

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

OCTOBER 7, 2014

**RESPONSE TO REQUEST OF CONNECTICUT STATE CONFERENCE OF THE NAACP  
HEALTH COMMITTEE AND THE GREATER WATERBURY BRANCH OF THE NAACP  
HEALTH COMMITTEE FOR LEGAL STATUS**

Vanguard Health Systems, Inc. ("Vanguard") and Greater Waterbury Health Network, Inc. ("GWHN") (together, "Applicants"), hereby respond to the request of the Connecticut State Conference of the NAACP Health Committee and the Greater Waterbury Branch of the NAACP Health Committee (together, "NAACP"), made via letter of James E. Rawlings dated October 2, 2014 ("Petition"), that the NAACP be given "legal status relative to the proposed Waterbury-Vanguard Joint Venture Application." Petition at 1.

The NAACP does not identify the statute or regulatory provision under which it seeks "legal status." It requests only that it be permitted to participate "at the highest legal status." Petition at 3. The NAACP may not, however, be given party status under Conn. Gen. Stat. § 4-177a(a) because it has not presented "facts that demonstrate that [its] legal rights, duties or privileges shall be specifically affected by the decision in [this] contested case," as required for party status under Conn. Gen. Stat. § 4-177a(a). Nor may the NAACP be granted intervenor status with full rights pursuant to Conn. Gen. Stat. § 4-177a(b), because its request does not state "facts that demonstrate that [its] participation is in the interests of justice and will not impair the orderly conduct of the proceedings," as required under subsection (b)(2) of the statute.

Applicants do not, however, oppose the NAACP being given intervenor status with limited rights. The NAACP has a valuable perspective, and Applicants are interested in its views on such issues as access to care, continuity of quality of care and community needs. In fact, these are issues to which GWHN's Board gave great weight in selecting its new partner. The NAACP should have the opportunity to make its views part of the record through prefiled testimony, and, if necessary, late filed testimony.

**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 continues to be a separate corporate entity and remains the Applicant in these proceedings.

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

Under the proposed transaction that is the subject of these proceedings, GWHN will transfer substantially all of its assets to a joint venture (the "Joint Venture") with a Vanguard affiliate. The Joint Venture will implement charity care and uncompensated care policies that are at least as favorable to patients as those GWHN currently maintains.

Through the application process for the Certificate of Need for the conversion ("CON"), the Office of Health Care Access ("OHCA") (Docket No. 13-31838-CON) has extensively investigated the pertinent details of the contemplated transaction. In addition, pursuant to the requirements of the Conversion Statute, Conn. Gen. Stat. § 19a-486 et seq., as amended by Public Act 14-168, the Office of Attorney General (the "OAG"), in coordination with OHCA, has undertaken its own exhaustive investigation and due diligence (AG Docket No. 13-486-01). Since the CON Application was filed on May 3, 2013, Applicants have provided under oath nearly 2000 pages of written materials, addressing more than 160 separate questions and requests for production posed by the OAG and OHCA, including more than 70 exhibits. These materials have provided extensive, specific information regarding the Applicants, their operations, corporate organizations and finances; the details of Teneff's acquisition of Vanguard; the background, compelling reasons for, and terms of, the proposed transaction, including the events leading up to it; the fairness of the financial terms of the sale; the anticipated impact of the transaction on The Waterbury Hospital and its healthcare professionals, as well as on the delivery of health care services in Waterbury and the surrounding area; and a myriad of other matters raised as the OAG and OHCA have diligently carried out their statutory duties in connection with the pending Application.

## **II. NAACP's Petition**

In its Petition, the NAACP does not address any specific portion of the pending Application. More specifically, it does not address any of the details of the financial structure of the transaction or the Applicants' financial statements, nor does it identify any specific concerns about the patient care commitments, charity care policies or community needs commitments set forth in the Application.

Instead, the gist of the NAACP Petition is that – notwithstanding 2000 pages of written materials, addressing more than 160 separate questions and requests for production posed by the OAG and OHCA – the Application has not been yet been subject to sufficient scrutiny. The NAACP suggests that the Application fails to take into consideration the “the fragility of the Greater Waterbury community.” Petition at 1. In fact, the Application does speak to the fragility of the community. See Application at 00049-52. The NAACP identifies several factors that contribute to this “fragility,” but does not draw any connection between those factors and the Applicants' satisfaction of the standards for the granting of a CON.

In its Petition, the NAACP sets forth a list of five “global concerns,” suggesting that these concerns justify it being granted intervenor status. Petition at 2. The Applicants fully appreciate those concerns, but each of those concerns is directly addressed in the CON submissions. For example, the NAACP expresses concern about Vanguard's “lack of possible acceptance of [Medicaid] as payer.” Petition at 2. But review of the Application makes clear that the terms of the transaction include the Joint Venture's commitment to operate “in accordance with the Community Benefit Standard,” which includes, among other things, “(i) acceptance of all Medicare and Medicaid patients, (ii) acceptance of all

emergency patients without regard to ability to pay . . . and (iv) promotion of public health, wellness and welfare in the community through the provision of health care at a reasonable cost.” Application at 0052.

Similarly, the NAACP expresses concern about changes in collection policies. Petition at 3. But, as the Applicants have clearly stated, the Joint Venture will maintain charity care and collection policies at least as favorable to patients as those Waterbury Hospital currently maintains. Where Vanguard’s charity care policy is more favorable to patients than Waterbury Hospital’s current policy, the Vanguard policy will be in effect, and where Waterbury Hospital policy is more favorable, it will be utilized. CON Application at 00987. In addition, the Joint Venture will comply with the requirements of sections 501(r)(3) – (6) of the IRS Code with respect to, among other things, limiting amounts charged for emergency and other medically necessary services for those qualifying for financial assistance, and foregoing extraordinary collection actions against an individual before determining whether that individual is eligible for financial assistance. And activities with respect to patient billing and collections will not change materially from existing Hospital policy. CON Application at 00987-88.<sup>1</sup>

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

The NAACP does not identify an interest in these proceedings other than to state, “everyone needs to better understand how this JV will directly impact the overall health status of this very fragile community.” Petition at 1. Missing from the Petition is any

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<sup>1</sup> Another of the “global concerns” the NAACP raises – the issue of competition and anti-trust considerations – is the subject of a separate Federal Trade Commission proceeding, and not a focus of this hearing.

identification of a “legal right, duty, or privilege” pertaining to the NAACP that is at issue in these proceedings, or how any such interest might be “specifically affected” by the decision in the matter. See Conn. Gen. Stat. § 4-177a(a) (granting of party status requires that petitioner “state[ ] facts that demonstrate that the petitioner’s legal rights, duties or privileges shall be specifically affected by the agency’s decision in the contested case”). In fact, regardless of whether OHCA and the OAG grant or deny the CON Application, none of the interests to be adjudicated in the consideration of the Application implicate any “legal right, duty or privilege” of the NAACP.

The NAACP has not sustained its statutory burden of stating facts that demonstrate it has a *legal* right that “shall be *specifically affected*” by any decision here. Party status under Conn. Gen. Stat. § 4-177a(a) is therefore inappropriate and must be denied.

**IV. Petitioner States No Facts Showing that Its Participation Is in the Interests of Justice as Conn. Gen. Stat. § 4-177a(b) Requires for Intervenor Status, But Applicants Do Not Oppose NAACP Being Granted Intervenor Status with Limited Rights**

The Uniform Administrative Procedures Act provides that intervenor status may be granted when “the petition states facts that demonstrate that the petitioner’s participation is in the interests of justice and will not impair the orderly conduct of the proceeding.” Conn. Gen. Stat. § 4-177a(b). The pertinent “interest of justice” at issue here is whether the Application pending before OHCA and the OAG meets the requirements for a CON. Rather than address the terms of the transaction or the statutorily imposed considerations for the granting of a CON, the NAACP instead raises questions about the for-profit nature of the purchaser, and the broader societal questions of health care equity. Given the focus and tenor of the NAACP’s Petition, it seems that the NAACP wants policy discussion, rather than the hearing required by statute. The NAACP’s concerns – such as the dangers

of large corporations and for-profit ownership of health care facilities in general – might be suitable subjects for the legislature, but they are outside the statutorily defined scope of these proceedings.

Granting intervenor status to the NAACP is not necessary to further the investigation, and the NAACP Petition does not provide a basis for finding that its participation would materially improve the record on this Application.

Nevertheless, the Applicants do not oppose the NAACP being given intervenor status with limited rights. 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 the NAACP’s participation as intervenor. Based on the Petition, the NAACP may properly be given limited rights, including the right to inspect and copy records on file with the OAG and OHCA related to the Application. As an intervenor with limited rights, the NAACP may be cross-examined by the Applicants, but should not have the right to cross-examine the witnesses, or present argument.

## **V. Conclusion**

For the foregoing reasons, the Applicants respectfully submit:

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

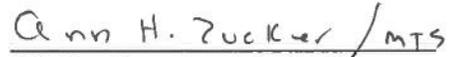
2. The NAACP has not presented facts showing that it is entitled to intervenor status pursuant to Conn. Gen. Stat. § 4-177a(b) because it has made no showing that it will add anything to the record that would advance the interests of justice, and because any incremental benefit of its participation is outweighed by the resulting impairment of the orderly conduct of the proceeding. Applicants do not, however, oppose NAACP being given limited rights as an intervenor, but only to inspect and copy records on file with the OAG and OHCA related to the Application, and to present prefiled testimony, subject to cross-examination.

Respectfully submitted,



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## CERTIFICATION

This is to certify that on October 7, 2014, a copy of the foregoing was sent via e-mail to the following:

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