

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 MIKE FADEL;
AND (2) PRECLUDE TESTIMONY OF THE APPLICANTS OUTSIDE THE PARAMETERS
OF OAG AND OHCA'S GRANT OF INTERVENOR STATUS TO MASSACHUSETTS
NURSES ASSOCIATION**

Vanguard Health Systems, Inc. ("Vanguard") and Greater Waterbury Health Network, Inc. ("GWHN") (together, "Applicants"), hereby move to (1) strike the pre-filed testimony of Mike Fadel, filed October 6, 2014, on behalf of Massachusetts Nurses Association ("MNA") [Table of the Record, Exhibit GGG] ("Fadel Testimony"); and (2) preclude the submission of any further testimony of MNA 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 MNA 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 Massachusetts Nurse Association to Be Designated as an Intervenor with Full Procedural Rights ("OAG Ruling"). The OAG designated MNA as an "Intervenor with limited 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 . . . [MNA] 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 Massachusetts Nurse Association to Be Designated as an Intervenor ("OHCA Ruling"). In its Ruling, OHCA designated MNA as an "Intervenor with limited rights," with no right to cross-examine witnesses. 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: "[MNA] 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 Fadel Testimony Falls Far Outside the Permissible Scope of Testimony

The Fadel Testimony falls outside the limited sphere within which the OAG and OHCA have ruled that MNA 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, Mr. Fadel'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.

For example, the proffered testimony includes speculation addressed to policy questions concerning private ownership of hospitals and about what may occur under private ownership of Waterbury Hospital. Fadel Testimony at 2-3. 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.

Mr. Fadel also speculates about the effects on competition. Fadel Testimony at 2. But, again, such considerations are outside the scope of the matter before the OAG and OHCA. Moreover, the issues of competition and market share are 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 GGG, 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 Mike Fadel, submitted October 6, 2014, and filed on behalf of MNA, be stricken from the Table of the Record (Exhibit GGG) in this proceeding as outside the scope of testimony MNA is permitted to submit;
2. That MNA be precluded from submitting any further testimony, whether from Mr. Fadel or any other MNA representative, that falls outside the scope of what the OAG and OHCA have expressly defined as the limited scope of testimony MNA may present in this proceeding, that is testimony that falls outside the scope of Connecticut General Statutes §§ 19a-639, 19a-486c or 19a-486d; and
3. That MNA 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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