COMMENT ON DRAFT RECOMMENDATIONS OF THE GOVERNOR'S CERTIFICATE OF NEED (CON) TASKFORCE

December 14, 2016

Testimony of Cary S. Shaw,
Board Member of the Connecticut Coalition of Reason (CT CoR);
Patient's Right to Know Act Lead for the Secular Coalition for Connecticut (SC-CT); and
President of Humanists and Freethinkers of Fairfield County;

Who We Are

The Gallup Poll found, in its February 2016 report, that 39% of Connecticut's population describes themselves as non-religious (1). Some researchers would put that number significantly higher, as many people are afraid or shamed into not admitting their non-belief. CT CoR and SC-CT are the voices of this constituency, with organizations and independent individuals throughout the state.

The component organizations of the Connecticut Coalition of Reason have over 8,000 adherents, and include The Humanist Association of Connecticut; Connecticut Valley Atheists; the Congregation for Humanistic Judaism of Fairfield County; Hartford Area Humanists; Humanists and Freethinkers of Fairfield County; Atheist Humanist Society of Connecticut and Rhode Island; and the Yale Humanist Community.

We believe in a progressive life stance that, without supernaturalism, affirms our ability and responsibility to lead meaningful, ethical lives capable of adding to the greater good of humanity.

In my professional life, I developed a mathematical model for Yale Medical School and Yale-New Haven Hospital for use in surgically treating primary hyperparathyroidism. It tells the endocrine surgeon in real time when cure is achieved. This work is published in the peer-reviewed World Journal of Surgery (World J Surg (2014) 38:525-533). I add this so that you will know that I care about the proper use of evidence-based science to help patients.

Disclosure – Patient's Right to Know

We commend the Governor's CON Taskforce in taking the time and energy to develop recommendations to improve healthcare in Connecticut.

Improving competition in the healthcare environment, providing access to care for the underserved, and creating superior patient outcomes, are goals that are clearly enunciated by the CON Task Force, and which we support.

A meaningful component of any competitive environment is the provision of information to consumers, in this case the patients, in advance of the decision to purchase. Today a "health care provider" may choose, by policy, to refuse to provide "standard of care" medical procedures, claiming religious reasons, and to avoid informing potential and actual patients, not only that it does not provide these treatments, but even the fact that these treatments exist and are medically appropriate.

For example, a thorough examination of the websites of Connecticut's major religious hospitals reveals that none of them mention under the category of Services, or elsewhere, that there are medical services they will not allow to be performed.

We agree with the 2016 statement by the organization of ObGyn doctors, the American College of Obstetricians and Gynecologists (ACOG):
"ACOG is concerned that a growing number of U.S. health care systems and hospitals limit the scope of reproductive health care services that they provide.
...Women should have access to scientifically based health care. Prohibitions on essential care that are based on religious or other non-scientific grounds can jeopardize women's health and safety.
Restrictive hospital policies can damage the patient-physician relationship. In some instances, physicians are prohibited from informing patients about treatment options that are not permitted at the hospital, depriving patients of valuable information and the option of going elsewhere for treatment (if alternatives exist in the community)."

Some problems extend uniquely to men's health, such as removal of diseased reproductive tissue. And, in geographic areas where patients are especially vulnerable for financial and educational reasons, the impact is especially serious.

We recommend that a regulation be adopted to assure full disclosure, described as "Patient's Right to Know"; Model wording attached. This regulation does not in any way restrict a healthcare entity or cause it any material expense; it merely requires clear and upfront disclosure.

<u>Precarious Position of Doctors</u>

In the popular mind the term "healthcare provider" means a doctor or other medical person. Perniciously, the term may refer to an institution, controlled by an out-of-state healthcare conglomerate, which forbids its trained medical personnel from providing necessary and appropriate medical services.

As Dr. Amy Breakstone testified on the Emergency Contraception bill, which CT then passed into law:
"My concern is also for the medical provider....(Don't) continue to place those providers in the untenable position where following what they know to be correct medical protocol is to place their jobs in jeopardy. Too often emergency facilities must find 'a work

around' or a 'creative solution' in order to do what is medically right. Please provide these conscientious medical providers your support."

Transfers of Ownership

In Connecticut there not only is merger activity among hospital institutions, but the consolidation activity of larger institutions taking over smaller ones, such as surgical centers and doctor's practices. We fully support the Recommendation under "Actions: Transfers of Ownership: Option 1, bullet points 2,3,and 4:
-- Applying expanded CON review to hospital acquisitions of health care facilities and large group practices (cost and market impact review, mandatory public hearing, stronger application criteria, post-transfer compliance monitoring)
-- Applying expanded CON review to all hospital mergers and acquisitions (not only those involving for-profit entities and larger hospital systems, as under current law)
-- Imposing consequences for non-compliance with post-transfer conditions

And we request that such review specifically include examining any resultant termination, reduction or relocation of services, for non-medical reasons.

Other Recommendations

The Draft Recommendations of the Certificate of Need (CON) Taskforce contains many recommendations and alternatives. Among additional ones we especially support or wish to comment upon are:

--Under "Terminating Services" we recommend keeping in the Status Quo language "CON review of...surgical services at an outpatient surgical facility." If it is too onerous for OHCA (Office of Health Care Access) to monitor all such facilities, then the proper solution in our opinion is to add the caveat "terminating services for religious reasons."

--Actions: Reduction of Services: Support Option 2: apply to a hospital

--Actions: Transfers of Ownership (discussed above)

--Organization: Support 1b: include front-line caregivers...to serve...(as) experts.

--Public Input: Support Option 1, (not alternative 1a):
----- Requiring that the subject matter panel of experts includes consumer representation
----- Requiring that hospital acquisitions of other health care facilities and large group practices receive a mandatory public hearing

--Transparency: Support Option 1: Expand ...methods of informing the public...

--CON Post-Approval Compliance Mechanisms: Support the strengthening (Options 1,2,4,5)

--CON Evaluation Methods: Option 2, Support that Plan tracks access to and cost of services across the state.

Summing Up

As Denise Merrill, now Secretary of the State, testified as an elected state Representative, "The women of Connecticut should expect that when they enter a hospital they are being provided with all legal healthcare options."

We ask that the Taskforce and Governor implement these ideas fully and clearly, without delay.

Cary S, Shaw
Humanists and Freethinkers of Fairfield County
11 Lycett Ct
Norwalk CT 06850
caryshaw@optonline.net
(203)849-8978
(203)505-3180 cell

Footnote:
(1) http://www.gallup.com/poll/125066/State-States.aspx

Attached:
Patient's Right to Know Model Act

Introduction

In the United States, religious hospitals account for more than 17 percent of all hospital beds, and religiously based hospitals, physicians, and other health care entities treat more than 1 in 6 Americans each year.

Current law allows these health care providers to opt out of providing medical services such as abortions, birth control, tubal ligation, hormone replacement therapy, and nearly any other treatment that conflicts with the provider's religious beliefs or the religious doctrine of the affiliated religious group. There are no state or federal laws or regulations that require health care providers to inform patients of services or treatments a provider will not provide because of the provider's religious beliefs.

The Patient's Right to Know Act, a proposed piece of legislation drafted by American Atheists, seeks to ensure that patients are able to make completely informed medical decisions about their health by requiring health care providers to disclose to patients and prospective patients exactly which types of medical care they do not provide because of their religious beliefs.

"This is about disclosure, not about forcing providers to do anything they have a religious objection to. If a religiously affiliated hospital or health care provider has some objection to a specific treatment, they can continue to opt out of providing those services. What they can't do is pull a bait and switch on patients and potential patients," said Amanda Knief, National Legal and Public Policy Director of American Atheists.

Model Patient's Right to Know Act Summary:

Reconciling patients' rights to know all their health care options with the desire of some health care providers to not provide certain care based on religious or philosophical beliefs.

This model act balances the religious liberty of health care providers with the basic health care rights of their patients.

This act requires that any health care provider who uses **religious beliefs** to determine patient care instead of standard medical guidelines and practices,

subsequently resulting s in any health care options being omitted or favored based on these religious beliefs, **to inform patients in writing** of health care services that are not available to the patients through this particular provider; **patients must provide signed consent acknowledging they have received this information.** Additionally, this act requires health care providers who use religious beliefs to determine patient care to inform health insurance companies of specific health care options that are not provided; health insurance companies will share that information with their enrollees and insured participants.

Section 1. (Title) This Act may be cited as the "Patient's Right to Know Act".

Section 2. (Definitions)

1. The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

2. The term "health care entity" means— a. A hospital that is licensed to provide health care services by the State in which it is located. b. An entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care. c. A licensed health care practitioner such as a doctor, physician, nurse, nurse practitioner, or other practitioner licensed to provide health care services by the State in which the practitioner is located.

3. The term "health care services" means inpatient hospital services, inpatient critical access hospital services, or extended care services; outpatient nursing services, outpatient diagnostic or therapeutic items or services, outpatient surgical or medical services, with a physician who has clinical privileges; any services provided by a physician or licensed health care practitioner; or private-duty nursing or other privateduty attendant duties.

4. The term "hospital" means an entity that is primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled,

or sick persons; maintains clinical records on all patients; and has bylaws in effect with respect to its staff of physicians.

5. The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

6. The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

7. The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

8. The term "religious beliefs" means any set of philosophical or religious beliefs, guidelines, decrees, directives, or other instructions determining patient care that is not based on legal, peer-reviewed, or scientifically accepted standards of health care, and may be imposed on health care entities through employment or clinical privileges.

Section 3.

Not later than 12 months after the effective date of this Act, a health care entity which does not provide certain health care services based on the religious beliefs of the entity shall adopt a policy that provides a complete list of health care services that will not be provided to patients of the health care entity, based on the entity's religious beliefs.

Prior to initiation of treatment or in the case of an emergency as soon as the patient is able or patient's representative is available, the health care entity which adopted such a policy shall provide a written notice to every patient that includes the list of services that will not be provided by the entity based on the entity's religious beliefs and requires the patient or patient's representative to acknowledge receipt of the notice and the list of services that will not be provided.

Section 4.

Not later than 12 months after the effective date of this Act, health care entities shall provide a complete list of any health care services the health care entity will not provide based on religious beliefs to all group health plan providers and health insurance issuers offering group or individual health insurance coverage from whom the health care entity seeks and accepts payments.

The health care entities shall prominently list on the entities' websites the health care services that will not be provided to patients based on the entities' religious beliefs and shall provide the list of health care services not provided based on the entities' religious beliefs upon request to any person.

Section 5.

Not later than 18 months after the effective date of this Act, group health plan providers and health insurance issuers offering group or individual health insurance coverage shall provide enrollees with a list of any health care entities within their network of health care providers that do not provide certain health care services based on religious beliefs and provide a list of health care services that will not be provided by each health care entity listed. Such information shall also be available on the providers' and issuers' websites.

Section 6.

Not later than 12 months after the effective date of this Act, a health care entity that does not provide health care services based on religious beliefs shall inform any State or Federal agency that licenses the health care entity of all health care services that are not provided. State and Federal agencies that enroll or otherwise oversee the application of health care entities into state or federal health care reimbursement programs shall amend the application process to include a requirement that health care entities disclose any health care services the entity does not provide based on the entity's religious beliefs.

Section 7.

Health care entities shall provide information about health care services that are not provided by the health care entities based on religious beliefs when applying for any State or Federal grant related to providing any kind of health care services.
Written by Amanda Knief, Esq., August 2015.