

IN RE CERTIFICATE OF NEED
APPLICATION BY A JOINT VENTURE
OF GREATER WATERBURY HEALTH
NETWORK, INC. AND VANGUARD
HEALTH SYSTEMS, INC.

: STATE OF CONNECTICUT
:
: DEPARTMENT OF PUBLIC HEALTH
: OFFICE OF HEALTH CARE ACCESS
: DOCKET NO. 13-31838-CON
:
: OFFICE OF ATTORNEY GENERAL
: DOCKET NO. 13-486-01
:
: SEPTEMBER 23, 2014

**OBJECTION TO REQUEST OF CONNECTICUT HEALTH CARE ASSOCIATES FOR
INTERVENOR STATUS**

Vanguard Health Systems, Inc. (“Vanguard”) and Greater Waterbury Health Network, Inc. (“GWHN”) (together, “Applicants”), hereby object to the request of Connecticut Health Care Associates (“CHCA”), made via letter dated July 3, 2014, that it be given “the opportunity to participate in the . . . proceedings as an intervenor with full procedural rights.” (“Petition”).

According to its Petition, CHCA seeks to participate “[p]ursuant to Connecticut General Statutes, Section 4-177a(b) and Section 19a-648-38 [sic] of Regulations of Connecticut State Agencies.” CHCA may not, however, be granted intervenor status pursuant to Conn. Gen. Stat. § 4-177a(b) because it fails to state “facts that demonstrate that [its] participation is in the interests of justice and will not impair the orderly conduct of the proceedings,” as required for intervenor status. To the contrary, CHCA’s participation is likely to “impair the orderly conduct of the proceeding.” Conn. Gen. Stat. § 4-177a(b)(2).

I. Background

In operating regional integrated health delivery networks in urban areas across the United States, Vanguard’s management team has successfully partnered with 28 community hospitals and the communities they serve. In late 2013, Tenet Healthcare

Corporation (“Tenet”) acquired Vanguard. As a subsidiary of Tenet, Vanguard remains a separate corporate entity and remains the Applicant in this proceeding.

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

Under the proposed transaction that is the subject of these proceedings, GWHN will transfer substantially all of its assets to a Vanguard affiliate in consideration of, among other things, \$45 Million and the commitment to spend no less than \$55 Million on capital items and improvement of services in the Greater Waterbury, Connecticut market. The transaction terms also provide that GWHN will use the proceeds of the transaction to retire all of its debt, and Vanguard will implement charity care and uncompensated care policies that are at least as favorable to patients as those GWHN currently maintains. Negotiated union contracts, including the recent CHCA Agreement, will remain in effect.

Through the application process for the Certificate of Need for the conversion (“CON”), the Office of Health Care Access (“OHCA”) (Docket No. 13-31838-CON) has

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

II. CHCA’s Petition

CHCA states that it has represented Waterbury Hospital nurses for over 30 years. But nowhere in its Petition does it address any specific concerns of nurses who might be affected by the transaction.

In fact, CHCA fails to address *any* specific portion of the pending Application. CHCA does not challenge a single specific representation the Applicants have made to OHCA; the

City of Waterbury, the Governor, the OAG, or anyone else. Nor does CHCA address any of the details of the financial structure of the transaction or the Applicants' financial statements. Most tellingly, not only does CHCA have nothing to say about the Waterbury community's hospital and patient care needs, it does not identify any specific shortcoming concerning the patient care commitments Vanguard makes in the Application. Indeed, it is not even clear that CHCA has read the Application.

Instead, CHCA focuses almost entirely on a single issue: Tenet's acquisition of Vanguard. Without identifying any factual basis for its claim, CHCA offer only speculation that because of the "complexity of this deal" there exists "the real possibility that this takeover can result in hardship to the Waterbury community" in various ways. In short, CHCA submits nothing in support of its Petition beyond a series of general concerns about the fact that Tenet is a for-profit organization with a "confusing array of entities."

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

The Uniform Administrative Procedures Act provides that intervenor status may be granted when "the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceeding." Conn. Gen. Stat. § 4-177a(b).¹ The pertinent "interest of justice" at issue here is whether the Application pending before OHCA and the OAG meets the requirements for a CON. Rather than address the terms of the transaction or the Application, CHCA instead challenges the nature of the purchaser.

¹ CHCA does not seek party status pursuant to Conn. Gen. Stat. § 4-177a(a).

CHCA expresses “concern” about the transaction because Tenet is a for-profit entity and the corporate structure of the transaction is “confusing.” CHCA does not even attempt to explain how its confusion about the corporate structure or the “possibility” of potential, but undefined, “hardship” entitles it to intervenor status. CHCA does not address any specific provision of the Application or the proposed transaction that will have specific effect on its members, but speaks only in generalities.

Not only does the Petition fail to indicate how the participation of CHCA is “in the interests of justice,” it fails to demonstrate that its participation “will not impair the orderly conduct of the proceeding.” Given the focus and tenor of CHCA’s Petition, it seems quite clear that CHCA wants nothing more than to turn the hearing into a forum for arguing about its uninformed suspicions of the dangers of large corporations and for-profit ownership of health care facilities in general. Such topics, while possibly suitable subjects for the legislature, are not an appropriate focus for these proceedings.

Moreover, granting intervenor status to CHCA is not necessary to further the consideration of the CON Application. If OHCA and the OAG believe the matters CHCA raises in its Petition warrant further investigation or questioning, OHCA and the OAG are able to obtain the facts directly, and are fully competent to do so without the assistance of CHCA. Indeed, by letter dated August 25, 2014, Assistant Attorney General Gary W. Hawes and OHCA Director of Operations Kimberly R. Martone have so advised CHCA.

To the extent CHCA believes it has something to add to OHCA and the OAG’s consideration of the Application, it is free to raise any such issue as a *speaker* at the public hearing that will follow the technical hearing. If it raises a meritorious issue that OHCA or the OAG determines should be further explored, OHCA or the OAG can pursue the issue.

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

IV. Intervention, if Allowed, Should Be With Only Limited Rights

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

As discussed above, the Petition does not identify any legitimate “interest” that might serve to define the scope of CHCA’s participation as intervenor. Based on the Petition, the only possibly appropriate level of participation for CHCA might be by presenting prefiled testimony, subject to cross-examination by OHCA, the OAG and the Applicants, on the limited topic of personnel issues. To allow CHCA to do more will not advance the interests of justice or promote the orderly conduct of the proceeding.

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

V. Conclusion

For the foregoing reasons, the Applicants respectfully submit:

1. CHCA should be denied intervenor status because it has made no showing that it will add anything to the record that would advance the interests of justice, and because any incremental benefit of its participation is outweighed by the resulting impairment of the orderly conduct of the proceeding. If it is granted any rights at all as an intervenor, it should only be to present prefiled testimony, nothing more.

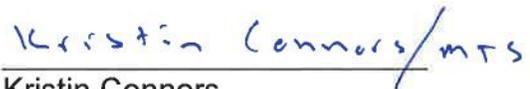
2. CHCA’s role should be limited to that of a speaker at the public hearing.

Respectfully submitted,



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CERTIFICATION

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

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