

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 13, 2014

**MOTION OF APPLICANTS TO: (1) STRIKE PRE-FILED TESTIMONY OF BARBARA SIMONETTA, RN; AND (2) PRECLUDE TESTIMONY AND INQUIRIES OF THE APPLICANTS OUTSIDE THE PARAMETERS OF OAG AND OHCA'S GRANT OF INTERVENOR STATUS TO CONNECTICUT HEALTH CARE ASSOCIATES**

Vanguard Health Systems, Inc. ("Vanguard") and Greater Waterbury Health Network, Inc. ("GWHN") (together, "Applicants"), hereby move to (1) strike the pre-filed testimony of Barbara Simonetta, RN, dated October 6, 2014, and filed on behalf of Connecticut Health Care Associates ("CHCA") [Table of the Record, Exhibit III] ("Simonetta Testimony"); and (2) preclude the submission of any further testimony of CHCA, or inquiry by CHCA, that falls outside what the Office of Attorney General ("OAG") and the Office of Health Care Access ("OHCA") have expressly defined as the limited scope of testimony CHCA may present in this proceeding on Vanguard and GWHN's joint application for a Certificate of Need ("CON Application").

The Applicants request to be heard on this motion after the convening of the Hearing on October 15, 2014, at 1:00 p.m.

**ORAL ARGUMENT REQUESTED**

**I. The Express Limitations on OAG and OHCA's Grants of Intervenor Status**

By notice dated September 29, 2014, the OAG issued its Ruling on a Petition Filed by Connecticut Health Care Associates to Be Designated as an Intervenor with Full Procedural Rights ("OAG Ruling"). The OAG designated CHCA as an "Intervenor with full rights." The Ruling also provided that because "OAG's jurisdiction in this matter is limited to the issues set forth in Conn. Gen. Stat. § 19a-496c . . . [CHCA] is not permitted to present written or verbal testimony regarding any matter beyond the scope of the 19a-486c issues identified in § 19a-486c."

Similarly, by notice dated September 30, 2014, OHCA issued its Ruling on a Petition Filed by Connecticut Health Care Associates to Be Designated as an Intervenor ("OHCA Ruling"). In its Ruling, OHCA designated CHCA as an "Intervenor with full rights of cross-examination." The OHCA Ruling also provided that, "OHCA's jurisdiction in this matter is limited to the guidelines and principles set forth in Connecticut General Statutes §§ 19a-639 and 19a-486d." OHCA expressly set forth the statutorily prescribed ambit of its jurisdiction and concluded with this admonition: "[CHCA] is *not permitted* to present written or verbal testimony regarding *any* matter beyond the scope of the guidelines and principles." OHCA Ruling at 2 (emphasis added).

**II. The Simonetta Testimony Falls Far Outside the Permissible Scope of Testimony**

The Simonetta Testimony falls outside the limited sphere within which the OAG and OHCA have ruled that CHCA is permitted to present testimony in this proceeding. Indeed, the submission contains no reference to any provision of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d, nor does it otherwise provide any indication that the

proffered testimony is intended to address or reflect any provision of the statutes, guidelines and principles that govern the OAG and OHCA in reviewing the merits of the CON Application.

Instead, Ms. Simonetta's proffered testimony, in complete disregard the orders of the OAG and OHCA, consists of numerous matters having no bearing on the statutory criteria by which the OAG and OHCA must evaluate the merits of the CON Application that is the subject of this proceeding, much of which is supported only with hearsay accounts. Here are some examples:

1. Discussion regarding increase in the number of long-term care hospitals ("LTCH"). Simonetta Testimony at 2. But The Waterbury Hospital is an acute care hospital, not an LTCH.

2. Discussion of concern regarding a proposed merger in Idaho. Simonetta Testimony at 5. Not only is that transaction entirely unrelated to the proposal at issue here, it involves a completely different *type* of transaction. The Idaho matter is a hospital acquisition of the largest physician group in that state, not a hospital-to-hospital transaction as here. And neither of the Applicants is a party to that transaction.

3. Discussion regarding the 1993 merger between two hospitals in Massachusetts, of which neither of the Applicants is a party. Simonetta Testimony at 6.

4. Discussion of concern about a proposed merger in Ohio. Simonetta Testimony at 5-7. Again, neither the Applicants is a party to that transaction.

5. Extensive discussion of a Massachusetts Superior Court Judge's review of an anti-trust settlement regarding a network of affiliated hospitals and physicians in that state. Simonetta Testimony at 7-8. Not only does that "discussion" consist almost entirely of

incomplete quotes from news articles, but, again, the CHCA testimony concerns a completely different type of transaction from the one at issue here, another hospital acquisition of a physician group, and neither of the Applicants is a party to that transaction.

The proffered testimony amounts to speculation addressed to policy questions concerning private ownership of hospitals and about what may occur under private ownership of Waterbury Hospital. Simonetta Testimony at 2-5, 8. But those concerns, and those policy discussions, are beyond the scope of this proceeding. Moreover, the Legislature has already considered the matter, and addressed it with the adoption of Public Act 14-168. Now that the Legislature has spoken, it is not a subject that should or can be reconsidered here.

Speculation about private ownership is followed by speculation on another topic: “what the future may hold if Tenet is allowed such market dominance.” Simonetta Testimony at 5-8. On that issue, presented entirely through recitations of portions of news articles and press releases, Ms. Simonetta suggests that the “market impact of mergers should not be ignored” in these proceedings. Simonetta Testimony at 8. But, again, such considerations are outside the scope of the matter before the OAG and OHCA. Moreover, the issue of “market dominance” is within the purview of the Federal Trade Commission.

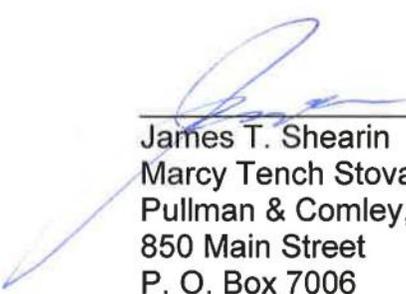
In light of the Intervenor’s failure to follow OAG and OHCA instructions, it should bear the consequences of doing so, and the prefiled testimony, recorded as Exhibit III, should be stricken from the Table of the Record.

### **III. Conclusion**

For the foregoing reasons, the Applicants respectfully request the following relief:

1. That the pre-filed testimony of Barbara Simonetta, RN, dated October 6, 2014, and filed on behalf of CHCA be stricken from the Table of the Record (Exhibit III) in this proceeding as outside the scope of testimony CHCA is permitted to submit;
2. That CHCA be precluded from submitting any further testimony, whether from Ms. Simonetta, Gary Storrs, Sal Luciano or any other CHCA representative, that falls outside the scope of what the OAG and OHCA have expressly defined as the limited scope of testimony CHCA may present in this proceeding, that is testimony that falls outside the scope of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d;
3. That CHCA be precluded from posing questions to the Applicants' witnesses that address matters falling outside the scope of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d; and
4. That CHCA be precluded from having any portion of its direct testimony at the hearing fall outside the scope of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d.

Respectfully submitted,



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**CERTIFICATION**

This is to certify that on October 13, 2014, a copy of the foregoing was sent via e-mail to the following:

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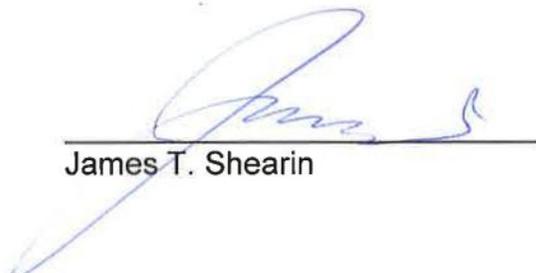
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