STATE OF CONNECTICUT	:	
DEPARTMENT OF PUBLIC HEALTH	:	**Docket No. 13-31838-CON**
OFFICE OF HEALTH CARE ACCESS	:	
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OFFICE OF THE ATTORNEY GENERAL	:	**Docket No. 13-486-01**
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IN RE: PROPOSAL FOR JOINT	:	
VENTURE BY GREATER	:	
WATERBURY HEALTH CARE, INC.	:	
AND VANGUARD HEALTH SYSTEM, INC.	:	**October 6, 2014**

Pre-filed testimony of Barbara Simonetta, RN,
President, CHCA, NUHHCE, AFSCME
for Waterbury Hospital/Tenet CON Hearing (10/15)

Hello, my name is Barbara Simonetta and I am the president of CHCA, NUHHCE, AFSCME, the union representing over 1500 nurses, medical technicians and other health care workers in Connecticut, with 550 members at Waterbury Hospital. I thank you for accepting our application to be interveners in this docket concerning the acquisition and transfer of Waterbury Hospital, a public good, created by and supported for a century by the citizens of Waterbury and Connecticut, its assets and book of business, to a private for-profit entity that buys and sells hospitals. The transfer of this public asset should only occur after thoughtful consideration determines that it is in the best interests of those citizens, and not merely the shareholders of Tenet and its extremely well compensated corporate leadership.

We feel that it is appropriate for our union to intervene because Waterbury Hospital has been sustained over many years, not only by citizens and taxpayers, but by the hard work of its employees, a group that CHCA has had the privilege of representing for over 40 years. From the vantage point of the workers, serious questions arise over how this takeover will impact the quality of services to the community and the costs to patients, taxpayers and employers who pay insurance premiums. Also testifying will be AFSCME's research staff from Washington, DC, Gary Storrs, who can give examples that flesh out our concerns, and Sal Luciano, Executive Director of AFSCME Council 4 here in Connecticut, who can discuss the impact on state employee health care costs from the perspective of his role on the SEBAC Health care cost containment committee.

For the purposes of this presentation I would like to focus on Tenet's fitness to acquire this hospital, the effects of private ownership of former non-profit hospitals on care and access, the purchase of doctor practices, the dominance by Tenet based on the total scope of proposed acquisitions, and the effects on Waterbury Hospital's workers. I also want to offer proposed solutions to mitigate the impact of this proposed acquisition on our community.

Tenet's fitness to acquire Waterbury Hospital

Over the years Tenet has grown to be one of the largest owners of hospitals in the nation, owning 80 hospitals and over 190 outpatient centers, according to its website. But this growth has come with a price to taxpayers and patients. Over the last 12 years Tenet has:

- Paid nearly $1 billion in fines for Medicare fraud-DOJ Press release June 29, 2006,

- Paid $25 million for patients harmed or killed in their hospital during Katrina (bloomberg.com, 3/23/11, "Tenet settles class action lawsuit over Katrina Hospital death")

- Been sued for Medicaid kickbacks (DOJ press release, 2/19/2014, "Government Intervenes in Lawsuit Against Tenet Healthcare Corp. and Georgia Hospital Owned by Health Management Associates Inc. Alleging Payment of Kickbacks")

Tenet will claim that this is old news, that it has changed, that there is a new leadership instilling a culture of compliance and honesty. However, the charges are relatively recent and the Georgia case is brand new. While I believe institutions with a troubled past can change, it is important to implement strong safeguards to prevent old bad habits from re-appearing.

Effects of private ownership on care and access

Senator Chris Murphy recently released a report ("Impact of for-profit medicine on Medicare", August 15, 2014) on the effects of a for-profit entity acquiring not-for-profit hospitals and establishing market share. The study demonstrated that Medicare billing goes up and services shift to more profitable product lines and away from less lucrative (but still essential) services. Key findings include:

- For-profit hospitals are more likely to offer financially profitable services. For example, for-profits were 7 percent more likely to provide open-heart surgery than non-profits and 8 percent less likely to offer psychiatric emergency services. Tests for more than thirty other services yielded similar results. The study also found that for-profits were more responsive to rapid changes in profitability than the other types of hospitals.

- There has been a substantial increase in the number of for-profit long-term care hospitals (LTCHs), predominantly in states that already had this specialized level of care. On average, Medicare accounts for two-thirds of all LTCH discharges and pays these hospitals almost $39,000 per case. From 2003-2011, there was a 60 percent increase in for-profit long-term care hospitals, which corresponded with a 46 percent increase in total spending for these hospitals.

- States with higher percentages of for-profit hospitals spend more per Medicare beneficiary than states with high percentages of non-profit hospitals. In general, for-profit dominant states spend 3 percent more per Medicare enrollee than non-profit dominant states. Many of these states lack a regulatory framework to prevent excessive healthcare facilities and services. This "build it and they will come" mentality not only applies to for-profit hospitals but also to other for-profit operators in these states.

- If Connecticut's per-enrollee spending was the same rate as for-profit spending, Medicare would have spent $173 million in that same year for Connecticut beneficiaries. Overall, if per-enrollee spending was at the same rate in the top non-profit states as in the top for-profit states, the Medicare program would have spent nearly $2 billion more in 2009.

- Non-profit hospital behavior changes when for-profits are in the same market. This "spill-over" effect could be problematic for the existing network of non-profit hospitals in Connecticut that plan to stay non-profit.

- Research has found that the more for-profit hospitals there are in a city, the more non-profit hospitals in that area: (1) respond aggressively to revenue-increasing opportunities, (2) adopt profitable services, (3) discourage admissions of unprofitable patients, and (4) reduce resources devoted to treating the patients they do admit. Conversely, the presence of non-profits in a community is associated with increased quality of care in for-profit nursing homes, reduced mortality rates in for-profit dialysis facilities, and increased trustworthiness of for-profit health plans.

Tenet trumpets its ability though bulk purchasing to save money. It can buy goods at substantially cheaper rates than a standalone hospital can. This appears to be true, but Sen. Murphy's findings raise the question - where does that extra money go?
Access is directly related to costs. When costs rise, access is diminished.
As for quality of care, it should be noted that increasing participation by for-profits doesn't automatically lead to improved quality of care. An article from the *St. Louis Dispatch* dated November 24, 2013, entitled "St. Louis area hospitals receive mixed scorecard on quality measures", describes how hospitals are rated for performance and that they can be penalized in terms of federal reimbursement for poor performance:

> St. Louis University Hospital, which is owned by Dallas-based Tenet Healthcare Corp., showed a small decline in quality scores. The hospital will be penalized about 0.03 percent. Des Peres Hospital, which is also owned by Tenet, showed a modest improvement but not enough to avoid a penalty: It will have its payment rate reduced 0.38 percent.

Another troubling development is that Tenet is proposing to outsource its doctors in California. According to a *Modesto Bee* article dated June 12, 2014:

> The corporation that owns Doctors Medical Center of Modesto is considering a contract with a national management company that would replace contracts with physicians who save lives in the emergency room, care for patients in hospital beds and put patients to sleep before surgery. A hospital spokeswoman confirmed it's a topic of early discussion to see if a contract with a "single-source" provider makes sense for the Florida Avenue hospital. Physicians opposed to the proposal said it could lead to departures from the medical staff and ***undermine the quality of care*** (emphasis added) in affected departments at the hospital.... An agreement with a national company would replace local contracts with doctors and other providers who have cared for patients at Doctors of Modesto for years, physicians said. "I am sure some accountant in Dallas told the company they could save a lot of money if they do this," said Dr. Robert Barandica, chief of the medical staff and emergency department at Doctors of Modesto. "On paper, it may sound like a good idea, but they are not realizing what the impact is on the local level."

In a subsequent article on doctor outsourcing from August 20 2014, in the same newspaper:

> Fast-growing national companies, such as EmCare, employ doctors and other providers to staff hospitals that contract with the firms. The idea of replacing local physician contracts at up to 12 Tenet hospitals in the state brought a response from the 39,000-member California Medical Association in June. The association said the outsourced physician management services could undermine staff self-governance at hospitals and violate provisions of medical staff bylaws. The president of the American Academy of Emergency Medicine voiced opposition to the outsourcing proposal in a July letter to Tenet. "Many of these local physician groups have served their hospitals and their communities for decades and built strong, productive relationships with their medical and nursing staff and local communities," academy President Mark Reiter wrote. Reiter predicted a backlash from the hospital staff and community members if Tenet were to eliminate contracts with local physicians.

According to the first article, Tenet floated similar schemes in other California hospitals, but physician and patient outcries caused them to discard this plan. But Doctor Barandica's remarks bear repeating - a Dallas accountant, who has no idea of the impact on care, probably did think it was a good idea to save money (and reap additional profits). It raises the question: will similar profit-centered decisions be made here in Waterbury even at the detriment to patient care? Will Tenet be granted *carte blanche* to replace its medical staff in order to save money?

Purchase of Doctor's Practices

Conversely, Tenet's junior partner in the takeover bid, Yale-New Haven ("YNH"), has been buying up individual doctor practices in the New Haven area. This has caused billings to increase. The same procedures performed in the same office by the same personnel can be billed at a much higher rate because it is now deemed to be a hospital facility instead of a doctor's office. Such practices prompted legislation designed to put

a brake on these purchases and required the State Comptroller to study the impact of these purchases on its employee health care costs. Will YNH continue its purchase of doctors' practices? What impact will that have on rate-payers and taxpayers? After they buy the practices, will Tenet keep the facilities (and its higher reimbursement rates) but outsource and replace doctors like California has considered?

Total Scope of Tenet's activities

While the CON process that the Office of Health Care Access ("OHCA") and the Attorney General are undertaking may be technically correct, the piecemeal consideration of Tenet's purchases of Waterbury, St. Mary's, Bristol, and ECHN, coupled with its alliance with YNHH, *may result in establishing Tenet's market dominance in the state in a short period of time* - with scant thought given to what will happen when we allow such a development. As stated above, for-profits raise costs. Access is directly related to costs: when costs rise, access is diminished.

Several developments in other states offer some guidance on what the future may hold for Connecticut if Tenet is allowed such market dominance.

In Idaho, the Federal Trade Commission is investigating whether purchases similar to Tenet's will create a monopoly. Our Attorney General has joined in those proceedings.

The members of CHCA, NUHHCE, AFSCME - along with all Connecticut health care consumers - strongly applaud Attorney General George Jepsen's decision to join other states' attorneys general as *Amicus Curiae* in the health care antitrust appellate case pending in the United States Court of Appeals for the 9th Circuit (Case No. 14-35173). This appellate case is an appeal by the Saint Luke's Hospital and the Saltzer Medical Group in Idaho from a January 2014 decision of the Idaho Federal trial court, where the trial court decided that a proposed merger between the Saint Luke's Hospital and the Saltzer Medical Group would violate Federal and Idaho Antitrust laws, and would cause increased costs for consumers.

On January 24, 2014, Edith Ramirez, the Chairwoman of the Federal Trade Commission, issued a press release supporting the Idaho trial court's decision. Ramirez stated:

> The district court's ruling is an important victory that will benefit both competition and consumers in Nampa, Idaho, and the surrounding areas. The combination of St. Luke's and Saltzer would have given the merged hospital system the market power to demand higher rates for health care services, ultimately leading to higher costs for both employers and consumers. Keeping health care costs low and quality high by ensuring vigorous competition between providers is, and will continue to be, a top Commission priority.

On August 20, 2014, Attorney General Jepsen - along with the Attorneys General of several other states - filed their *Amicus Curiae* brief in order to support the Idaho trial

court's decision. In their brief at pages 9-11, the Attorneys General specifically cite Attorney General Jepsen's recent report in support of their arguments that the merger in Idaho violates the antitrust laws and harms consumers: "Connecticut Attorney General, Report of the Connecticut Attorney General Concerning Hospital Physician Practice Acquisitions And Hospital-Based Facility Fees (April 2014)."

CHCA, NUHHCE, AFSCME appreciates that Attorney General Jepsen has joined the fight for consumers in Idaho. We are also grateful that Mr. Jepsen is now carefully reviewing the proposed mergers here in Connecticut involving Tenet and Waterbury Hospital and YNH. It is crucially important for Mr. Jepsen to continue to fight for Connecticut health care consumers and to ensure that our antitrust laws are not being trampled in the name of "corporate investment" in Connecticut.

In Massachusetts an interesting development is occurring with Partners HealthCare's efforts to buy more hospitals. A settlement is being floated that will *cap the amount of rate increases that can occur after more hospitals are acquired.* After the initial settlement was reached, interveners objected and the judge reopened hearings on the appropriateness of the settlement. Here are some reports on that situation. First, a *Forbes* article from August 2011:

> While Romneycare is one large driver of rising costs in the Bay State, an equally large driver has been the 1993 merger between two eminent Harvard-affiliated hospitals, Massachusetts General Hospital and Brigham and Women's Hospital. With the two most prestigious hospitals in the state locking arms, insurers were hosed. The new hospital monolith, Partners HealthCare, could deny access to the beneficiaries of any insurer who dared not accept whatever they wanted to charge. After all, who would want to be on an insurance plan that didn't have access to the two most prestigious hospitals in Boston.
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> In 2008, the *Boston Globe* ran an important exposé on the "handshake that made healthcare history": Partners' secret agreement in 2000 with Blue Cross Blue Shield of Massachusetts, in which Blue Cross would give Partners more money, in exchange for Partners' promise that they would demand the same rate increases from everyone else. The growth rate of individual insurance premiums in the state doubled.... Today Partners dominates what was once one of the most competitive healthcare markets in the world, with a hospital and physician network big enough to overwhelm competitors and intimidate insurers. The government needs to do more to fight consolidation among hospitals. And there are signs that this is starting to happen. In 2010, the Department of Justice opened an investigation into "anticompetitive behavior" by Partners. And yesterday, the *New York Times*' Robert Pear reported that the Federal Trade Commission is challenging a similar merger in Toledo, Ohio, between ProMedica Health System of Toledo and St. Luke's Hospital of Maumee, a Toledo suburb.

As with the Partners case, the Toledo hospital executives are offering bromides about how consolidation will lead to "more efficient and cost-effective care." But the long history of hospital mergers shows no evidence that consolidation leads to either. Indeed, according to FTC lawyer Matthew J. Reilly, the merged Toledo hospitals immediately went to work jacking up rates.

St. Luke's chose to join ProMedica even though it concluded that the affiliation could "stick it to employers, that is, to continue forcing high rates on employers and insurance companies," according to an internal document unearthed by the commission.

"Soon after the acquisition was consummated," Mr. Reilly said, "ProMedica approached certain health plans to obtain higher reimbursement rates." The higher rates, he said, are typically passed on to consumers in the form of higher premiums, co-payments and other costs."

Similar "bromides" are the basis for Tenet's proposal to purchase hospitals in Connecticut.

And a more recent article from Joan Venocchi in October 5, 2014's *Boston Globe*:

> Someone who stands up to Partners HealthCare rather than kneels before it? That's unusual in Boston. But Superior Court Judge Janet L. Sanders so far has refused to let the powerful network of Harvard-affiliated hospitals and doctors push her around.
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> Sanders is reviewing what was supposed to be a routine settlement of an antitrust case. But at a recent hearing, she postponed any further action until Nov. 10. Saying she needs more time to weigh the consequences, she expressed serious concerns about the impact of the settlement on the state's overall health care system and the ultimate cost to consumers.
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> "This is the wrong venue for that," Bruce D. Sokler, one of Partners' lawyers, told the judge. "Your job is not to fix the health care policy system in Massachusetts."
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> To his suggestion that she is overstepping her bounds, Sanders replied, "I don't think that market impact can be ignored."
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> Partners is used to getting what it wants - when it wants it. That's been the pattern since its creation 20 years ago. But now, it's confronted by a judge who is questioning whether what Partners wants is good for Massachusetts, and she doesn't want to rush her decision. That's admirable.... The settlement now before Sanders would allow Partners to acquire at least three more hospitals and add several hundred more doctors to its network. In exchange, Partners would agree to keep price increases within the rate of inflation and restrict its contracts with

insurance companies. The Partners network already encompasses 10 hospitals-including Brigham and Women's and Massachusetts General - and more than 6,000 physicians.

Partners hoped the deal would be sealed last June. Instead, rivals challenged it. They asked for a 45-day public comment period, which Sanders extended until Sept. 15. She has now put off the next hearing until November... As attorney general, (Martha) Coakley negotiated the settlement. She first presented it as a way to limit Partners' growth and pricing. But after it ran into tough criticism, she amended the deal by capping price increases for patient services at two hospitals that are part of merger proposal. A cap is already part of the proposed merger with South Shore Hospital.

Judge Sanders is correct - market impact of mergers should not be ignored. Similar considerations should be taken here in Connecticut.

Effects on CHCA members

As the representative for collective bargaining for nurses and techs at Waterbury Hospital we have already seen the effects of Tenet's involvement at Waterbury Hospital. It has cost us our pension. More ominously though is the long term effects of for-profits entry into Connecticut's market. If costs go up, as has been the case in other states, we fear that there will be increased pressure on us to pay more for our health care, reduce wages or consolidate jobs in order to ensure Tenet's profits, executive pay, and stock prices remain high. With Tenet as a precedent, this pressure will be felt at all subsequent negotiations sessions in every one of our hospital bargaining units around the state.

Proposed Solutions

If the State deems that it is appropriate for for-profit entities to greatly expand in Connecticut, CHCA, NUHHCE, AFSCME recommends as a precondition to any approval that strong, enforceable, and clear conditions for Tenet or any other for-profit to abide by are established. These community benefits should include protections the AG and OHCA requires immediately, including that you:

1. Require, as a floor, similar protections to those required by the AG and OHCA in the Sharon Hospital/Essent purchase. Key items based on Sharon deal (or recommended to go farther than that deal) include:

   - Creation of a completely independent community advisory board *chosen by OHCA* with oversight responsibilities.

   - Appointment of an independent monitor through OHCA for at least 5 years, funded by the purchaser.

- Creation of a baseline report that would include information on the services, staffing levels, employee benefits, and community programs in place at the time of the sale, for the monitor and advisory board, with ongoing updates and before/after comparisons.

- Require staffing cuts or changes in next 5 years be subject to OHCA review.

- No reduction in transparency or information required of non-profit hospitals, such as filing 990-like documents, and requiring for-profits to do Community Needs Assessment reports.

- Creation of a self-funded board by the hospital to ensure compliance and perform audits.

- Creation of a charitable foundation from the charitable assets that is of an appropriate and considerable size, taking into account all charitable and taxpayer efforts and contributions over the hospital's history (i.e., state and municipal grants, funding from faith-based groups, Hill-Burton funding, foundation grants, etc.).

- The new Foundation should have right of first refusal to buy the hospital in the first 10 years if Tenet leaves.

- Agreement by Tenet to maintain charitable care, community services at similar or improved levels and an agreement that what will be spent is based on what has been contributed by community and public.

- Monitoring whether funds promised for hospital improvements and programs are spent and, if not, give unspent funds to charitable foundation.

2. Put protections in place with regard to ensuring payment of local taxes to municipalities.

3. Ban or strictly limit hospital facility fees, at a minimum for public employees and public programs funded by taxpayers.

4. Protect against price inflation and monopoly power, such as establishing a cap on price increases.

5. Require a "community benefits agreement" between community and purchasers that goes beyond simple IRS definitions and could include any of the above and additional safeguards for hospital employees and unions (including honoring the right to collectively bargain), employee benefits and the community.

Conclusion

Thank you for this opportunity to submit testimony and participate in this important hearing. We realize that the business of health care is rapidly changing with more emphasis on "business "at the expense of "care". We realize that there are forces that we cannot compete against: the loop between profits, share prices and out-of-whack executive compensation packages that are spiraling out of control, all of which are damaging good paying middle class jobs and standards of living. And in this case that closed loop may also impact our community's health. It is our hope that you will inject some controls over this process and mitigate the damage we fear will happen to not only our members but to patients, consumers, and taxpayers.