 I know it's in this docket somewhere. It's
19 attached as Exhibit A to this letter -- so hold
20 on. We will find it.

21 Let me pull up the record. It's in the
22 (unintelligible) -- I thought I had everything
23 all --

24 MS. FUSCO: Are you referring to the forum invitation?

25 MS. MANZIONE: Yes, the attachment is the virtual

1 public meeting invitation.

2 MS. FUSCO: Yes, that's -- I think it might be --

3 MS. MANZIONE: And it's attached as an exhibit.

4 MS. FUSCO: -- something. I'm not --

5 MS. MANZIONE: That's the only way I saw it.

6 MS. FUSCO: It's probably --

7 MS. MANZIONE: I thought I had everything all lined up.

8 MS. FUSCO: That's okay. It's probably -- oh, here it
9 is.

10 MS. MANZIONE: Hold on.

11 MS. FUSCO: It's Bates page 43 of Donna Handley's
12 testimony.

13 MS. MANZIONE: Yeah, I apologize. I don't mean to make
14 you go searching for things.

15 Okay. Thank you for that.

16 MS. FUSCO: You're welcome.

17 MS. MANZIONE: So okay. I'm going to ask you a couple
18 of questions about this flyer -- now that I've
19 screwed up my computer screen. Hold on. Let's
20 see if I can pull everybody back.

21 BY MS. MANZIONE:

22 Q. (Manzione) Okay. So just so we're making
23 sure we're on the same page -- Steve?

24 A. (Lazarus) Yes.

25 Q. (Manzione) Can you describe the flyer to make

1 sure we're talking about the same flyer?

2 A. (Lazarus) So there's a colorful flyer with a
3 Hartford HealthCare/Windham logo on the top
4 right side. On the left side it says,
5 Windham Hospital, hosted virtual, in orange.
6 And then in purple it says, public meeting on
7 childbirth services. And then it --

8 MS. MANZIONE: Okay. Is that the same flyer that you
9 have, Attorney Fusco --

10 MS. FUSCO: Yes.

11 MS. MANZIONE: -- and Windham Hospital?

12 MS. FUSCO: Yes.

13 MS. MANZIONE: Yeah? Okay.

14 BY MS. MANZIONE:

15 Q. (Manziona) Okay. There's a couple sentences
16 on here that I have highlighted that I would
17 like you to read, Steve.

18 But before we do that, Steve, this kind
19 of flyer, what do you think it's for? What
20 is the purpose of this flyer?

21 A. (Lazarus) It appears to be an announcement
22 flyer for the public regarding a virtual
23 forum.

24 Q. (Manziona) And what date is the virtual
25 forum?

1 A. (Lazarus) According to the flyer, August 10,
2 2020.

3 Q. (Manziona) Okay. And according to the flyer,
4 you know, the first two sentences, what will
5 be discussed?

6 You can read from the flyer.

7 A. (Lazarus) Sure. From the -- which portion?

8 Q. (Manziona) So you can read after it says,
9 open to the public?

10 A. (Lazarus) Open to the public. Please join us
11 for a discussion about the future of
12 childbirth services at Windham Hospital.
13 Windham Hospital -- Windham Hospital leaders
14 will discuss their proposal to discontinue
15 childbirth services while enhancing overall
16 women's health services.

17 The hospital will also discuss how
18 community residents will access childbirth
19 services in the future. They'll plan to
20 continue prenatal and postpartum care and
21 other service, service enhancements.

22 Q. (Manziona) And just read that one following
23 sentence after that dotted line, please?

24 A. (Lazarus) This proposal is subject to
25 regulatory approval, comma, and the hospital

1 plans to submit a certificate of need
2 application to the Office of Health Strategy
3 in the coming weeks, period.

4 Q. (Manziona) Okay. Thank you. So just to
5 recap, this flyer appears to be from an event
6 in August of 2020?

7 A. (Lazarus) Yes.

8 Q. (Manziona) Okay. So that would have happened
9 before the CON was filed because -- when was
10 the CON application filed again?

11 A. (Lazarus) September -- September -- I'd say,
12 September 3, 2020.

13 Q. (Manziona) Okay. So the CON is filed, the
14 completeness letter happens, the response;
15 there's some back and forth. How do you know
16 when the back and forth with the letters is
17 completed?

18 A. (Lazarus) Um --

19 Q. (Manziona) How do you know when it's time to
20 move on to the next step?

21 A. (Lazarus) Once completeness letters, either
22 one or two, or whatever, however many we
23 have, I think. I believe in this case there
24 were two.

25 Once where OHS is satisfied that we have

1 enough evidence and we can deem the
2 application complete, that's the next step
3 and that's when the application would have
4 been done -- is deemed complete.

5 Q. (Manziona) Do you know when this file was
6 deemed complete?

7 A. (Lazarus) I believe it was deemed complete on
8 February 25, 2021.

9 Q. (Manziona) Okay. And then there were a bunch
10 of procedural occurrences, and we will skip
11 most of those.

12 And then a letter that was sent out
13 about a civil penalty.

14 Okay. And did I leave anything out that
15 you wanted to mention about this case or
16 about this filing? Or anything that you
17 think is important to say that you would like
18 to?

19 A. (Lazarus) No, I think we covered everything
20 related to the process and what was my
21 testimony.

22 Q. (Manziona) Okay. Then I am done with this
23 Witness -- but stay here. You might be
24 having other questions.

25 A. (Lazarus) I'm sure.

1 MS. FUSCO: Just a few. Is it okay, Attorney Csuka,
2 for me to proceed with cross-examination?

3 THE HEARING OFFICER: Yes, that's fine.

4 MS. FUSCO: Thanks. Good morning, Steve.

5
6 CROSS-EXAMINATION

7
8 BY MS. FUSCO:

9 Q. (Fusco) Is it okay if I call you Steve,
10 Mr. Lazarus?

11 A. (Lazarus) Absolutely. Steve is fine.

12 Thank you.

13 Q. (Fusco) So you've testified that you've been
14 with OHS and its predecessor agency, the
15 Office of Healthcare Access for more than 26
16 years.

17 Correct?

18 A. (Lazarus) Yes.

19 Q. (Fusco) And historically during that time you
20 did work as a CON analyst. Correct?

21 Including as the principle analyst --

22 A. (Lazarus) Yes.

23 Q. (Fusco) -- during this period of time?

24 A. (Lazarus) Yes.

25 Q. (Fusco) Am I correct that between September

1 of 2019 and September of 2020 your title was
2 operations manager?

3 A. (Lazarus) Yes.

4 Q. (Fusco) So during that time you were not
5 overseeing the day-to-day of the CON unit.
6 Correct? That was being done by Brian
7 Carney, the CON unit supervisor?

8 A. (Lazarus) Yes, but I was -- my role -- I was
9 still guiding CON with the process piece.
10 That was still part of my responsibilities.
11 So I would guide, you know, Brian and the CON
12 team as needed.

13 Q. (Fusco) Okay.

14 A. (Lazarus) But not the day-to-day operations.

15 Q. (Fusco) Okay. Fair enough. And you didn't
16 assume the role -- you didn't assume Brian's
17 role, really, until he retired in March of
18 2022.

19 Correct?

20 A. (Lazarus) Yes. I'm currently acting in this,
21 but I haven't pursued the role fully, yes.

22 I'm just clarifying.

23 Q. (Fusco) Yeah. Right. So I think you
24 testified under direct that you -- you
25 yourself had no conversations with anyone

1 from Windham Hospital or Hartford HealthCare
2 about their obstetric services and their plan
3 to file a CON application. Correct?

4 A. (Lazarus) Correct.

5 Q. (Fusco) Were you aware before September of
6 2020, before September 3rd of 2020 that
7 Kimberly Martone, who I believe you said is
8 your direct report from OHS, had spoken with
9 Barbara Durdy about the Windham OB service on
10 November 1, 2019?

11 A. (Lazarus) No.

12 Q. (Fusco) You were not aware of that? And you
13 were not on that call with Ms. Martone and
14 Ms. Durdy.

15 Correct?

16 A. (Lazarus) I don't believe so.

17 Q. (Fusco) And the particulars of that call were
18 never communicated to you in your position as
19 operations manager?

20 A. (Lazarus) No.

21 Q. (Fusco) Okay. Were you aware -- kind of the
22 same question. Were you aware before
23 September 3rd of 2020 that Ms. Durdy had
24 contacted Ms. Martone in late June or early
25 July of 2020 to tell her that Windham was

1 about to publish the notice of intent to file
2 the CON application?

3 A. (Lazarus) Correct, I don't -- I wasn't aware.

4 Q. (Fusco) All right. Were you aware -- and I'm
5 not certain how this works at OHS, but were
6 you aware that the notice of intent to file
7 the CON application was published in The
8 Chronicle on July 8th, 9th and 10th of 2020?
9 In real-time -- I guess is my question?

10 A. (Lazarus) No, I don't believe so.

11 Q. (Fusco) Okay.

12 A. (Lazarus) We don't -- we don't get real-time
13 information that's been published.

14 Q. (Fusco) Okay. All right. Were you aware
15 that Leslie Greer of OHS had been invited as
16 sort of a representative of OHS to attend a
17 virtual public forum hosted by Windham about
18 the OB service closure in August of 2020,
19 about the proposed closure?

20 A. (Lazarus) No, I wasn't.

21 Q. (Fusco) Okay. So I guess it's fair to say --
22 and I think you said at the beginning of this
23 line of questioning, that you were not
24 directly involved with any of the preliminary
25 discussions and notifications made to OHS by

1 Windham Hospital regarding the proposed
2 termination of OB services. Correct?

3 A. (Lazarus) Correct.

4 Q. (Fusco) You mentioned in your testimony that
5 Lindsey Donston who was the initial analyst
6 on this, on the Windham OB CON is no longer
7 with OHS. Correct?

8 A. (Lazarus) Right.

9 Q. (Fusco) And Mr. Carney who is overseeing the
10 CON unit day-to-day when, you know, in the
11 year leading up to the filing of the CON has
12 since retired. Correct?

13 A. (Lazarus) Yes.

14 Q. (Fusco) And Attorney Michaela Mitchell who
15 served as the Hearing Officer on the Windham
16 OB CON has since resigned and moved out of
17 state. Correct?

18 A. (Lazarus) Unfortunately, yes.

19 Q. (Fusco) I'm the only one left, Steve.

20 A. (Lazarus) Right.

21 Q. (Fusco) Okay. You testified in some detail
22 about an inquiry that was initiated by OHS in
23 September of 2020 after the CON application
24 had been filed concerning whether the
25 hospital preemptively discontinued obstetric

1 services without CON authorization. Correct?

2 A. (Lazarus) Yes.

3 Q. (Fusco) And one of my questions, which I
4 think you may have answered, is that the
5 letter says -- or the inquiry letter says
6 that OHS was in receipt of certain
7 information, but you don't know what that
8 information is. Correct?

9 A. (Lazarus) Correct.

10 Q. (Fusco) And you don't know if that
11 information was ever related to Hartford
12 HealthCare or Windham Hospital?

13 A. (Lazarus) I have no knowledge of that, no.

14 Q. (Fusco) Would you be able to access that
15 information in reviewing the file?

16 A. (Lazarus) I have reviewed the file. I didn't
17 see it in there.

18 Q. (Fusco) Okay. I want to take you back to
19 page -- I'm sorry to be jumping around on
20 these Bates numbers, but I think it's
21 page 107 of the exhibits to your testimony.
22 It was the response to the inquiry letter
23 that Attorney Manzione had you reading from?

24 A. (Lazarus) Okay.

25 Q. (Fusco) Let me know when you're there?

1 A. (Lazarus) Almost there.

2 Okay. I'm on page 107.

3 Q. (Fusco) So question three of your response,
4 Attorney Manzione had you read the first
5 sentence. I'd like you, if you could, to
6 read the first three sentences of that first
7 paragraph?

8 A. (Lazarus) Sure. The response to question
9 three. Right?

10 Q. (Fusco) Uh-huh. Yes.

11 A. (Lazarus) Okay. The decision was made on
12 June 20, 2020, to again temporarily interrupt
13 obstetric services while seeking regulatory
14 approval from OHS to terminate these
15 services. The decision was made on this date
16 because the one physician
17 providing obstetrical services at the
18 hospital took a time off for vacation, and
19 the hospital was not made -- not able to
20 provide call coverage for this leave.

21 In addition, the loss of nursing staff
22 and the hospital's inability to secure
23 nursing resources either through employment
24 or with locums makes the -- makes the safe
25 reopening of the unit not possible. Please

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see --

Q. (Fusco) Okay. Thank you --

A. (Lazarus) Go ahead.

Q. (Fusco) Okay. Thank you. And in the next paragraph I think Attorney Manzione had you read the first sentence about the public notice being filed on July 8th, 9th and 10th. Can you read the sentence after that that begins with, the hospital used?

A. (Lazarus) Sure. The hospital used the time between June 20, 2020; and July 8, 2020, to contact all community stakeholders including local legislators to discuss the circumstances at the hospital that the -- that the ultimate decision, to seek regulatory approval to officially terminate the service.

Q. (Fusco) Okay. Thank you. So this response was submitted on, I believe, October 2, 2020 -- if I have the date right?

Yeah, so this was submitted on October 2, 2020, which was more than a year and a half ago.

Are you aware that the Office of Health Strategy has not to date responded to this

1 inquiry?

2 A. (Lazarus) I -- I am not. I am not, no.

3 Q. (Fusco) Okay. Having gone through the record
4 in the CON docket, do you see any official
5 response to the inquiry?

6 A. (Lazarus) I do not.

7 Q. (Fusco) Given sort of your ample experience
8 with CON matters would you agree that it's
9 atypical for the agency not respond to
10 an inquiry of this type?

11 A. (Lazarus) I haven't really been directly
12 involved in past inquiries. So I don't
13 really know the answer to that.

14 Q. (Fusco) Okay. And so based upon that, you
15 wouldn't be in a position to say how many
16 times in your years at OHS you've seen an
17 inquiry left open for this long or
18 indefinitely. Correct?

19 A. (Lazarus) Right. Correct.

20 Q. (Fusco) In your testimony -- and bear with me
21 while I find the page. I'm looking for the
22 board minutes of the Hartford HealthCare
23 meeting -- which let me just find where they
24 are. I'm sorry. I should have marked them.

25 I believe they are Exhibit B, which is

1 Bates page 118.

2 A. (Lazarus) Yes.

3 Q. (Fusco) So you've testified about -- in your
4 written testimony you've testified about this
5 meeting. You've attached a copy of the
6 minutes to your testimony. Correct?

7 A. (Lazarus) Uh-huh, yes.

8 Q. (Fusco) Anywhere in these minutes does it say
9 that the closure of Windham OB services would
10 be effective immediately?

11 A. (Lazarus) No.

12 Q. (Fusco) In fact, the minutes reference a
13 timeline and approval process. Do they not?

14 A. (Lazarus) Yes.

15 Q. (Fusco) And based on your experience with
16 CON -- and this is going back a little bit
17 testing your memory. Like, historically
18 wasn't it pretty typical for OHS or probably
19 more OHCA to ask for board minutes and
20 resolutions in CON applications?

21 I mean, if I'm recalling I think at one
22 point it was a standard question to gather
23 these minutes or these resolutions as part of
24 the CON process?

25 A. (Lazarus) They were at one time, yes.

1 Q. (Fusco) Okay.

2 A. (Lazarus) But as you know, our CON
3 application gets updated frequently.

4 Q. (Fusco) Okay. Can you think of an instance
5 in which board minutes or resolutions were
6 requested and those were used as evidence to
7 prove that an applicant had proceeded with a
8 project without CON approval, versus having
9 had the board just approve the project before
10 the CON application was filed, before the
11 regulatory process started?

12 A. (Lazarus) I don't remember.

13 Q. (Fusco) Okay. Going back to 2015 -- and I
14 don't know if you remember what position you
15 were in, in 2015 -- but you were a healthcare
16 analyst at that time. Right?

17 A. (Lazarus) Right.

18 Q. (Fusco) In some capacity?

19 A. (Lazarus) Yes.

20 Q. (Fusco) Given that you were a healthcare
21 analyst at that time you likely would have
22 been aware of and might even have worked on
23 the CON application to terminate Milford
24 Hospital's obstetric program?

25 A. (Lazarus) I don't -- I remember the general

1 project. I don't remember --

2 MS. MANZIONE: I'm going to have to object to this line
3 of questioning, that anything that happened in
4 2015, that's beyond the scope of my direct
5 examination. It wasn't part of my direct
6 examination, and it wasn't part of the prefile
7 with respect to Steve.

8 MS. FUSCO: Okay. Well, these things have been
9 administratively noticed and are in the record,
10 and I would ask to be given some latitude, the
11 same as Attorney Manzione was given latitude to
12 ask about parts of the CON application that were
13 not prefiled. I can assure you it's a very brief
14 line of questioning.

15 THE HEARING OFFICER: I will permit it, and give it its
16 due weight in connection with preparing my order.

17 BY MS. FUSCO:

18 Q. (Fusco) So my question for you, Steve, is
19 were you aware that Milford Hospital
20 suspended its OB services due to staffing
21 issues in advance of filing for and receiving
22 CON approval?

23 A. (Lazarus) I don't remember the specifics.

24 I just remember the general project.

25 Q. (Fusco) To the best of your knowledge, did

1 OHCA at the time assess a civil penalty
2 against Milford for preemptively
3 discontinuing OB services?

4 A. (Lazarus) I don't believe so, no.

5 Q. (Fusco) Okay. And are you aware that a
6 similar situation occurred in 2015 with the
7 Sharon Hospital Sleep Center where they, due
8 to staffing issues, had to preemptively
9 discontinue services before getting a CON?

10 A. (Lazarus) I don't recall that.

11 Q. (Fusco) Okay. And then I assume you don't
12 recall whether they were fined or not.

13 Do you recall?

14 A. (Lazarus) I don't -- my memory is getting
15 really slow with age.

16 Q. (Fusco) I totally understand.

17 A. (Lazarus) It's not on purpose, I can tell you
18 that.

19 Q. (Fusco) Okay. So I guess a more general
20 question is, in your 26-plus years at OHCA
21 and OHS are you aware of any instances in
22 which the agency has assessed a civil penalty
23 against a provider, a hospital for suspending
24 service due to staffing issues in the
25 interests of patient safety before filing for

1 a CON, and then not ultimately waiving that
2 penalty?

3 Are you aware of any penalties that have
4 been fully imposed in those situations?

5 A. (Lazarus) Personally, no, because I wasn't
6 involved in those, in any of the inquiries or
7 instigations. So I wouldn't be -- have any
8 knowledge of those at the -- from their time.

9 Q. (Fusco) You may not know this then given what
10 you're working on now, but are you aware
11 whether OHS is investigating or has penalized
12 any other hospitals that have currently
13 suspended OB services because they're not
14 delivering babies?

15 Or is Windham the only one?

16 A. (Lazarus) I don't know positively, no.

17 Q. (Fusco) Just a couple more questions. Would
18 you agree -- a sort of CON process
19 question -- that the publication of notice of
20 intent to file a CON obligation under Section
21 19a-639a is a prerequisite to filing a CON
22 application?

23 A. (Lazarus) Yes.

24 Q. (Fusco) And would you agree then that that
25 notice, publication of that notices is the

1 first step in the CON process, that it begins
2 the CON process?

3 A. (Lazarus) I suppose, yes.

4 MS. FUSCO: Okay. That's it. I have no additional
5 questions. Thanks, Steve.

6 THE WITNESS (Lazarus): You're welcome. Thank you.

7 THE HEARING OFFICER: Ms. Manzione, do you have any
8 redirect for Mr. Lazarus?

9 MS. MANZIONE: I do, and I'm going to call him Steve.

10
11 REDIRECT EXAMINATION

12
13 BY MS. MANZIONE:

14 Q. (Manzione) So Steve, I'm just going to ask
15 you one quick question?

16 A. (Lazarus) Sure.

17 Q. (Manzione) Just to briefly follow up on that
18 last point that Attorney Fusco made, how do
19 we know at OHS, or how does OHS track when a
20 CON application is filed?

21 A. (Lazarus) The first -- the first time we know
22 is when an application is uploaded to the
23 portal.

24 Q. (Manzione) And does a newspaper filing happen
25 before or after that?

1 A. (Lazarus) It's -- it's required to be done
2 prior to that publication.

3 Q. (Manziona) Is it possible that an
4 organization or a hospital or a facility
5 could make an advertisement in a newspaper
6 and then not go forward with filing an
7 application?

8 A. (Lazarus) Yes.

9 Q. (Manziona) So do you want to reconsider your
10 statement you just made that filing the --
11 publishing the notice in the newspaper is the
12 first step in filing the application process?

13 A. (Lazarus) Well, our application process
14 starts when the application is uploaded to
15 the portal. There have been several times
16 when an applicant has puts something in the
17 newspaper that they did intent to file an
18 application, but it doesn't -- it doesn't
19 really begin the CON, or it doesn't come in,
20 or they miss the deadline and they don't
21 follow up.

22 So for OHS, officially the application
23 begins when it's filed there, their office.
24 For that -- for us, that's step one.

25 Q. (Manziona) And is there a fee to file a CON

1 application, a full CON application?

2 A. (Lazarus) Yes. There's -- up until a couple
3 weeks ago it was \$500 flat fee.

4 Q. (Manziona) And at one point does that fee
5 have to be paid?

6 A. (Lazarus) At the time of the filing, when
7 it's filed with the portal.

8 Q. (Manziona) So at the time when the
9 application is filed into the portal --

10 A. (Lazarus) Yes.

11 Q. (Manziona) -- is the time when the money has
12 to come through?

13 A. (Lazarus) Yes, we can't accept an application
14 that doesn't have the payment with it, or
15 doesn't have evidence of newspaper notice.

16 MS. MANZIONE: Okay. That was it. Thank you.

17 MS. FUSCO: If I may just ask one, one question based
18 on that?

19 THE HEARING OFFICER: Yeah. I was about to say, there
20 were some things that came up that weren't
21 addressed earlier.

22 So if you want to do recross, that's fine.

1 THE WITNESS (Lazarus): No.

2 THE HEARING OFFICER: Do you know in your experience
3 whether inquiries have ever been formerly closed?

4 THE WITNESS (Lazarus): No.

5 THE HEARING OFFICER: Okay. That's all I had.

6 So we've been going about an hour and a half.
7 Some of us have been here for about two hours now.
8 I'm going to suggest that we take maybe a
9 ten-minute break and come back at 11:40 before we
10 start with the Respondent's evidence.

11 Does that sound reasonable to everybody?

12 MS. FUSCO: Yes, thanks.

13 MS. MANZIONE: Sounds very good. Thank you.

14 THE HEARING OFFICER: Actually it's 11:32 now. So
15 let's say 11:42.

16 MS. FUSCO: Great. Thank you.

17 MS. MANZIONE: Very good. Okay.

18
19 (Pause 11:32 a.m. to 11:42 a.m.)
20

21 THE HEARING OFFICER: Attorney Fusco, do you have an
22 opening statement that you'd like to make on
23 behalf of your client?

24 MS. FUSCO: Yes, I do. Thank you. Good morning -- I
25 guess it's still morning -- Attorney Csuka,

1 Attorney Manzione and Mr. Lazarus.

2 As I mentioned previously, my name is
3 Jennifer Fusco and I represent Windham Hospital,
4 the Respondent in this matter. Thank you for the
5 opportunity to provide an opening remark on behalf
6 of my client, which is really intended to
7 outline the issues before OHS in this civil
8 penalty proceeding.

9 To begin with, I'd like to thank the
10 attorneys here specifically for working
11 collaboratively with Windham throughout this
12 process, which admittedly is new to all of us.
13 Neither OHS nor its predecessor agency has imposed
14 a civil penalty and conducted a hearing of this
15 type in nearly a decade, and there's a good reason
16 for that.

17 The imposition of a civil penalty is an
18 extreme measure governed by a statute that imposes
19 an exceedingly high standard on respondents. It's
20 one of willfulness and not simple negligence or
21 carelessness. And the statute also places the
22 burden of proof on the agency as the petitioner
23 and not on the respondent to prove that that
24 conduct took place, and that it was in fact
25 willful.

1 As you know, Windham received a notice from
2 OHS in February of 2022 that the agency was
3 imposing a \$65,000 civil penalty against the
4 hospital for allegedly terminating inpatient OB
5 services without first seeking CON approval.

6 And in her opening Attorney Manzione seems to
7 call this an inconsequential penalty -- but it is
8 consequential if it's not warranted and justified
9 under the law. And really, any penalty is
10 consequential when it takes monies away from
11 healthcare providers that could otherwise direct
12 it to patient care.

13 But to the law, in order to impose a civil
14 penalty under 19a-653 of the Connecticut General
15 Statutes, OHS has the burden of proving by a
16 preponderance of the evidence, which means
17 basically the better evidence; two things, first
18 that Windham Hospital engaged in an activity that
19 required a CON under Section 19a-638 of the
20 General Statutes; and second, that it willfully
21 failed to seek CON approval for that activity.

22 And we've now heard OHS's evidence in this
23 matter, and based upon that evidence this burden
24 has not been met. And in fact, today you're going
25 to hear better evidence from Donna Handley, the

1 President of Windham Hospital who's with me, and
2 Barbara Durdy, who's the Director of Strategic
3 Planning for Hartford HealthCare.

4 I'm showing that neither of the prerequisites
5 to the imposition of civil penalty under 653 have
6 been met. The civil penalty that's being assessed
7 must be rescinded if those elements are not
8 clearly met.

9 So looking a little more closely at the
10 elements of 19a-653, as to OHS's allegation that
11 Windham engaged in an activity requiring CON
12 without first applying for a CON, what they're
13 alleging here is that Windham terminated inpatient
14 OB services in June of 2020, and that this
15 required approval under 19a-638(a)(5). So the
16 only problem being Windham did not terminate OB
17 services in June of 2020.

18 The services were suspended in June of 2020
19 with the full knowledge of the Office of Health
20 Strategy and the Department of Public Health, the
21 latter expressing concern over the competency of
22 nurses who worked in the OB program under the
23 circumstances that were present at that time.

24 I can tell you that OB services, that we
25 understand that OB services cannot and will not be

1 terminated unless and until OHS approves the CON
2 application filed by Windham, which has now been
3 pending before this agency for more than 20
4 months.

5 You're going to hear today from Ms. Handley
6 and Ms. Durdy who are going to explain to you the
7 situation with Windham OB and how it evolved
8 between September 2019 and June of 2020,
9 ultimately necessitating a suspension of the
10 service in the interests of patient safety due to
11 inadequate clinical coverage. You're also going
12 to hear evidence of Windham Hospital's discussions
13 with OHS about these very staffing challenges, and
14 the impending need to request CON approval to
15 close the unit.

16 As you'll see in our testimony, these
17 discussions date back to November of 2019 and
18 continued through the filing of the CON
19 application in September of 2020. So OHS knew
20 what was happening with Windham OB, and they
21 encouraged the hospital to keep the program
22 operational as long as possible -- which it did.

23 OHS Also asked the hospital to engage key
24 community stakeholders -- which I know Mr. Lazarus
25 mentioned is often important -- and to hold a

1 community forum during the early months of the
2 COVID-19 pandemic, which the hospital also did.
3 And now OHS is attempting to penalize Windham for
4 soliciting advice from the agency and following
5 that very advice.

6 Much has been made and it was discussed in
7 Mr. Lazarus' testimony about the minutes of the
8 HHC board meeting that took place in June of 2020
9 about the proposed closure of the OB service.
10 Respectfully, these minutes do not prove what OHS
11 believes they prove. The board's approval of the
12 proposal to close Windham's OB service does not
13 mean the service was terminated in June of 2020.
14 It means the board gave Windham permission to file
15 the CON application and to begin the regulatory
16 process to close the unit permanently.

17 I think you heard Mr. Lazarus testify that
18 it's not unusual -- or at least at one point in
19 time it wasn't unusual for the agency to request
20 board resolutions or minutes in connection with
21 CON applications. And never before have these
22 documents been used to prove or even suggest that
23 an activity was undertaken in advance of OHS
24 approval.

25 In addition and perhaps most importantly,

1 there is clear precedent for the hospital -- for a
2 hospital's ability to suspend the service due to
3 staffing issues without CON approval. This
4 happened with the OB program at Milford Hospital
5 just five years before Windham was forced to
6 suspend its labor and delivery services for the
7 same reason.

8 If you look at the Milford Hospital docket
9 which was administratively noticed in this matter,
10 it lays out a case very similar to the one
11 presented by Windham. You've got the loss of
12 coverage for physicians and an inability to
13 adequately staff the program. You've got a board
14 of directors vote to close the program followed by
15 notification of key stakeholders, and the public
16 publication of CON notice.

17 Then you've got the suspension of the OB
18 service while the application to terminate those
19 services was pending. And in that case OHS
20 expeditiously reviewed the CON. They got it done
21 in, I think, less than five months. They approved
22 the closure and no one received a civil penalty.

23 In fact, you heard Mr. Lazarus testify -- and
24 I can say in my nearly 25 years of handling CON
25 matters I'm not aware of any hospital being

1 penalized for suspending a service in the
2 interests of patient safety due to lack of
3 clinical staff.

4 Importantly, because 19a-653 is about the
5 intent and state of mind, Windham believed and
6 Windham relied on this precedent, specifically the
7 Milford precedent, the Sharon Sleep Center
8 precedent in making a good-faith determination
9 that suspension of OB services due to staffing
10 issues pending CON approval to close the unit
11 didn't require a CON.

12 So that decision to suspend in June of 2020
13 and to immediately move forward with the CON
14 application, just like Milford had done, didn't
15 require CON approval. And OHS can't now suggest
16 that the rules are different, you know, and that
17 suspension of this type constitute a termination.
18 Because one of the fundamental premises of OHS and
19 CON is the ability to rely on precedent, and this
20 precedent is clearly on point.

21 So moving on to the second prong of 19a-653,
22 that requires OHS to prove that Windham acted
23 willfully in failing to file to request CON
24 approval for the termination in June of 2020.

25 And as I know, you know willful is a really

1 high standard. It's one of knowledge and
2 intentional disregard. It means to be reckless,
3 to be wanton, malicious; to do something without
4 just cause or with an intent to deceive.

5 And that standard is so high that the agency
6 has been forced to rescind most if not all of the
7 civil penalties it's imposed over the years. And
8 in fact, the agency has tried on multiple
9 occasions to get that standard changed, one of
10 negligence, and the Legislature has refused to do
11 so.

12 So the evidence you're going to hear today to
13 the point of, you know, willfully failing to file
14 is that the hospital moved as expeditiously as
15 possible after suspending those services to
16 commence the CON process.

17 The notice of CON -- which we had to publish
18 in order to be able to file an application -- was
19 published just seven days after the service was
20 suspended, and once all of the key stakeholders
21 were notified at OHS's request.

22 The application itself wasn't filed until
23 September of 2020, but that's because the hospital
24 was required to hold a virtual community forum in
25 the middle of a global pandemic -- which is really

1 difficult to coordinate. And again that was done
2 at OHS's request.

3 So I don't believe OHS can -- the evidence is
4 not going to show that OHS can prove that there
5 was any intent on the part of Windham to
6 circumvent the CON process. And without that
7 intent there can't be a willful failure, and
8 without a willful failure there can't be a civil
9 penalty under 19a-653.

10 You're going to hear primarily from
11 Ms. Handley today who's going to let you know that
12 Windham did everything in its power to hold
13 together kind of a fragile labor and delivery
14 service until it could no longer safely do so.

15 The hospital kept OHS apprised throughout the
16 process and consulted with DPH as part of its
17 decision to suspend the service in June of 2020.
18 Windham moved forward with the CON process
19 immediately following the suspension, and worked
20 diligently to bring the matter to a conclusion.

21 And I think it's important to note that
22 because we were in the middle of the COVID-19
23 pandemic, and with what was allowed at that time,
24 Windham could simply have filed the notice with
25 OHS and said, we're suspending OB services because

1 we need the staff and we need the space to care
2 for and manage COVID patients -- and then we
3 wouldn't be here.

4 But they didn't, you know, because they knew
5 that they needed to permanently close that unit,
6 and they knew that they needed to file a CON
7 application. And they wanted to be transparent,
8 and transparency in my mind is the exact opposite
9 of willful failure to file a CON application.

10 Attorney Manzione also made a remark in her
11 opening about sort of the consequences to the
12 community of the suspension of OB services back in
13 June of 2020, but I think you need to remember
14 that the CON application has now been pending for
15 629 days without a decision. That's more than 20
16 months. And the agency itself has a statutory
17 obligation to issue a decision, and it has not
18 issued that decision and the deadline passed. And
19 to the extent that there are any consequences,
20 they're being exacerbated by the agency's inaction
21 as well.

22 But instead of moving forward with that
23 decision OHS is focused on trying to fine Windham
24 for sort of this brief and justifiable delay in
25 filing a CON for a service that it had to suspend

1 out of necessity, because it could simply no
2 longer be operated in a safe manner.

3 In order for OHS to impose the civil penalty,
4 the Hearing Officer has to find that Windham knew
5 it needed a CON in June of 2020 to suspend those
6 services, and that it made a conscious decision
7 not to request one. And I say the agency has not
8 and cannot meet its burden of proof on either
9 point.

10 And because the elements of 19a-653 haven't
11 been met, the civil penalty needs to be rescinded
12 in its entirety.

13 But let me turn this over -- my plan is to
14 have Ms. Handley give some narrative testimony,
15 and then I have some questions for her. And then
16 I'll also have some questions for Ms. Durdy.

17 So I don't know if you want to swear them
18 individually or at the same time.

19 THE HEARING OFFICER: We could just do them at the same
20 time. That's fine.

21 So first I'll just have the Witnesses
22 identify themselves. So starting with
23 Ms. Handley?

24 DONNA HANDLEY: Yes. My name is Donna Handley;
25 D-o-n-n-a, H-a-n-d-l-e-y.

1 THE HEARING OFFICER: And your title please?

2 DONNA HANDLEY: Yes, I'm the President of Windham
3 Hospital and the Senior Vice President for
4 Hartford HealthCare.

5 THE HEARING OFFICER: Okay. Now Ms. Durdy?

6 BARBARA DURDY: My name is Barbara Durdy;
7 B-a-r-b-a-r-a, D-u-r-d-y. I am the Director of
8 Strategic Planning for Hartford HealthCare.

9 THE HEARING OFFICER: Thank you. Can we please zoom
10 out so that I can see them both for the swearing
11 in? Okay.

12 D O N N A H A N D L E Y,

13 B A R B A R A D U R D Y,

14 called as witnesses, being first duly sworn
15 by the HEARING OFFICER, were examined and
16 testified under oath or affirmation as
17 follows:

18
19 THE HEARING OFFICER: Thank you. So Attorney Fusco,
20 you can proceed with Ms. Handley.

21 THE WITNESS (Handley): Well, it's still morning. Good
22 morning, Attorneys Csuka and Manzione, and members
23 of the Office of Health Strategy.

24 Again my name is Donna Handley, President of
25 Windham Hospital and Vice President of Hartford

1 HealthCare. Hartford HealthCare is an integrated
2 healthcare delivery system. The east region
3 acute-care general hospitals include Windham
4 Hospital, which is the subject of this public
5 hearing.

6 I thank you for this opportunity to testify
7 in opposition of the \$65,000 civil penalty that
8 OHS has imposed on Windham for its alleged
9 termination of obstetric labor and delivery
10 services at the hospital prior to filing the
11 certificate of need application.

12 I have submitted comprehensive written
13 testimony in this matter, so I will keep my
14 remarks brief today and really focus on the
15 following points. First, Windham Hospital has not
16 terminated OB services. Rather, these services
17 were suspended at the end of June 2020, beginning
18 July 1st with the knowledge of the Department of
19 Public Health and OHS due to the increasingly
20 serious staffing challenges that could have had a
21 significant impact on patient safety and quality
22 outcomes.

23 Second, Windham did not willfully fail to
24 seek a certificate of need approval for the
25 termination of OB services as a hospital, as is

1 required for the imposition of a civil penalty.

2 Imposing a civil penalty against a hospital
3 for suspending a program for quality related
4 issues and reasons is against public policy. So
5 please let me begin by taking you through the
6 circumstances that led to the decision to suspend
7 OB services in Windham at the end of June 2020
8 pending CON approval to close the unit.

9 As we discussed at length during the Windham
10 OB CON hearing, birth volume at Windham has
11 declined precipitously in recent years, with a
12 75 percent decrease in births between 2011 and
13 2019. In 2019 the hospital delivered less than
14 100 babies -- in fact, it was 91 babies in 2019.

15 By the fall 2019 we found ourselves with only
16 one employed obstetrician, full-term obstetrician
17 and we used -- later we had an on-call service
18 from Backus OB/GYNs, and that arrangement was
19 tenuous.

20 On September 16th of 2019 we were notified
21 that OB-GYN Services, which is a private obstetric
22 practice out of Norwich and the hospital's
23 exclusive on-call coverage provider was
24 terminating its coverage agreement with Windham
25 effective December 31, 2019.

1 Around this same time Connecticut Children's
2 Specialty Services who we contracted for
3 neonatology services to provide neonatal care in
4 our labor and delivery department was having
5 difficulty providing nursery coverage. In fact,
6 they were hiring locums to provide their coverage
7 at Windham.

8 As the situation was developing and evolving
9 in the fall of 2019, Barbara Durdy Director of
10 Strategic Planning was in contact with OHS staff
11 regarding the fragility of the Windham OB service,
12 and the impending need to file a CON to
13 permanently close the unit.

14 Windham Hospital made every effort to keep
15 the OB service operational during the first half
16 of 2020 including through those very overwhelming
17 and tumultuous first four months of the COVID-19
18 pandemic. This included contracting with
19 individual physicians from OB-GYN Services
20 beginning in January of 2020 for obstetric call
21 coverage, but the available coverage was neither
22 consistent nor sufficient to support the OB unit
23 long term.

24 The precipitating event was December 31st of
25 2019. The senior partner was cc-ing the delivery

1 of babies, so they were decreased to five
2 positions who can provide that coverage for both
3 Backus and Windham Hospitals. So for these
4 reasons during the early months of 2020 Windham
5 was forced to place the obstetric department on
6 diversion three times for a total of 30 days.

7 Dr. Rosenstein who was our full-time
8 obstetrician had scheduled three -- three periods
9 of PTO time. During that time the physicians from
10 Norwich and OB-GYN Services who were covering had
11 very busy full practices, patients, you know, that
12 they were seeing and providing call coverage at --
13 at Backus Hospital. So the decision was
14 made to -- so to go on a re-diversion in order for
15 the patients to have the appropriate coverage by
16 the obstetricians.

17 We had been planning for this eventuality for
18 many months. So on June 15, 2020, we presented
19 the need for an indefinite suspension of OB
20 services and a plan for patient care to the
21 hospital's OB steering committee where it was
22 approved. On June 16, the Hartford HealthCare
23 Board of Directors meeting was held, and at that
24 meeting the rationale and plan for the closure of
25 OB services at Windham was presented to the Board.

1 In fact, when we received a letter of
2 termination of the agreement for call coverage
3 back in September of '19, we were required by our
4 governance boards of structure to notify the board
5 of the potential risk and the commitment to the
6 plan, as we would pull it through. So we kept the
7 Hartford HealthCare Board apprized throughout the
8 period of time from September 19th until the board
9 meeting of June 16th.

10 At that -- after the presentation the board
11 approved the plan to close Windham obstetric unit
12 subject to all necessary regulatory approvals,
13 including CON authorization. That board approval
14 was required before we could file a CON
15 application for the termination of OB services.

16 The first call is made June 16th -- June
17 19th, I apologize. June 19th was I had called to
18 Donna Ortelli, DPH facility licensing and
19 investigation chief about Windham's inability to
20 staff the OB service adequately and safely. I
21 informed her of our plan to suspend the program
22 indefinitely and submit a CON application for
23 permanent closure of the unit.

24 Ms. Ortelli expressed concerns about the
25 ability of OB nurses to maintain competencies

1 given the low volume of births at Windham
2 Hospital. At the end of June 2020 following my
3 conversation with doctor -- with Ms. Ortelli an
4 indefinite -- the long-term suspension of labor
5 and delivery services at Windham was implemented.

6 Windham has not terminated the OB service.
7 The hospital continues to maintain contracts with
8 physicians for delivery support services. We have
9 budget lines for this program. The space occupied
10 by the OB unit has not been repurposed.

11 Prior to July 8, 2020, Hartford HealthCare
12 implemented a communications plan to notify all
13 relevant stakeholders of the indefinite suspension
14 of OB service and the hospital's intent to file a
15 CON application for permanent closure.

16 These communications were necessary and
17 consistent with the advice given by OHS staff to
18 have an open dialogue with the community prior to
19 filing our CON application. I personally spoke to
20 42 community leaders and elected officials, taking
21 very detailed notes about their concerns and
22 feedback in order to prepare for our community
23 hearing.

24 Between July 8th and July 10th of 2020 public
25 notice of the CON application was published in The

1 Chronicle, as has already been presented, thus
2 beginning the CON process immediately after all
3 necessary stakeholder communications took place.
4 We felt it was imperative to make community
5 understand the circumstances of the low volume and
6 the staff vacancies that were requiring this,
7 rather than have them reading about this in the
8 newspaper when they saw the public hearing
9 notification.

10 So to increase community understanding and
11 support for this proposal OHS advised us to hold a
12 public forum. And coordinating that forum in the
13 middle of COVID-19 was very challenging. The
14 virtual community forum was planned and eventually
15 held on August 10th of 2020.

16 Between August 10th and September 3rd we
17 worked to address the community's concerns that
18 were raised at that public forum so that it was
19 embedded into our CON filing. And as already
20 noted, on September 3, 2020, our final CON
21 application was submitted. Again not to be
22 redundant, but the CON application for Windham OB
23 has been pending for over 600 days without
24 decision.

25 I will defer to counsel on the legal

1 arguments, but it is my understanding OHS can only
2 impose that civil penalty if the agency proved
3 that the termination of services did, in fact,
4 occur in June of 2020, and that Windham willfully
5 failed to file a CON when one was required. And I
6 don't believe that either of those can be proven
7 here.

8 As I discussed previously, Windham had a
9 fragile OB service that we were increasingly
10 challenged for staff in a way that ensured patient
11 safety. I am a nurse, and quality and safety is
12 my highest priority. A perfect storm of staffing
13 issues culminated in June of 2020 leading us to
14 determine that it was no longer safe to provide OB
15 services at Windham going forward. This included
16 the loss of our remaining call coverage
17 obstetrician. And they began coverage when the
18 private practice at Windham Hospital in 2015 moved
19 to Manchester Hospital, and moved their practice
20 to Manchester.

21 The loss of multiple nurses including the
22 unit coordinator -- we had ten open shifts of
23 nursing coverage in the OB unit every single week,
24 and we had inconsistent neonatal coverage -- and
25 the planned vacation, as I mentioned, of our sole

1 staff obstetrician Dr. Rosenstein; so we planned
2 for this.

3 We were thoughtful. We were deliberate, and
4 based on some of the conversations and questions
5 we felt it imperative to have a very detailed plan
6 in place for communication and education of our
7 patients, how they would be cared for prenatally
8 during their delivery experience, and then during
9 the postnatal period.

10 So we implemented what was a long-term or
11 indefinite suspension beginning -- at end of June
12 2020. The suspension was consistent with my
13 conversations with DPH, with Ms. Ortelli, as I
14 mentioned our concern about the ability of Windham
15 OB nurses to maintain critical competencies. We
16 had periods of weeks at a time when a single baby
17 was not delivered in the Windham OB unit.

18 Evidence that we suspended the program in
19 June of 2020 and did not terminate the program
20 includes the fact that we remain -- our contracts
21 remained in place for the physicians for delivery
22 services we selected for that program, and again
23 have not repurposed the space.

24 We didn't willfully fail to seek an approval
25 when a CON was required. We did not believe that

1 a CON was required for us to suspend OB service in
2 the interest of patient safety while obtaining the
3 approval from OHS to permanently close the unit.

4 In fact, past OHS precedent made it clear
5 that we could do exactly this without triggering a
6 CON or a civil penalty. Windham had a good-faith
7 basis to believe that a suspension pending CON
8 approval determination was allowed including the
9 context of OB service termination, given what had
10 happened at other hospitals including Milford.

11 There was no intent to circumvent OHS CON
12 requirements or to deceive OHS. In fact, Windham
13 kept OHS apprised for nearly a year before the
14 suspension occurred that the program was in a
15 fragile state, and that a CON filing would be
16 necessary when staffing challenges became
17 insurmountable. We also notified DPH before
18 implementing the long-term suspension.

19 Imposing a civil penalty for suspending a
20 program for quality related reasons is against
21 public policy. By imposing a substantial civil
22 penalty against Windham for suspending its OB
23 service, when in the judgment of clinical
24 professionals it was unsafe to keep the program
25 open, only just is encouraging hospitals to

1 continue to operate unsafe programs less they be
2 fined.

3 We rely on agencies like DPH to assist us in
4 evaluating the quality and safety of the services
5 we provide. I consulted with Ms. Ortelli at DPH
6 about the problems -- program's low volume and
7 staffing challenges, and our need to suspend
8 pending regulatory approval.

9 Hospitals need the flexibility to make these
10 kinds of decisions quickly in the interests of
11 patient safety. To maintain an OB program where
12 patient safety could no longer be ensured would be
13 entirely inconsistent with OHS's mission to
14 promote equal access to high-quality health care
15 and ensure better health for the people of
16 Connecticut.

17 And let me conclude with a few things I think
18 that's important for OHS to keep in mind in
19 considering the waiver of the civil penalty
20 against Windham Hospital.

21 Windham has a history of compliance with CON
22 statutes and regulations. The hospital has a
23 history of applying for CON approval when it is
24 required, and of requesting clarification when we
25 are unsure. We are forthcoming with information

1 as evidenced by the fact that we spoke with the
2 DPH, OHS and community stakeholders about the
3 suspension of OB services of Windham pending CON
4 approval to close the unit.

5 Windham has proven itself to be a good
6 community partner. We are committed to the
7 healthcare needs of our community, and our efforts
8 to expand services for women including prenatal
9 and postpartum clear care is evident. OHS has the
10 power to waive or rescind the civil penalty, a
11 penalty here where a decision was made of
12 necessity and in the interests of patient safety,
13 and where women were safely transitioned to
14 alternate providers of their choice. Recision
15 waiver of the civil penalty is justified.

16 Considering the foregoing, we respectfully
17 request that OHS exercise its discretion to waive
18 imposition of the \$65,000 civil penalty against
19 Windham.

20 I thank you for your time and willingness to
21 hear our evidence and arguments. I am available
22 to answer any questions that you have.

23 **THE HEARING OFFICER:** Thank you, Ms. Handley.

24 Attorney Fusco, it's my understanding you
25 wanted to do some direct exam with her?

1 MS. FUSCO: Yeah, I just have some brief direct exam
2 for Ms. Handley and Ms. Durdy.

3 THE HEARING OFFICER: Can we back the camera out a
4 little bit so that I can see both of you?

5 MS. FUSCO: Thank you.

6
7 DIRECT EXAMINATION

8
9 BY MS. FUSCO:

10 Q. (Fusco) Ms. Handley, what day was the last
11 delivery at Windham Hospital?

12 A. (Handley) So the last delivery at Windham
13 Hospital was on June 16th of 2020.

14 Q. (Fusco) Okay. And other than during that
15 Dr. Rosenstein's vacation from June 20th to
16 27th -- when we're talking about that month
17 of June 2020, did you have coverage through
18 the end of the month?

19 A. (Handley) Yes, we had full services available
20 through June 30th of 2020.

21 Q. (Fusco) Did any women present in labor to
22 deliver babies during that time?

23 A. (Handley) No. If a woman had presented we
24 would have delivered her child.

25 Q. (Fusco) So the date you suspended OB services

1 was actually effective what date?

2 A. (Handley) Technically, it was July 1 of 2020.
3 We had services in place until midnight at
4 the end of June 30.

5 Q. (Fusco) Okay. When you suspended OB services
6 effective July 1, 2020, did you believe you
7 were terminating a hospital service at that
8 time?

9 A. (Handley) Absolutely not.

10 Q. (Fusco) What did you believe you were doing?

11 A. (Handley) We believed that we were suspending
12 the service pending approval, filing of our
13 CON, and an eventual decision by OHS.

14 Q. (Fusco) To the best of your knowledge is a
15 termination of services defined in the OHS
16 statutes?

17 A. (Handley) To the best of my knowledge, it is
18 not.

19 Q. (Fusco) Is a suspension of services defined
20 in the OHS statutes?

21 A. (Handley) To the best of my knowledge, it is
22 not.

23 Q. (Fusco) All right. Did you believe that the
24 suspension of services you were implementing
25 in June of 2020 required CON approval?

1 A. (Handley) No, we did not believe that
2 suspending a service in the interests of
3 patient safety required CON approval.

4 Q. (Fusco) And were you advised by legal counsel
5 on this?

6 A. (Handley) Yes, we discussed this with our
7 attorney who advised us that a suspension
8 pending CON approval to close the OB unit did
9 not require CON approval.

10 Q. (Fusco) And are you aware of the precedents
11 that I referenced, the OHS precedent that I
12 referenced in my opening remark about other
13 hospitals that suspended OB services?

14 A. (Handley) Yes, we were aware that Milford
15 Hospital had suspended their OB services due
16 to staffing challenges, similar to those that
17 we were facing at Windham Hospital in June of
18 2020. They, suspending their program, filed
19 for CON and after the suspension took place,
20 received approval, and not fined.

21 Q. (Fusco) Did you rely on that Milford Hospital
22 and other precedent, and the advice of legal
23 counsel in deciding to suspend the service in
24 June of 2020, and seek CON approval after the
25 suspension took effect?

1 A. (Handley) Yes, we did. And based on this
2 precedent and the advice of counsel we made a
3 good-faith determination that no CON was
4 required at the time.

5 Q. (Fusco) If you believed a CON was required to
6 suspend the service in June of 2020 would you
7 have requested one?

8 A. (Handley) Yes.

9 Q. (Fusco) Did you always intend to file a CON
10 application and obtain OHS approval before
11 permanently terminating services?

12 A. (Handley) Yes, which is why we filed public
13 notice on July 8th, 9th and 10th.

14 Q. (Fusco) And did the President of Windham
15 Hospital who ultimately implemented this
16 process of suspension -- like, did you ever
17 intend to usurp the CON process by suspending
18 OB services before the CON was filed?

19 A. (Handley) Absolutely not.

20 Q. (Fusco) Are you aware -- moving onto a
21 different line of questioning. Are you aware
22 that Windham was eligible to suspend OB
23 services in June of 2020 pursuant to Governor
24 Lamont's Executive Order 7B and the OHS
25 guidance during COVID?

1 A. (Handley) Yes. As President of an acute-care
2 general hospital I was aware of our ability
3 to suspend services through assistant caring
4 for and managing COVID-19 patients.

5 Q. (Fusco) And why didn't you do this?

6 A. (Handley) Because we know that we had to
7 close our OB program pending final approval
8 of OHS. We had low-volume. Our volume was
9 decreasing. We lost our coverage. We had
10 critical physician and nurse staffing issues.

11 So we did not have the resources that we
12 needed to keep the department open.

13 MS. FUSCO: That's all the questions I have more for
14 Ms. Handley. May I direct some questions to
15 Ms. Durdy now?

16 THE HEARING OFFICER: Yeah, that's fine.

17 Actually -- Yeah. I think it makes maybe
18 more sense to do cross-exam.

19 MS. FUSCO: Like, one at a time?

20 THE HEARING OFFICER: Yeah.

21 MS. FUSCO: Okay.

22 MS. MANZIONE: I was trying to object. I was on mute.

23 I'm trying to signal (unintelligible) --

24 MS. FUSCO: (Unintelligible) -- that's fine.

25 THE HEARING OFFICER: So?

1 MS. MANZIONE: I was going to ask permission to do
2 cross individually before I lose my train of
3 thought.

4 THE HEARING OFFICER: Okay. That's fine.

5 MS. MANZIONE: Okay. Great. Thank you, everyone.
6 Okay. Let me just get myself together here.

7
8 CROSS-EXAMINATION

9
10 BY MS. MANZIONE:

11 Q. (Manziona) All right. Ms. Handley, will you
12 remind me please what is your current
13 position at Windham Hospital?

14 A. (Handley) I'm the President of Windham
15 Hospital.

16 Q. (Manziona) And how long have you held that
17 position?

18 A. (Handley) I became the president of Windham
19 Hospital on October 1 of 2017, so a little
20 over four and half years.

21 Q. (Manziona) Okay. Great. And could you tell
22 me what the mission statement of Windham
23 Hospital is?

24 A. (Handley) I should know this. Um --

25 MS. MANZIONE: You can -- if you have to refer to

1 something to refresh your recollection, you know,
2 I sort of know OHS's mission statement.

3 MS. FUSCO: I mean, yeah. I'm going to object for the
4 same reason you objected before. I mean, that's
5 not something that's in her direct testimony. If
6 you want her to look it up and read it, that's
7 fine.

8 THE WITNESS (Handley): I'm happy to do that. I wasn't
9 prepared for such a riveting question.

10 My apologies.

11 BY MS. MANZIONE:

12 Q. (Manzione) You know you have to prepare the
13 interview question, why should you hire me?

14 A. (Handley) Yes. Exactly.

15 Okay. This like, what I -- my mantra.
16 Right? To improve the health and healing of
17 the people in the communities we serve.

18 Q. (Manzione) I'm sorry. To improve the health
19 and?

20 A. (Handley) Healing of the people and
21 communities we serve.

22 Q. (Manzione) Great. Thank you. I asked you
23 that question because I heard you talk about
24 your background as a nurse.

25 A. (Handley) Yes.

1 Q. (Manziona) And I figured you -- yes, I'm sure
2 you believe that mission statement and you're
3 a mission-driven person.

4 A. (Handley) Thank you.

5 Q. (Manziona) And I believe when you say you
6 take very seriously the quality-related
7 issues and how important that is.

8 My question is -- so my first question
9 is, you were testifying just now about being
10 advised by legal counsel that you should
11 suspend your service in June of 2020. And
12 you were relying on Milford case precedent
13 that everything would be okay if you were
14 just to go ahead and suspend service without
15 filing a CON -- not that you needed to,
16 because it was just a suspension in your
17 words. Is that right?

18 A. (Handley) That is correct.

19 Q. (Manziona) Okay. And have you ever heard of
20 a process at the OHS -- the Office of Health
21 Strategy has called a determination process?

22 A. (Handley) I have heard of that, yes.

23 Q. (Manziona) Okay. Would you know that a
24 determination is sort of like a question that
25 is filed when an entity like a facility, a

1 hospital isn't sure whether a CON is needed.
2 It's something that a facility would file
3 with OHS to determine whether a CON is
4 needed.

5 Does that sound like something that you
6 knew?

7 A. (Handley) So -- so for me, there was no
8 question that a CON needed to be filed for a
9 final determination, and we were working
10 through that process.

11 It was -- it was a period of time and,
12 you know, two -- over two years later the
13 pandemic, we've learned to live with this.
14 We have science. We have evidence. We have
15 policies and processes to keep patients and
16 staff safe.

17 In March of 2021 when the pandemic was
18 coming to Eastern Connecticut we -- we were
19 really focused on preparing our communities,
20 preparing our hospitals to manage through
21 that pandemic. We never lost sight of the
22 fact that this was a process that we would
23 absolutely initiate.

24 Starting in 2019 when -- and there was a
25 long process. I'll let you ask me a

1 question. There's so much history that led
2 to the file of -- filing of the CON. So we
3 didn't notify a determination of need because
4 we knew we would be fine and the --
5 eventually, the CON application.

6 Q. (Manziona) Okay.

7 A. (Handley) I had a whole breakdown for you,
8 Attorney Manziona. I don't want to cloud the
9 procedure.

10 Q. (Manziona) No, and I didn't want to interrupt
11 you because I thought you had other
12 interesting things to say. So you knew about
13 the determination option --

14 A. (Handley) Yes.

15 Q. (Manziona) -- and you chose not to file it
16 because you thought it was an appropriate.

17 Is that accurate?

18 A. (Handley) I did not think it was indicated in
19 this situation. That's correct.

20 Q. (Manziona) Okay. And similarly, you knew
21 about the Executive Order 7b of the Governor,
22 which allowed healthcare hospitals to not
23 have to go through a CON process to suspend
24 services in order to address patient safety,
25 patient care because of the pandemic.

1 Is that true?

2 A. (Handley) That's -- that's true, yes.

3 Q. (Manziona) Okay. I know that you talked a
4 lot about difficulty with staffing,
5 difficulty with keeping the shifts staffed
6 fully?

7 A. (Handley) Uh-huh.

8 Q. (Manziona) You used a word -- and you used a
9 word in your written testimony that I'm not
10 familiar with, a Latin word. I think it
11 means something like per diems for doctors.

12 It's locums?

13 A. (Handley) Correct. Locums, yes. Locum
14 tenens.

15 Q. (Manziona) Can you tell me what that word is
16 and what exactly does it mean?

17 A. (Handley) So locum tenens, in the case of
18 physicians, there are agencies that supply
19 physicians for short-term coverage. And so
20 that's what that means. You heard the
21 term -- well, the covered term is as relates
22 to our staffing shortages of travelers. You
23 have traveler physicians, but they're called
24 locum tenens.

25 Q. (Manziona) Okay. So locum tenens would be

1 physicians who are to play a similar role
2 like a temp?

3 A. (Handley) Correct.

4 Q. (Manziona) For physicians?

5 A. (Handley) Yes.

6 Q. (Manziona) Similarly to temporary nurses,
7 we've heard a lot about during the pandemic,
8 are called travelers?

9 A. (Handley) Yes.

10 Q. (Manziona) Did Windham Hospital hire
11 travelers, the nurses during any of the
12 time -- let's just say, the first six months
13 of 2020 in its OB unit to help staff?

14 A. (Handley) We -- so there's a long history at
15 Windham OB of locum tenens physicians and
16 traveling nurses. And we had -- were unable
17 to -- we had positions posted for -- we had
18 one position, an RN posted for two years; no
19 applicants. We had a travel nurse come and
20 after two weeks of not a single delivery, she
21 resigned and called her agency because she
22 can't deliver babies with no babies to
23 deliver. So she left.

24 Q. (Manziona) So let me just redirect you just a
25 little bit here. So is your testimony that

1 Windham Hospital in the months of January to
2 June of 2020 hired travel nurses in the OB
3 department?

4 A. (Handley) We did not.

5 Q. (Manziona) So the one, the one traveler that
6 you did hire resigned?

7 A. (Handley) That was pre -- that was even
8 before the pandemic.

9 Q. (Manziona) That was a different time period?

10 A. (Handley) It was a different time period.

11 Q. (Manziona) So did Windham Hospital
12 affirmatively decide not to try to hire
13 traveling nurses -- travel nurses during that
14 January to June 2020 time period?

15 A. (Handley) We did not. I will -- the nurses
16 who were staffing the OB unit picked up and
17 covered those shifts. So there was never --
18 we did not -- they covered every shift. So
19 we had the coverage we needed, but it was
20 with a very limited -- we had, you know, 8.4
21 FTEs covering the obstetric unit, two nurses
22 per shift.

23 Q. (Manziona) Okay. Let me --

24 A. (Handley) So nurses signed up to cover.

25 Q. (Manziona) Excuse me. I'm sorry to interrupt

1 you, but so you didn't feel the need to
2 hire traveling nurses in OB during that time
3 period?

4 A. (Handley) Correct.

5 Q. (Manziona) Okay. Did you feel the need to
6 hire traveling doctors, or locum tenens in
7 the OB department in January to June of 2020?

8 A. (Handley) I did not. We -- when OB-GYN
9 Services terminated we had an agreement with
10 the group. And when the senior physician, as
11 I mentioned, discontinued delivering babies,
12 that's why the termination of the agreement
13 notice was given.

14 I was able to work with individual
15 physicians within the group to cover us
16 beginning January 1. So we provided on-call
17 coverage during that period of time.

18 Q. (Manziona) Okay. So now let's switch to the
19 period after this, the first two quarters of
20 the year. Let's talk about the period
21 starting the third quarter July 1, and the
22 third quarter of the year.

23 Did you have the need -- or did you,
24 actually Windham Hospital hire traveling
25 nurses for the OB department at Windham

1 Hospital?

2 A. (Handley) No, we did not.

3 Q. (Manziona) How about locums tenens, the
4 physicians that travel?

5 A. (Handley) No, we did not.

6 Q. (Manziona) Okay. And why did you not hire
7 doctors, traveling doctors or traveling
8 nurses?

9 A. (Handley) Well, we had made the decision to
10 based on low volume and the fact that it was
11 in the best interests in the quality and
12 safety of our patients to have a different
13 plan to coordinate care for there.

14 Q. (Manziona) So if you had made the plan to
15 continue to have to offer OB services at
16 Windham Hospital, would it have been an
17 option to hire, for example, traveling nurses
18 or locum tenens during the third quarter of
19 2020?

20 A. (Handley) So one of the most fundamental
21 tenets of healthcare is teams. So traveler
22 nurses and locum physicians are -- they work
23 various periods of time, but deliver --
24 delivering a baby is very much -- requires a
25 team who can work well together.

1 So having, you know, kind of
2 transitional and transitory physicians and
3 nurses creates a higher risk.

4 Q. (Manziona) Okay. So let me just ask you to
5 give me a yes-or-no answer?

6 A. (Handley) Okay.

7 Q. (Manziona) That would be easier. So did
8 Windham Hospital hire any traveling nurses or
9 locums doctors during the third quarter to
10 staff the OB department?

11 A. (Handley) I'll reiterate my answer to that
12 question is no.

13 Q. (Manziona) No? Were you -- was Windham
14 Hospital in a financial position to do so?

15 A. (Handley) It was never a question of
16 finances. It was about quality and safety.

17 Q. (Manziona) So the answer is -- so if I asked
18 you, did Windham Hospital have sufficient
19 resources monetarily to hire those traveling
20 types of professionals? The answer would be,
21 yes. Is that correct?

22 A. (Handley) Yes, yes.

23 Q. (Manziona) Okay. Because I hear that
24 traveling physicians and -- I don't know
25 about physicians, but I hear traveling nurses

1 are very expensive.

2 A. (Handley) They are and --

3 Q. (Manziona) Is that your experience?

4 A. (Handley) Yes, they are very expensive. At
5 this, at this moment in time -- if you turned
6 back the clock to June and July of 2020, I
7 think --

8 Q. (Manziona) You know what? I'm sorry. I'm
9 going to have to interrupt you, because I
10 need to keep asking a couple more questions,
11 and I don't want this to go on for a long
12 time today.

13 I want to return to your conversations
14 that you had. You said you had 32
15 conversations with community leaders. Is
16 that close to what you said?

17 A. (Handley) I said 42, but --

18 Q. (Manziona) Oh, 42. I got the number wrong.
19 Sorry. Thank you.

20 So what were some of the main themes
21 that you learned from these conversations?

22 A. (Handley) Concern about what would happen to
23 the staff, you know, every staff member --
24 nobody lost their job.

25 Consistently -- and this was immediately

1 before -- everybody was sad. Out of the 42
2 people that we talked -- elected official
3 community leaders, for these corporators of
4 the hospital, they wanted to ensure that we
5 had a good plan for our patients. They
6 wanted to be sure that we had a
7 transportation plan.

8 They wanted to be sure that we were
9 communicating in each patient's primary and
10 first language -- and I'm just going down. I
11 kept my notes. I'm looking at them as we
12 speak.

13 MS. FUSCO: I'm actually just going to interject and
14 object to this line of questioning. I mean, the
15 issues here are limited to whether services were
16 terminated in June of 2020, and whether that was
17 done willfully.

18 So I don't believe the community's response
19 and requests and reaction is relevant to the
20 19a-653 analysis.

21 MS. MANZIONE: Okay. Well, your client brought up
22 about all of these conversations she had with the
23 community and how important they were to her
24 decision making. And I wanted to explore a little
25 bit about why they were important.

1 MS. FUSCO: They were not raised in terms of their
2 importance to the decision making. They were
3 raised to establish for OHS why there was a delay
4 between when the program was suspended and when
5 the public notice of CON was filed.

6 There was a need in that seven to ten-day
7 period to have 42 conversations. What the
8 substance of those conversations was is
9 irrelevant. It was introduced for purpose of
10 showing that there would have been a seven to
11 ten-day delay there, and I think that was clear in
12 the testimony.

13 MS. MANZIONE: So a cynical person would interpret that
14 approach as a saying the conversations were held
15 as a means to check a box. OHS said you have to
16 have conversation, so we checked the box and we
17 have conversations.

18 I do not think that the President of the
19 hospital would spend time talking to members of
20 the community just in order to satisfy checking a
21 box on an application. I think this is a
22 mission-driven person, and I'm curious to see how
23 the conversations affected her input, her
24 viewpoint and her decision-making, that I was
25 curious for themes. I wasn't asking individual.

1 MS. FUSCO: I understand, but respectfully there was no
2 decision-making after that time. The service was
3 already suspended. We were planning to file a
4 CON. We had the public notice ready to go, and
5 all we've offered this evidence before is to show
6 why there was a delay between the suspension and
7 the publication of the public notice.

8 She'll tell you that they were meaningful
9 conversations. Those conversations were discussed
10 in the CON docket. Attorney Csuka is probably
11 familiar with that testimony, but it's not
12 relevant to what is at issue here -- which is a
13 very, very specific legal issue -- which is, did
14 they willfully fail to file the CON? And we've
15 offered evidence of delays in filing in an
16 explanation for that delay.

17 Please don't answer.

18 THE HEARING OFFICER: Yeah. Ms. Manziona, do you have
19 anything further?

20 MS. MANZIONE: Yes.

21 THE HEARING OFFICER: If not I'll rule on the
22 objection.

23 MS. MANZIONE: Yes. I can move on. If you want to
24 rule on the objection that's fine, but I can move
25 on.

1 THE HEARING OFFICER: Okay. I won't bother.

2 MS. MANZIONE: Okay.

3 BY MS. MANZIONE:

4 Q. (Manzione) Okay. So Ms. Handley, so what was
5 the purpose of reaching out to -- I think you
6 said DPH, a person who's in the licensing
7 office at DPH, to a woman named Donna --
8 maybe Ortelli?

9 A. (Handley) Yes.

10 Q. (Manzione) What was the purpose of that
11 phonecall, or e-mail, or however you reached
12 out to her?

13 A. (Handley) So it is, I have -- I have an
14 important responsibility to provide the
15 quality and safety care as expected by DPH,
16 and they're the regulatory agency with which
17 we follow those standards. And given that
18 we -- that I would be thinking of suspending
19 the program, the service until we could get
20 through this process, I felt it imperative
21 that I have a conversation with DPH, explain
22 the current situation; why this process was
23 beginning.

24 And it's -- it's about respect for an
25 agency that is really important to the

1 quality of the care that we deliver in our
2 hospital.

3 Q. (Manzione) So you reached out on, you say
4 June 19th?

5 A. (Handley) Yes.

6 Q. (Manzione) And called Ms. Ortelli?

7 A. (Handley) Yes.

8 Q. (Manzione) And what was the gist of your
9 conversation? What was the main point?

10 A. (Handley) It was to inform her, again out of
11 respect, knowing that we would be commune --
12 communicating to the community, communicating
13 to our staff and then by the -- either public
14 notice.

15 I wanted, as the President of the
16 hospital, to show her that respect and have
17 that conversation with her, let her know that
18 this is a plan for the Windham OB department.

19 Q. (Manzione) Okay. And did you call anybody
20 else with that same or a similar kind of
21 message around that same time?

22 A. (Handley) No. In our plan -- and we had a
23 very detailed plan, the plan was always that
24 I would call the Department of Public Health,
25 and Barbara Durdy would call the Office of

1 Health Strategy.

2 Q. (Manziona) Okay --

3 A. (Handley) (Unintelligible) -- call
4 (unintelligible).

5 Q. (Manziona) I understand. Okay. And did
6 Ms. Ortelli respond to you in any way that
7 you recall that?

8 A. (Handley) Yes.

9 Q. (Manziona) Did she tell you to do anything?

10 A. (Handley) She immediately raised the question
11 about competency, which is a key tenet of our
12 DPH standards and really in a collegial
13 manner supported. You know, I made up the
14 plan.

15 And she just reinforced and validated
16 that we would not close anything until we had
17 formal approval from OHS.

18 I didn't go into any detail. I was well
19 aware that we would not close the department
20 until we had OHS approval.

21 MS. MANZIONE: Okay. Well, thank you for clarifying
22 those. Thanks for me.

23 THE HEARING OFFICER: You're welcome.

24 MS. MANZIONE: And I am done with asking you questions,
25 Ms. Handley.

1 THE WITNESS (Handley): Thank you, Attorney Manzione.

2 MS. MANZIONE: Thank you.

3 THE HEARING OFFICER: Attorney Fusco, did you have any
4 redirect for your witness?

5 MS. FUSCO: Yes, just one question going back to
6 something Attorney Manzione had asked you,
7 Ms. Handley.

8
9 REDIRECT EXAMINATION

10
11 BY MS. FUSCO:

12 Q. (Fusco) If after July 1, 2020, you had to
13 staff the OB program with exclusively locum
14 tenens physicians and traveling nurses, which
15 likely have been the case, would that have
16 presented patient safety issues?

17 And what would those issues have been?

18 A. (Handley) So we'll have to go back to the
19 store for me -- but when the private practice
20 group left Windham Hospital in 2015, we --
21 our experience with locum tenens is they came
22 and went. We didn't not know who was coming.
23 We -- they would sometimes leave without
24 knowing they were leaving, and that left gaps
25 in care.

1 And at that point in time traveler
2 physicians and nurses were being used to care
3 for the pandemic nationally. It was
4 impossible to get travel nurses and
5 physicians at that period of time.

6 MS. FUSCO: Thank you. I have no more questions of
7 Ms. Handley.

8 THE HEARING OFFICER: Okay. So I guess we will do --
9 Ms. Durdy, correct me if I'm wrong, she didn't
10 file any prefiled testimony. Is that correct?

11 MS. FUSCO: No, that's correct. I just wanted to
12 ask -- I mean, the questions are sort of specific
13 to some of the information that was in the
14 rebuttal. That wasn't assigned to any particular
15 witness, but I think she can sort of put into
16 evidence some of those points that were made.

17 THE HEARING OFFICER: Okay. That's fine. I did just
18 remember -- before we move off of Ms. Handley, I
19 just realized that I didn't ask whether she
20 adopted her prefiled testimony.

21 THE WITNESS (Handley): I adopt my prefiled testimony.

22 THE HEARING OFFICER: Okay. Thank you. I know we're a
23 ways off from doing that, but I appreciate that.

24 THE WITNESS (Handley): Of course.

25 THE HEARING OFFICER: Can we have the camera pan over?

1 THE WITNESS (Handley): As soon as she speaks -- oh, go
2 ahead. Say something, Barb?

3 THE WITNESS (Durdy): So do I need to introduce myself
4 again? Barbara Durdy, Director of Strategic
5 Planning, Hartford HealthCare.

6 THE HEARING OFFICER: Thank you.

7 MS. FUSCO: Good afternoon, Ms. Durdy. I just have a
8 few questions for you.

9
10 DIRECT EXAMINATION

11
12 BY MS. FUSCO:

13 Q. (Fusco) So in your role as Director of
14 Strategic Planning of Hartford HealthCare,
15 are you responsible for planning in HHC's
16 East region?

17 A. (Durdy) Yes.

18 Q. (Fusco) Including Windham?

19 A. (Durdy) Yes, I work across all regions,
20 systemwide.

21 Q. (Fusco) And what does your job entail
22 specifically with regard to certificate of
23 need?

24 A. (Durdy) Regarding certificate of need my job
25 entails reviewing business plans and projects

1 for CON applications; coordinating and
2 preparing all the submissions, including
3 public notice, the application's completeness
4 responses; in general, coordinating the
5 process.

6 Q. (Fusco) When did you -- I guess the question
7 is, did you speak with OHS staff about the
8 Windham OB service?

9 A. (Durdy) I did.

10 Q. (Fusco) Okay. And when did you first speak
11 with Windham OB about, you know, the
12 potential need to file a CON to close the
13 unit?

14 A. (Durdy) My first conversation with OHS staff
15 was November 1, 2019.

16 Q. (Fusco) And who did you speak with from OHS?

17 A. (Durdy) Kimberly Martone, who I believe at
18 that time was chief of staff, deputy director
19 of the agency.

20 Q. (Fusco) And who else was on that call?

21 A. (Durdy) My colleague, Jason Labs from east
22 region; our CON counsel, yourself, Jen Fusco;
23 and Ms. Martone.

24 Q. (Fusco) And what was discussed on the call?

25 A. (Durdy) Well, the purpose of the call really

1 was to give Ms. Martone an update about the
2 circumstances with the labor and delivery
3 serve -- service at Windham Hospital,
4 specifically that we were losing our
5 physician on-call coverage effective
6 December 31st, and that we were preparing to
7 file a certificate of need application to
8 formally terminate the service.

9 And as Steve mentioned in his earlier
10 testimony, we often would call OHS staff to
11 get guidance on how to proceed, especially
12 when we anticipate, you know, complicated or
13 sensitive applications.

14 Q. (Fusco) And what, if any, recommendations did
15 Ms. Martone have for Windham on that
16 phonecall?

17 A. (Durdy) Well, she strongly encouraged us to
18 exhaust all resources at Windham Hospital and
19 systemwide to keep the service operational
20 for as long as we possibly could.

21 Q. (Fusco) Uh-huh?

22 A. (Durdy) She strongly urged us to make every
23 effort to inform all stakeholders, internal
24 community stakeholders prior to filing the
25 certificate of need.

1 And that she also suggested -- strongly
2 encouraged us to hold a community forum so
3 that we could incorporate the feedback we
4 received from the community into the CON
5 application.

6 Q. (Fusco) Did you know, had OHS scheduled a
7 forum around that time, too?

8 A. (Durdy) They did, but they ended up canceling
9 it because we were holding ours.

10 Q. (Fusco) Moving forward to sort of the late
11 June, early July 2020 timeframe, did you have
12 another call with someone at OHS once the
13 decision to suspend OB services was made?

14 A. (Durdy) I did. I called Ms. Martone again to
15 give her a heads-up that public notice was
16 going to run starting July 8th. And you
17 know, that was not -- that was not atypical.

18 I mean, that was something I would
19 typically do.

20 Q. (Fusco) Did she have a sense of when you were
21 going to file the CON application? Did you
22 discuss with her sort of what needed to
23 happen before you could do that?

24 A. (Durdy) Well, I told her that we would be
25 filing it as soon as we could hold the

1 community forum, and that probably would be
2 coming within the next few weeks.

3 Q. (Fusco) Okay. Did you ever have a
4 conversation with Mr. Lazarus about Windham
5 OB?

6 A. (Durdy) I did not.

7 Q. (Fusco) I assume you're aware that Windham
8 held a community forum on the OB service
9 termination?

10 A. (Durdy) Yes.

11 Q. (Fusco) When did that forum take place?

12 A. (Durdy) August 10th.

13 Q. (Fusco) And were you privy to the invitation
14 list for that forum?

15 A. (Durdy) I did see it. Actually I did see it
16 and I -- yes.

17 Q. (Fusco) And was anyone from OHS invited?

18 A. (Durdy) Leslie Greer was sent an invitation.

19 Q. (Fusco) Now you are the one who's responsible
20 for publishing notice of intent to file a CON
21 application. Correct?

22 A. (Durdy) Correct.

23 Q. (Fusco) When was the notice published in this
24 matter?

25 A. (Durdy) July 8th, 9th and 10th.

1 Q. (Fusco) Okay. And were you able to publish
2 it earlier than that?

3 A. (Durdy) We were not, because following, you
4 know, the guidance we received from
5 Ms. Martone we wanted to make sure that we
6 reached out to every stakeholder and had --
7 and so that Ms. Handley had an opportunity to
8 communicate directly with every stakeholder
9 before they read about it in the newspaper.

10 Q. (Fusco) And you were responsible for actually
11 filing/uploading the CON application as well.

12 Correct?

13 A. (Durdy) Yes.

14 Q. (Fusco) And when was that filed?

15 A. (Durdy) September 3rd.

16 Q. (Fusco) And could it have been filed any
17 sooner?

18 A. (Durdy) No. We, you know, weren't able to
19 hold the public -- the community forum until
20 August 10th, and then it took, you know, two
21 or three weeks after to incorporate and
22 address all the concerns that we heard from
23 the community into the application; finalize
24 the application, and then it was submitted as
25 soon as we could.

1 Q. (Fusco) Okay. Are you the designated contact
2 for the Windham OB CON?

3 A. (Durdy) I am.

4 Q. (Fusco) And do you know when the hearing
5 record was closed?

6 A. (Durdy) Oh, boy.

7 I want to say March, March 17th. March
8 17th, yeah.

9 Q. (Fusco) And based upon that when would you
10 have expected to receive a decision?

11 A. (Durdy) 60 days later, or you know, May 16th.

12 Q. (Fusco) And have you received the decision?

13 A. (Durdy) No.

14 Q. (Fusco) Or any contact from OHS?

15 A. (Durdy) No.

16 MS. FUSCO: Okay. No further questions.

17 THE HEARING OFFICER: Okay. Ms. Manziona, do you have
18 any cross for Ms. Durdy?

19 MS. MANZIONE: Yes. Just give me one moment, please,
20 to pull it together? Okay. Hello, Ms. Durdy.

21 THE WITNESS (Durdy): Hello.

22 MS. MANZIONE: I have seen your name on so many pieces
23 of paper. I have been looking forward for the
24 chance to meet you -- and this will have to do.

25 So, hello.

1 THE WITNESS (Durdy): It's nice to meet you, too --
2 virtually nice to meet you.

3 MS. MANZIONE: Yeah. Yes, I'm sure we will be working
4 together. You have your name on lots and lots of
5 projects going forward.

6 I would like to ask you about --

7 A VOICE: (Laughs.)

8 MS. FUSCO: I'm sorry. Did I say something wrong?

9 THE WITNESS (Handley): I don't know if that's a good
10 thing or a bad thing, I guess.

11 MS. MANZIONE: Oh, no. I say that because I'm one of
12 the people who keeps track of all the things, and
13 it just seems like there are a lot of things to
14 do, and several of them that are up soon seemed to
15 have your name, or Hartford HealthCare or some --
16 anyway.

17 We'll be in touch. I think Steve has already
18 been in touch with you about a few things coming
19 up this month, next month -- anyway, we'll leave
20 that as it is.

21
22 CROSS-EXAMINATION

23
24 BY MS. MANZIONE:

25 Q. (Manziona) I would like to ask you about the

1 same kind of conversation I was trying to ask
2 Ms. Handley about June 2020, and about being
3 advised by legal counsel to suspend service
4 and rely on the Milford case precedent.

5 Do you remember this, this conversation?
6 This testimony just now?

7 A. (Durdy) I do, yes.

8 Q. (Manziona) Okay. I would like to know -- I
9 was asking Ms. Handley if she was aware of
10 the process of filing a determination at OHS
11 and if she had ever considered filing a
12 determination.

13 I am going to ask you that same
14 question. I know you are aware of what the
15 determination process is. So I'm going to
16 ask you, did you consider advising the
17 Windham Hospital or any representatives of
18 Windham Hospital to submit the determination
19 to determine whether a CON should be filed
20 regarding the termination of OB services in
21 late June, early July of 2020?

22 A. (Durdy) No, I did not. It was always clear
23 to us that a CON would be required. So there
24 was no -- no ambiguity around whether or
25 not --

1 MS. FUSCO: She's asking about, kind of, the suspension
2 in June of 2020?

3 THE WITNESS (Durdy): No, I did not.

4 BY MS. MANZIONE:

5 Q. (Manziona) Okay. And why is it that you did
6 not?

7 A. (Durdy) Because it was always clear to us
8 that a CON would required if we were going to
9 terminate a hospital service.

10 Q. (Manziona) Okay. And so Ms. Handley also
11 said that she was counseled or advised by
12 legal counsel to rely on the case precedent
13 in Milford. Are you familiar with that case,
14 with what happened in that situation?

15 A. (Durdy) Generally. Yes, I am.

16 Q. (Manziona) Okay. And would you advise
17 someone, a coworker, a colleague to rely on
18 prior case precedent in matters of OHS?

19 MS. FUSCO: I'm just going to object. I mean, she's
20 not an attorney, but if you're asking her as a
21 layperson who is familiar with CON precedent, she
22 can answer.

23 BY MS. MANZIONE:

24 Q. (Manziona) I am asking Ms. Durdy as a person
25 who has many years -- I don't know how many

1 and I'm not going to put a number on it
2 unless you are, but many years and lots of
3 experience of going through the CON process
4 with OHS and the predecessor organizations.

5 So my question to you in that capacity
6 is, would you advise as a layperson, a
7 colleague, or a coworker to rely on precedent
8 in taking action, making decisions regarding
9 the CON activity?

10 A. (Durdy) Yes, if I felt that the facts and the
11 circumstances were -- were very similar to
12 another application. Yes, I would. I would
13 feel comfortable doing that.

14 Q. (Manziona) Okay. Thank you for that. My
15 other question is -- so it concerns how long
16 it's been taking the Office of Health
17 Strategy to produce decisions and things like
18 that.

19 So you testified that the record was
20 closed on March 17th, and so far there has
21 been no decision rendered. Is that accurate?

22 A. (Durdy) That's correct, yes.

23 Q. (Manziona) And the statute says we should
24 have produced a decision in 60 days.

25 Is that correct?

1 A. (Durdy) Correct.

2 Q. (Manziona) Do you happen to know if there are
3 other cases that are pending that have not
4 met the statutory deadline --

5 A. (Durdy) Yes.

6 Q. (Manziona) -- in terms of having the decision
7 produced?

8 A. (Durdy) Yes. There are -- yes, there are
9 many, yes.

10 Q. (Manziona) Yes -- I hate to admit it, but
11 yes, there are many. I'm just pointing this
12 out that this is not the only one,
13 unfortunately.

14 And do you know when -- I'm going to go
15 back now to your conversation with Kim
16 Martone, or one of your conversations back
17 with Kim Martone.

18 Do you know -- when she gave you the
19 recommendation to exhaust all of your
20 resources and to keep your services open as
21 long as possible, do you know why she made
22 those recommendations?

23 A. (Durdy) I think she wanted us to be able to
24 demonstrate that we had crossed every "t,"
25 and dotted every "i," and made every effort

1 to keep the service open and operational
2 before we made the decision to seek
3 regulatory approval to terminate.

4 Q. (Manziona) Okay. Had Windham Hospital or
5 Hartford HealthCare as the parent
6 organization of Windham Hospital received any
7 indication from members of the community that
8 they were upset with the plan of what was
9 happening?

10 A. (Durdy) I wouldn't have --

11 Q. (Manziona) -- terminating --

12 A. (Durdy) That's a question --

13 MS. FUSCO: Yeah. I mean, again I'm going to object to
14 this line of questioning. It's not relevant to
15 the discrete issues in the civil penalty
16 proceeding which are, did we terminate the
17 service? And did we willfully fail to seek a CON?

18 THE HEARING OFFICER: Ms. Manziona, what was your
19 question again? I'm sorry.

20 MS. MANZIONE: I was asking Ms. Durdy if she was aware
21 if Hartford HealthCare or Windham Hospital had
22 received any indication from the community, from
23 the public about their viewpoint of the services
24 for OB being terminated or suspended.

25 THE HEARING OFFICER: I'm going to sustain the

1 objection. I don't think that's relevant to this.

2 MS. MANZIONE: Okay. That's the end of my questions
3 for Mr. Durdy. Thanks.

4 THE HEARING OFFICER: Okay. Attorney Fusco, did you
5 have any followup?

6 MS. FUSCO: I do -- and it's not redirect, but it's
7 just a point of clarification. Attorney Manzione
8 mentioned several times in questioning both
9 Ms. Handley and Ms. Durdy that legal counsel, that
10 being me -- she asked them if I had advised
11 Windham to suspend the service.

12 I just want to make sure this is clear. I
13 did not advise them to suspend the service.
14 That's a clinical decision. Okay? What we're
15 talking about is whether I advised them on
16 precedent that clearly stated you could suspend
17 the service under these circumstances without
18 filing for CON approval before that suspension.

19 And that gets to the issue of why you
20 wouldn't request a CON determination, because the
21 law only requires you to request one when you're
22 unsure whether a CON is required. So if your
23 attorney tells you they've analyzed it and a CON
24 isn't required, you wouldn't file. So I just
25 wanted to make sure that point was clear on the

1 record.

2 I have no further questions for either
3 Witness.

4 THE HEARING OFFICER: I did want to ask Ms. Handley a
5 couple questions. And Attorney Fusco, you are
6 free to follow up on anything, or on any of her
7 responses.

8 So in her prefile at page 8 -- let me see if
9 I can pull that up.

10 Do you have that in front of you?

11 THE WITNESS (Handley): Yes.

12 THE HEARING OFFICER: Okay. So three bullets down you
13 say the hospital continues to maintain contracts
14 with physicians for delivery support services, and
15 budget for the program. The space occupied by the
16 OB unit has not been repurposed. Do you see that?

17 THE WITNESS (Handley): Yes, I do.

18 THE HEARING OFFICER: Did you offer testimony at the
19 CON application hearing in the fall of 2021?

20 THE WITNESS (Handley): I did, yes.

21 THE HEARING OFFICER: And do you recall stating -- or
22 do you recall stating that, or do you recall any
23 of the other witnesses bringing that to OHS's
24 attention during that hearing?

25 THE WITNESS (Handley): I'm -- I'm sorry. Bringing

1 what? I'm not sure of that -- just for some
2 clarity?

3 **MS. FUSCO:** If I could clarify? He's asking whether
4 you testified to those points in the CON hearing.
5 And I mean, I'll allow her to answer -- but I'd
6 like to clarify it, if I can?

7 **THE HEARING OFFICER:** That's fine. And I'll clarify
8 it, too. My reason for asking that is I am
9 familiar with that, and I'm familiar with all of
10 the filings in that case. And this is the first
11 I've heard of the hospital continuing to maintain
12 contracts with physicians for delivery support
13 services.

14 **MS. FUSCO:** If I can just interject before you answer?
15 I mean, again it gets back to the issues being
16 different in the two dockets. No one was asking
17 us to prove in the CON application that we had
18 suspended not terminated the service.

19 We assumed at that point in time that it was
20 understood based on our conversations with OHS.
21 So we had focused our CON filing on the CON
22 decision criteria. When we've been given a notice
23 of civil penalty and that, that question has been
24 raised we thought it was important to bring that
25 information to light.

1 THE HEARING OFFICER: Okay. So that ties into my
2 second question which is, if the CON application
3 is not approved what is the hospital's plan going
4 forward?

5 THE WITNESS (Handley): Well, given that the situation
6 remains the same, we have very low volume, we do
7 not have physicians and we do not have nurses; we
8 would be in the very same situation that we were
9 in at the end of June of 2020. Right? Try to
10 deliver babies without doctors and nurses.

11 We -- I will -- I have learned from Attorney
12 Manzione to answer the question just asked.

13 MS. MANZIONE: I thank you for that.

14 THE WITNESS (Handley): Thank you.

15 THE HEARING OFFICER: So I'll ask the question again.

16 What is the plan if termination of services
17 is not approved?

18 THE WITNESS (Handley): We don't have one.

19 THE HEARING OFFICER: Okay.

20 THE WITNESS (Handley): We don't have one.

21 THE HEARING OFFICER: And just to go back to the other
22 thing that I was just asking you about in terms of
23 the hospital continuing to maintain contracts; so
24 in September of 2020 the CON application was
25 filed. Is that correct?

1 THE WITNESS (Handley): Correct.

2 THE HEARING OFFICER: And in February of 2022 the
3 notice of civil penalty was issued.

4 Is that correct?

5 THE WITNESS (Handley): That is correct.

6 THE HEARING OFFICER: Do you think it is relevant to
7 this proceeding for OHS to have known that the
8 hospital continued to maintain contracts with
9 physicians for delivery support services and to
10 budget for the program, and that it had not
11 occupied the OB unit?

12 MS. FUSCO: I'm sorry. Can you clarify? Are you
13 asking, is it relevant to this civil penalty
14 proceeding?

15 THE HEARING OFFICER: Do you think OHS would have
16 issued a notice of civil penalty in February of
17 2022 if we had known that the hospital continued
18 to maintain contracts with physicians for delivery
19 support services, and to budget for the program?

20 MS. FUSCO: I don't think Ms. Handley knows whether you
21 would have or not, but I mean, frankly we're
22 confounded as to why we're here right now. I
23 mean, we were never asked that question.

24 An inquiry was started. We responded to
25 the inquiry. A year and a half went by. We

1 weren't asked any more questions. It wasn't
2 resolved. No one ever asked that of us.

3 It didn't occur to us to offer it because it
4 wasn't relevant to the CON proceeding, but
5 certainly had we been asked for that information
6 we would have been forthcoming and potentially we
7 could avoid being here -- but we don't know what
8 was in OHS's mind.

9 And to my questions to Mr. Lazarus, there
10 have been a whole lot of hands dealing with this
11 over the last few years.

12 THE HEARING OFFICER: Okay. That was my only other
13 question.

14 MS. FUSCO: Thank you.

15 THE HEARING OFFICER: So Attorney Fusco, I said I would
16 allow you to ask additional followup if you have
17 any.

18 MS. FUSCO: Just briefly, Ms. Handley.

19
20 REDIRECT EXAMINATION

21
22 BY MS. FUSCO:

23 Q. (Fusco) So you said if the CON decision, if
24 the CON to terminate the service is denied
25 you don't have, currently have a plan for

1 what you would do to restart services.

2 Presumably you would evaluate that at
3 the time if you received a denial?

4 A. (Durdy) Absolutely.

5 Q. (Fusco) But what you've testified to before
6 is that if it was denied and you were back in
7 that position where you needed to evaluate
8 it, you would find yourself in the exact same
9 position you were in, in June of 2020.

10 Correct? Where the staffing challenges
11 caused you to have to suspend. Correct?

12 A. (Durdy) That's correct.

13 MS. FUSCO: That's it. No further questions.

14 THE HEARING OFFICER: Okay. Thank you. It is now
15 1:11 p.m.

16 We can either take lunch now, or we can just
17 take a brief break and then come back for final
18 argument, et cetera. So I'll leave that to you.

19 MS. FUSCO: I'm happy. Lara, I don't know what you
20 have, but I have a very brief closing remark. So
21 if it's easy to wrap it up, I'm happy.

22 MS. MANZIONE: I with you, Jen. I have two to three
23 minutes. And then whatever housekeeping we have,
24 I would be very happy to step away from this
25 proceeding.

1 THE HEARING OFFICER: Okay.

2 MS. MANZIONE: Not from this group, but from this
3 proceeding.

4 VOICES: (Unintelligible.)

5 MS. MANZIONE: Maybe we'll go out for lunch. I would
6 be happy to do that.

7 THE HEARING OFFICER: So let's just take a five-minute
8 break to regroup and then we can come back and we
9 can wrap up?

10 MS. MANZIONE: Certainly.

11 MS. FUSCO: Okay. Thank you.

12 THE HEARING OFFICER: Let's come back at 1:17 and I
13 will see you then.

14
15 (Pause: 1:12 p.m. to 1:17 p.m.)
16

17 THE HEARING OFFICER: So before we get to closing
18 arguments I just wanted to discuss the matter of
19 legal briefs. I understand that the hospital
20 wants an opportunity to file one. I'm going to
21 assume that OHS may also want to file one as well.

22 MS. MANZIONE: Yes.

23 THE HEARING OFFICER: So given, as we discussed
24 yesterday, given the fact that there will be some
25 time, a delay between when this hearing concludes

1 and when we receive the transcript -- and the
2 parties may wish to refer to the transcript in
3 connection with filing their briefs, I'm going to
4 suggest that we do a deadline of 20 days from the
5 date on which the transcript is made available
6 through the portal.

7 And I'll issue -- actually, it's not
8 necessary that I issue in order, but does 20 days
9 sound reasonable to you?

10 I know this hearing went on considerably
11 longer than I think any of us expected. So the
12 transcript will be longer, and perhaps review
13 maybe longer -- but 20 days, 30 days, whatever the
14 parties think is reasonable I'm open to.

15 MS. MANZIONE: I would appreciate more. I would
16 appreciate to have just a few more days depending
17 on -- I don't know when that 20 to 30 days is
18 going to fall. It might be right around the
19 holidays. So just a little bit of breathing room
20 would be better.

21 THE HEARING OFFICER: So let's say 30 days. And I can
22 issue an order that clarifies the date, the
23 deadline.

24 MS. MANZIONE: Thank you.

25 MS. FUSCO: That works, thanks.

1 MS. MANZIONE: That would be great.

2 THE HEARING OFFICER: That way there are no questions.

3 So are there any other topics that need to be
4 addressed before we start closing arguments?

5 Ms. Manzione?

6 MS. MANZIONE: Yes. Okay. Closing argument, I will be
7 brief --

8 THE HEARING OFFICER: No, I was just asking if there
9 were any other -- okay.

10 MS. FUSCO: You can start.

11 MS. MANZIONE: I'm ready. I'm ready. No more to
12 choose. No more -- nothing needs to be
13 addressed -- but if anyone else does?

14 THE HEARING OFFICER: Attorney Fusco?

15 MS. FUSCO: No, I'm sorry. I'm all set. Thanks.

16 THE HEARING OFFICER: So with that, Attorney Manzione,
17 you can proceed.

18 MS. MANZIONE: Okay. As I said during my opening
19 statement this morning, I had one task. I had to
20 prove that Windham Hospital knowingly and
21 willfully terminated its inpatient obstetric
22 services without first obtaining a certificate of
23 need. And I did just that.

24 I provided evidence that Windham Hospital
25 terminated its obstetric services as of July 1,

1 2020, and didn't file a certificate of need until
2 September 3, 2020, more than two months later.

3 I told you about the vote of the board of
4 directors that governs Windham Hospital, voting
5 unanimously on June 16, 2020, to terminate OB
6 services. We saw the dear-patient letter
7 distributed to pregnant patients telling them that
8 for purposes of giving birth Windham Hospital is
9 closed to them.

10 Those pregnant women were told that they had
11 to travel to Backus Hospital in Norwich, or
12 another hospital of their choosing in order to
13 deliver babies because Windham Hospital was no
14 longer providing that essential service for the
15 community as of July 1, 2020.

16 And I proved that the certificate of need was
17 finally filed on September 3, 2020, when it was
18 uploaded to the Office of Health Strategy's CON
19 portal.

20 We learned that Windham Hospital is part of
21 Hartford HealthCare, the largest healthcare system
22 in the state of Connecticut. We saw firsthand
23 that Hartford HealthCare is very ably represented
24 by an experienced attorney who understands the CON
25 process and has been through its many iterations

1 innumerable times.

2 Additionally, the President of Windham
3 Hospital was told directly by DPH that a CON would
4 be needed to be filed before terminating any
5 inpatient services. All of this evidence proves
6 Windham Hospital knew it needed to file a CON
7 before terminating OB services.

8 Windham Hospital knew they needed to file the
9 CON before terminating the services, but they
10 didn't. And that means they broke the law.

11 In putting on their case Windham Hospital
12 tried to distract us with alternate theories and
13 extraneous information, but we have to stay laser
14 focused. For our purposes today it doesn't matter
15 why Windham Hospital decided to terminate
16 obstetrics services. It doesn't matter if it was
17 hard to attract healthcare professionals to work
18 in the local community. It doesn't matter that
19 they said it was unsafe to deliver so few babies
20 at Windham Hospital. It doesn't matter what they
21 said they were doing to try to compensate for
22 terminating obstetric services at Windham
23 Hospital.

24 All that matters in this proceeding for the
25 civil penalty to be imposed is that Windham

1 Hospital did, in fact, willfully terminate
2 obstetric services without a CON, period.

3 And now that my job is done, it is up to this
4 tribunal to uphold the lawful imposition of a
5 civil penalty of \$65,000. Thank you.

6 THE HEARING OFFICER: All right. Thank you. Attorney
7 Fusco?

8 MS. FUSCO: Thank you. Thank you, Attorney Csuka,
9 Attorney Manzione, Mr. Lazarus and other members
10 of the OHS staff for your time today.

11 The issues from a legal standpoint are really
12 simple ones. 19a-653, the general statute
13 authorizes OHS to impose a civil penalty on a
14 provider only if the agency can prove two things;
15 first, that the provider engaged in an activity
16 that required CON approval under 19a-638, the year
17 of the termination of inpatient or outpatient
18 hospital services; and second, that the provider
19 willfully failed to seek such approval.

20 Both of those elements need to be proven.
21 They need to be proven by a preponderance of the
22 evidence, meaning OHS must have better evidence
23 than the Respondent, supporting a conclusion that
24 the elements of the civil penalty statute have
25 been met -- and OHS has not met the burden under

1 this standard.

2 As Ms. Handley testified, Windham did not
3 terminate OB services in June of 2020. These
4 services were suspended in the interests of
5 patient safety due to staffing challenges that
6 began years ago that were managed as best they
7 could in a program that was kept open as long as
8 we could keep it open at the request of the Office
9 of Health Strategy. And they became
10 insurmountable by the summer of 2020.

11 This included the loss of call coverage
12 obstetricians, the loss of those OBs that agreed
13 to sort of extend their call coverage for the
14 first half of 2020. The loss of OB nurses, the
15 loss of the unit coordinator, and an inability to
16 provide consistent neonatal coverage. And this
17 isn't something that could have been solved by
18 cobbling together a group of locums and traveling
19 nurses and saying, hey, let's have an OB program.
20 That would have been an unsafe and ineffective
21 program.

22 You know, Ms. Manzione said, the loss of
23 coverage, the loss of doctors doesn't matter. It
24 absolutely matters. If it compelled -- if you've
25 been compelled to close the service because you

1 can't safely staff it, which is exactly what
2 happened in Milford with their OB program, and
3 it's exactly what happened to Sharon Hospital with
4 their sleep center.

5 You cannot provide a clinical service safely
6 without sufficient staffing. Okay? As Mr. Durdy
7 testified, Windham kept OHS apprised of the
8 circumstances around its OB services. She had
9 discussions in the fall of 2019 when Windham first
10 received notice from OB-GYN Services that they
11 were terminating their call coverage arrangement
12 effective December 31st.

13 She had additional discussions with OHS in
14 the summer of 2020 before the notice was
15 published. So you know, regardless of when
16 Mr. Lazarus first knew Windham OB services were
17 being suspended and CON approval to close was --
18 the unit permanently would be applied for, OHS
19 knew for the better part of the year.

20 And I think that OHS is misconstruing the
21 conversation that Donna Handley had with Donna
22 Ortelli at DPH. You know Donna Handley explained
23 that that con -- why that conversation took place,
24 and that Ms. Ortelli was supportive of the fact
25 that there were nurse competency issues, given the

1 way that unit was staffed and operating at the
2 time.

3 Ms. Ortelli knew based on that phonecall that
4 the service was going to be suspended imminently,
5 and she told Ms. Handley, you do need a CON to
6 terminate it, meaning to close it permanently.

7 She did not tell her, you can't close it
8 tomorrow. You can't close it next week. You
9 can't close it -- or suspended until you get a
10 CON. She was aware that it was going to be
11 suspended, and simply reminded Ms. Handley that it
12 could not be closed permanently until the CON was
13 approved.

14 Windham was aware as OHS is of the precedent
15 allowing hospitals that cannot adequately and
16 safely staff for service, to suspend those
17 services pending CON approval to close. It
18 happened with Milford's hospitals OB under
19 circumstances that closely paralleled the
20 situation in Windham. Windham relied on this
21 precedent as well as the advice of counsel in
22 making a good-faith determination that the
23 suspension of OB services in June of 2020 did not
24 require CON approval.

25 OHS's failure to respond to its own inquiry,

1 whether they typically respond to these or not, as
2 to whether the OB suspension required a CON
3 further supports Windham's assumption that it
4 didn't require one. Right?

5 So whether they respond or not, what's
6 important here is what Windham believed. And
7 Windham believed when an inquiry was initiated and
8 they responded to it and didn't hear back from an
9 administrative agency for a year and a half, that
10 there was no issue. Because if there was an issue
11 a responsible agency would have responded
12 immediately and taken action.

13 As Ms. Handley testified, and Ms. Manzione
14 raised these board minutes again, the board
15 minutes are not the indisputable evidence that OHS
16 believes they are. The board approval was a
17 routine matter of corporate governance whereby a
18 parent board authorizes a plan to close a hospital
19 service subject to all necessary approvals
20 including CON.

21 The board authorization -- nowhere in it does
22 it say the services can close immediately. The
23 timeline and approval was discussed, and most
24 importantly that authorization was required before
25 we could even start this process, before we could

1 file public notice and the application. It
2 doesn't prove that the service was permanently
3 terminated in June of 2020. To the contrary, it
4 was suspended and it remains suspended to date.

5 Based on the foregoing, there's no
6 termination of services. And if there's no
7 termination of services, then the first element of
8 19a-653 isn't met.

9 Even if OHS determines against clear evidence
10 that a termination did occur, you can't prove that
11 Windham willfully failed to file a CON
12 application. Right? Willful failure requires
13 knowledge and an intentional disregard. Windham
14 was unaware at this time that a CON was required
15 to suspend the service. We maintain that it
16 isn't -- but assuming you're going to say it is,
17 we were unaware.

18 You know, there was clear agency precedent on
19 this point from prior service suspensions that no
20 CON was required to implement the suspension,
21 assuming as happened in those cases, a CON was
22 filed for to permanently close the service.

23 The suspension was done out of necessity in
24 the interests of patient safety and due to the
25 inability to staff the unit, and Windham knew that

1 a CON -- and this is what Ms. Durdy was saying --
2 like, Windham knew that a CON was required to
3 permanently close the unit, and that's why we
4 moved forward with the filing.

5 So you know, talking about where we failed to
6 file, we published public notice seven days after
7 the service was suspended and key stakeholders
8 were notified. Like, how can OHS claim that
9 Windham intended to circumvent the CON process
10 when we filed -- when we started the process?

11 Mr. Lazarus will tell you for us, that was
12 the first step in the process within seven days of
13 our own initiative. Okay? OHS didn't call us up
14 and say, we heard you suspended. You better get a
15 CON filed. We were moving forward with the
16 process regardless. There was a plan in place,
17 and the only delay was for the notification of
18 those 42 individuals.

19 And I can't imagine that OHS would want to
20 penalize us for holding a virtual public forum in
21 the middle of a global pandemic that OHS
22 requested, that in fact took the place of a public
23 forum that OHS itself was intending to hold in
24 Windham at that time so that we could address
25 community concerns in our CON filing.

1 And we did that. We did that in a thoughtful
2 manner, and I worked with Ms. Durdy on finalizing
3 that application after the public forum in
4 response to everything that we heard.

5 Those two things, that the notification of
6 stakeholders and the forum were really the only
7 reasons for that two-month delay that Attorney
8 Manziona referred to -- but you can see from the
9 evidence that there was never an intent not to
10 file a CON, or to usurp OHS's regular regulatory
11 authority.

12 I mean, just the opposite. Windham always
13 intended to file a CON, but they were unable to do
14 so before the OB service reached the point that it
15 was no longer safe to operate. So they had to
16 suspend the service. There literally was not the
17 clinical staff to deliver the babies. And it's
18 not as simple as you would think to, you know, to
19 replace physicians with locums and travelers.
20 Right?

21 And so instead they filed their CON
22 application after the service was suspended, which
23 is exactly what happened in Milford, and that
24 matter was resolved expeditiously with no fine.
25 So under the law, you know, without an intent to

1 circumvent the CON statutes, there can't be a
2 willful failure. And without a willful failure
3 there can be no civil penalty.

4 So you know, based on the foregoing, I would
5 assert that OHS hasn't met its burden of proof
6 under the statute, that they have not presented
7 the better evidence to show that Windham Hospital
8 did terminate and did willfully fail to seek a
9 CON. And because they haven't met their burden,
10 the civil penalty needs to be rescinded.

11 Now I will say -- and I know this came up in
12 a prior hearing, if against the weight of the
13 clear evidence OHS determines that the elements of
14 653 have been met, the Hearing Officer does have
15 complete discretion to waive the civil penalty
16 on (inaudible) --

17 THE HEARING OFFICER: Attorney Fusco --

18 MS. FUSCO: -- in its entirety (unintelligible) --

19 THE HEARING OFFICER: I'm sorry. I think you --

20 MS. FUSCO: -- and hearing about staffing challenges.

21 THE HEARING OFFICER: I think you froze. I'm sorry.

22 MS. FUSCO: I think you might have frozen. Are you
23 back?

24 THE HEARING OFFICER: I am. Yeah. I'm sorry. If you
25 can just back up a sentence or two, that would be

1 helpful.

2 MS. FUSCO: That's okay. Sorry. Maybe we did freeze
3 but -- okay. Sorry about that. Yeah.

4 I was just saying, I mean, going back a
5 little bit that there was, you know, that there
6 was never an intent not to file a CON or usurp the
7 agency's regulatory authority. That without
8 intent to circumvent this CON statutes there can't
9 be a willful failure. And without a willful
10 failure to seek CON approval, there can't be a
11 civil penalty.

12 I also mentioned that I think based on what
13 I've heard today, I disagree with the Attorney
14 Manzione. I think OHS hasn't met its burden of
15 proof under 19a-653. I think that they have not
16 presented the better evidence to show that we did
17 terminate or willfully failed to seek a CON.
18 Because they haven't met the burden the civil
19 penalty has to be rescinded.

20 Sort of alternatively, if you were to decide
21 against the weight of clear evidence that the
22 elements of 19a-653 have been met, you as Hearing
23 Officer do have complete discretion to waive the
24 civil penalty in its entirety due to extenuating
25 circumstances.

1 And here the extenuating circumstances would
2 include things like staffing challenges that were
3 insurmountable and completely out of the
4 hospital's control. You know, the existence of
5 this clear precedent that Windham was entitled to
6 rely on in suspending the service without a CON,
7 and that the need to conduct extensive community
8 outreach on the proposal, and to close an OB
9 service during the early months of the COVID-19
10 pandemic, which everyone forgets -- I mean, so
11 much time has passed. This was happening in the
12 spring and summer of 2020.

13 So for these reasons we respectfully request
14 that the civil penalty be waived or rescinded in
15 its entirety. Thank you.

16 **THE HEARING OFFICER:** Thank you. And I apologize for
17 interrupting. I don't know where the technology
18 glitch was, but -- and I'm sure the Court Reporter
19 got everything the first time as well, but I found
20 that helpful. So thank you.

21 So with that I believe we can conclude
22 today's hearing. Thank you to everybody for
23 attending, especially our Witnesses, who I know
24 are -- well, everybody is extremely busy right
25 now, but especially in the healthcare environment,

STATE OF CONNECTICUT
(Hartford County)

I, ROBERT G. DIXON, a Certified Verbatim Reporter, and Notary Public for the State of Connecticut, do hereby certify that I transcribed the above 157 pages of the STATE OF CONNECTICUT OFFICE OF HEALTH STRATEGY ADMINISTRATIVE HEARING, in Re: A CIVIL PENALTY PROCEEDING CONCERNING WINDHAM HOSPITAL FOUNDATION, INC. D/B/A WINDHAM HOSPITAL AND ITS TERMINATION OF OBSTETRIC SERVICES; DOCKET NO.: 22-32517-CON; HELD BEFORE: DANIEL CSUKA, ESQ., THE HEARING OFFICER; on May 25, 2022, via teleconference.

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of computer assisted transcription; and I further certify that said deposition is a true record of the testimony given in these proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

WITNESS my hand and seal the 21st day of June, 2022.



Robert G. Dixon, CVR-M No. 857

My Commission Expires:

6/30/2025

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