STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 4, 2012

Ms. Nancy M. Hamson
Director of Planning
Greenwich Hospital
5 Perryridge Road
Greenwich, CT 06830

Re: Notice of Civil Penalty Pursuant to Conn. Gen. Stat. § 19a-653

Dear Ms. Hamson:

On or about September 15, 2011, the Department of Public Health, Office of Health Care Access, ("OHCA") received a report that Greenwich Hospital was going to close its dental clinic located at 5 Perryridge Road, Greenwich, Connecticut ("Dental Clinic"). Thereafter, OHCA contacted Greenwich Hospital and learned that it had, in fact, closed the Dental Clinic as of October 1, 2011.

OHCA was not afforded an opportunity to determine whether a certificate of need ("CON") was required in this matter since Greenwich Hospital failed to file a timely CON determination request as to whether the discontinuance of the Dental Clinic required the filing of a CON application. Pursuant to Connecticut General Statutes § 19a-638, as amended by Public Act 11-183, a CON issued by OHCA is required for the termination of inpatient or outpatient services offered by a hospital. Because discontinuance of the Dental Clinic was a termination of an outpatient service at a hospital, Greenwich Hospital was required to file a CON application with OHCA specific to this termination of service.

Pursuant to Connecticut General Statutes § 19a-653, the Department of Public Health is authorized to impose a civil penalty against any person, health care facility or institution that willfully fails to seek certificate of need approval for any of the activities described in Connecticut General Statutes § 19a-638.

Connecticut Department of Public Health

Phone: (860) 509-8000 • Fax: (860) 509-7184 • VP: (860) 899-1611
410 Capitol Avenue, P.O. Box 34038
Hartford, Connecticut 06134-0308
www.ct.gov/dph

This letter shall serve as formal notice under § 19a-653(b) that the Department of Public Health is imposing a civil penalty against Greenwich Hospital as follows:

REFERENCE TO THE SECTIONS OF THE STATUTES INVOLVED

1. Connecticut General Statutes § 19a-638 related to the activities requiring a certificate of need; and
2. Connecticut General Statutes § 19a-653 related to the imposition of a civil penalty.

STATEMENT OF THE MATTER ASSERTED OR CHARGED

Greenwich Hospital willfully failed to comply with Connecticut General Statutes § 19a-638 by closing the Dental Clinic on October 1, 2011 without submitting a CON application to OHCA for approval.

STATEMENT OF THE AMOUNT AND INITIAL DATE OF THE CIVIL PENALTY IMPOSED

$1,000 per calendar day starting on October 1, 2011 (the day after the last day the Dental Clinic was in operation) and ending on June 11, 2012 (the day prior to the day OHCA received Greenwich Hospital's CON application). The total amount of the civil penalty imposed is $256,000 (Two-hundred Fifty-six Thousand and 00/100 Dollars).

STATEMENT OF THE PARTY'S RIGHT TO A HEARING

Pursuant to Connecticut General Statutes § 19a-653(c), Greenwich Hospital has fifteen (15) business days from the date of the mailing of this notice to make written application to the Department of Public Health to request a hearing to contest the imposition of the penalty. Therefore, such request for a hearing must be received by the Department of Public Health on or before the close of business on October 25, 2012. A failure to make a timely request for a hearing shall result in a final order for the imposition of the penalty.

Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner

Huber, Jack

From: Huber, Jack
Sent: Friday, October 26, 2012 2:03 PM
To: HelpDesk, DPH
Cc: Rahman, Aminur; Martone, Kim; Hansted, Kevin; Roberts, Karen
Subject: Information to be Added to the OHCA Wesite - Request for Public Hearing by Greenwich Hospital under DN: 12-31797

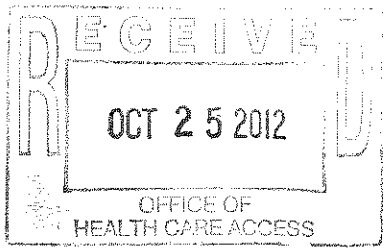
Dear Aminur – Please place the following information on OHCA's website for Greenwich Hospital's hearing request. Thank you. Jack

- NEW!!! On October 25, 2012, OHCA received Greenwich Hospital's Request for a Public Hearing to Contest the Imposition of a Civil Penalty for Failure to Comply with Section 19a-638, C.G.S. This request was filed under Docket No. 12-31797.

Applicant:	Greenwich Hospital
Docket No.:	12-31797
Proposal Description:	The Request of Greenwich Hospital for a Public Hearing to Contest the Imposition of a Civil Penalty for Failure to Comply with Section 19a-638, C.G.S.
Expenditure:	$0
Location:	Greenwich
Initial Filing:	October 25, 2012
Deemed Complete:	

FRANK A. CORVINO
President &
Chief Executive Officer

GREENWICH HOSPITAL
YALE NEW HAVEN HEALTH



October 24, 2012

Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner
Office of Health Care Access
410 Capital Avenue, MS #13HCA
P. O. Box 340308
Hartford, CT 06106

Re: Greenwich Hospital
Notice of Civil Penalty Pursuant to Conn. Gen. Stat. §19a-653

Dear Deputy Commissioner Davis,

We are in receipt of your October 4, 2012 correspondence giving notice of the Department of Public Health's intention to impose a $256,000 civil penalty against Greenwich Hospital for its alleged failure to comply with Section 19a-638 of the Connecticut General Statutes. In accordance with Section 19a-653(c) of the General Statutes, Greenwich Hospital hereby requests a hearing to contest the imposition of this penalty.

Sincerely,

Frank A. Corvino
President and CEO
Greenwich Hospital

cc: Jennifer L. Groves, Esq.

Huber, Jack

From: Hodys, Deborah <Deborah.Hodys@greenwichhospital.org>
Sent: Wednesday, October 24, 2012 6:28 PM
To: Huber, Jack
Cc: Martone, Kim; User, OHCA
Subject: Greenwich Hospital Hearing Request CGS 19a-653
Attachments: 10-24-12 Greenwich Hospital Hearing Request CGS 19a-653.pdf

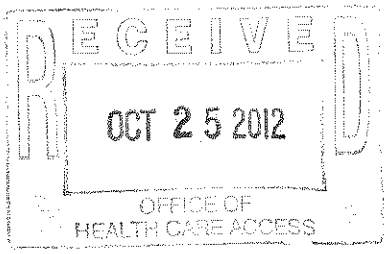
Dear Mr. Huber:

Attached please find Greenwich Hospital's hearing request to contest imposition of a civil penalty as described in Deputy Commission Davis's October 4, 2012 correspondence.

Please note that we have additionally mailed an original and two (2) copies of the attached hearing request directly to Deputy Commissioner Davis via Federal Express overnight mail, and will also fax the hearing request to Deputy Commission Davis.

Sincerely,

Deborah Hodys



Deborah A. Hodys
VP LEGAL SERVICES & GENERAL COUNSEL, GREENWICH HOSPITAL
DEPUTY GENERAL COUNSEL, YALE NEW HAVEN HEALTH SYSTEM

Greenwich Hospital
5 Perryridge Rd.
Greenwich, CT 06830
Phone: 203-863-3950

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

November 14, 2012

Ms. Deborah A. Hodys, Esq.
VP Legal Services & General Counsel
Greenwich Hospital
5 Perryridge Road
Greenwich, CT 06504

RE: Greenwich Hospital; Docket Number: 12-31797
Request for a Hearing to Contest the Imposition of a Civil Penalty for Failure to Comply with § 19a-638 of the Connecticut General Statutes Pertaining to the Activities Requiring a Certificate of Need
Notice of Hearing

Dear Ms. Hodys:

On October 25, 2012, the Office of Health Care Access ("OHCA") received Greenwich Hospital's ("Applicant") request for a hearing to contest the imposition of a civil penalty for failure to comply with § 19a-638 of the Connecticut General Statutes, as amended by Public Act 11-183.

Pursuant to Connecticut General Statutes § 19a-653(c), OHCA may hold a hearing when a health care facility or institution requests a hearing to contest the imposition of a civil penalty.

This hearing notice is being issued pursuant to Connecticut General Statutes §§ 19a-653 (c) and 4-177.

Applicant:	Greenwich Hospital
Docket Number:	12-31797
Request:	For a Hearing to Contest the Imposition of a Civil Penalty for Failure to Comply with § 19a-638, of the Connecticut General Statutes, as amended by Public Act 11-183.

Notice is hereby given of a hearing in this matter to be held on:

Date: December 12, 2012

Time: 10:00 a.m.

Place: Department of Public Health, Office of Health Care Access
Third Floor Hearing Room
410 Capitol Avenue, Hartford, Connecticut

Sincerely,

Kimberly R. Martone
Director of Operations

Enclosure

cc: Henry Salton, Esq., Office of the Attorney General
Marianne Horn, Department of Public Health
Kevin Hansted, Department of Public Health
Wendy Furniss, Department of Public Health
Marielle Daniels, Connecticut Hospital Association

KRM:JAH:lmg

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	3143
RECIPIENT ADDRESS	912037722037
DESTINATION ID	
ST. TIME	11/14 12:49
TIME USE	00'28
PAGES SENT	3
RESULT	OK

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: JENNIFER L. GROVES, ESQ.
FOR GREENWICH HOSPITAL

FAX: (203) 772-2037

AGENCY: UPDIKE, KELLY AND SPELLACY, P.C.

FROM: JACK HUBER

DATE: 11/14/2012 **Time:** ~11:45 am

NUMBER OF PAGES: 3
(including transmittal sheet)

Transmitted: Greenwich Hospital
Notice of Hearing to Contest the Imposition of a Civil Penalty
DN: 12-31797

PLEASE PHONE Jack A. Huber at (860) 418-7069

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	3144
RECIPIENT ADDRESS	912038633954
DESTINATION ID	
ST. TIME	11/14 14:34
TIME USE	00'33
PAGES SENT	3
RESULT	OK

STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: DEBORAH HODYS, ESQ.

FAX: (203) 863-3954

AGENCY: GREENWICH HOSPITAL

FROM: JACK HUBER

DATE: 11/14/2012 **Time:** ~1:25 pm

NUMBER OF PAGES: 3
(including transmittal sheet)

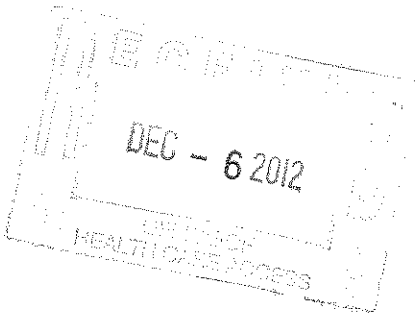
Transmitted:	GreenwichHospital Notice of Hearing to Contest the Imposition of a Civil Penalty DN: 12-31797

PLEASE PHONE Jack A. Huber at (860) 418-7069
IF THERE ARE ANY TRANSMISSION PROBLEMS.

5 Perryridge Road
Greenwich, CT 06830-4697
203-863-3901
Fax 203-863-3921

GREENWICH HOSPITAL
YALE NEW HAVEN HEALTH

FAX



Date: December 6, 2012

To: Kevin T. Hansted

Fax Number: 860-418-7053

From: Frank A. Corvino, President & CEO – Greenwich Hospital

Subject: **Greenwich Hospital**
Hearing to Contest Imposition of Civil Penalty for Failure to Comply with Section 19a-638
Docket No. 12-31797-CON

Number of pages including cover sheet: 51

FRANK A. CORVINO
President &
Chief Executive Officer

GREENWICH HOSPITAL
YALE NEW HAVEN HEALTH

December 6, 2012

VIA ELECTRONIC MAIL & FEDERAL EXPRESS

Kevin T. Hansted
Staff Attorney & Hearing Officer
State of Connecticut
Department of Public Health
Office of Health Care Access Division
410 Capitol Avenue
Post Office Box 340308
Hartford, CT 06134-0308

Re: Greenwich Hospital
Hearing to Contest Imposition of Civil Penalty for Failure to Comply with Section 19a-638
Docket No. 12-31797-CON

Dear Attorney Hansted:

Enclosed please find an original and four (4) copies of the testimony of Brian J. Doran, M.D., Executive Vice President and Chief Operating Officer of Greenwich Hospital, and Nancy Hamson, Greenwich Hospital's Director of Operations, in connection with the December 12, 2012 public hearing on this matter. Dr. Doran and Ms. Hamson will be available at the public hearing to adopt their testimony under oath and for cross-examination by DPH/OHCA.

Also enclosed is an Appearance from the law firm of Updike, Kelly & Spellacy, P.C. ("UKS"). Attorney Jennifer Groves of UKS will be representing Greenwich Hospital at the public hearing.

We look forward to the opportunity to present our evidence and arguments in opposition to the civil penalty imposed against Greenwich Hospital by DPH under C.G.S. §19a-653.

Very truly yours,

Frank Corvino
President and CEO
Greenwich Hospital

643510

5 Perryridge Road
Greenwich, CT 06830-4697
(203) 863-3000
Fax (203) 863-3921

STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

IN RE: GREENWICH HOSPITAL HEARING TO CONTEST IMPOSITION OF CIVIL PENALTY FOR FAILURE TO COMPLY WITH SECTION 19a-638	DOCKET NO. 12-31797-CON
	DECEMBER 6, 2012

NOTICE OF APPEARANCE

In accordance with Section 19a-9-28 of the Regulations of Connecticut State Agencies, please enter the appearance of Updike, Kelly & Spellacy, P.C. ("Firm") in the above-captioned proceeding on behalf of Greenwich Hospital ("Greenwich"). The Firm will appear and represent Greenwich at the public hearing on this matter, scheduled for December 12, 2012.

Respectfully Submitted,

GREENWICH HOSPITAL

By: _____

JENNIFER L. GROVES, ESQ.
Updike, Kelly & Spellacy, P.C.
265 Church Street
One Century Tower
New Haven, CT 06510
Tel: (203) 786-8300
Fax (203) 772-2037

Greenwich Hospital Dental Clinic
Docket No. 12-31797-CON

Civil Penalty Hearing
December 12, 2012

Prefiled Testimony of Brian J. Doran, M.D.

Good morning Attorney Hansted and members of the Department of Public Health ("DPH") and Office of Health Care Access ("OHCA") staff. My name is Dr. Brian Doran and I am an Executive Vice President and the Chief Operating Officer of Greenwich Hospital. I would like to thank you for the opportunity to testify today in opposition to the civil penalty imposed by DPH on Greenwich Hospital for our alleged "willful failure" to file a CON Application in connection with the contraction of our dental services. Before assuming my current position, I served as Greenwich Hospital's Senior Vice President for Medical Services and Chief Medical Officer. In this capacity I oversaw the preventative and restorative dental services provided in our outpatient clinic. I was involved with the decision to eliminate that subset of the overall dental services provided at the Hospital, as was my colleague Nancy Hamson, Greenwich Hospital's Director of Operations. Ms. Hamson is here with me today and together we hope to give DPH/OHCA a better understanding of the process around the contraction of dental services at the Hospital and why we did not (and still do not) believe that this change in services requires CON approval. Because we believed that the contraction of services did not require CON review, we respectfully submit that Greenwich Hospital could not have "willfully failed" to file a CON application that we knew to be required, and a civil penalty should not be imposed under Section 19a-653 of the Connecticut General Statutes.

Decision to Contract Dental Services

As you know, the decision to contract the dental services offered at the Hospital was driven by the need to close a budget gap caused by the imposition of a state hospital tax during the summer of 2011. This tax of approximately $12 million, which took effect on July 1, 2011, had a disproportionately adverse impact on Greenwich Hospital when compared with other hospitals in the state. The net revenue impact on Greenwich was a loss of approximately $8.5 million. St. Francis Hospital and Hartford Hospital had the next highest adverse net revenue impacts at $6.3 million and $5.3 million, respectively.

When the hospital tax was announced, Greenwich Hospital began the process of evaluating any and all cost-savings opportunities in order to ensure that we would remain financially stable and continue to fulfill our mission to provide core hospital services to the community. This process was deliberative and thoughtful and involved input and counsel from Greenwich Hospital senior management, our Board of Directors and outside consultants. The process was also fluid, evolving over a period of several months. Our efforts focused on changing how care is provided in order to ensure maximum efficiency without compromising the high quality of care for which Greenwich Hospital has always been regarded. Areas of consideration included pay policies, practices and benefits; restructuring the staffing and operations of various departments; staff reductions; relocation/integration of the physical location of certain services; and program reorganization and curtailment.

Greenwich Hospital retained the global healthcare management consulting firm of Kurt Salmon Associates ("KSA") to analyze the Hospital's clinical portfolio, prioritize programs and services and make recommendations on potential cost-savings opportunities. KSA was charged

with evaluating all programs and services with an understanding that certain mission-critical "core" hospital services would be maintained no matter what the cost to Greenwich Hospital. KSA identified many such services, including geriatric and psychiatric services, which have had a consistently negative impact on Greenwich Hospital's net revenue. To offset the impact of the state hospital tax, we needed to make cuts, which included the contraction of "non-core" clinical services such as the preventative and restorative dental services provided at our outpatient clinic, which are otherwise available in the greater Greenwich area.

The main issue before DPH today is whether Greenwich Hospital knew that a CON was required to contract its dental services. Only if Greenwich Hospital knew that a CON was required, and made a conscious decision not to request CON approval despite this legal requirement, can a civil penalty be imposed for "willful failure" to comply with Section 19a-638 of the General Statutes. We understand that OHCA's concerns arise from newspaper coverage of the cuts made at Greenwich Hospital, which suggested that contraction of the Hospital's dental services may require OHCA approval. Note, however, that these articles were written at a time when Greenwich Hospital was still reviewing the exact nature of changes to be made and whether and to what extent regulatory approvals were required.

As previously mentioned, the process around deciding which cost-savings measures would be implemented to offset the state hospital tax was a fluid one. Greenwich Hospital considered many factors, including existing costs and a need to ensure the availability of mission-critical services, in making these decisions. Also considered was the availability of services elsewhere in the community. Various scenarios were proposed and discussed before the Hospital settled on the options that were eventually implemented. Once a final decision was

made to contract dental services via elimination of the preventative and restorative component of the continuum of care, Hospital staff took a more careful look at OHCA and other regulatory requirements. We understand that a CON is required for the termination of services, which is why we looked specifically at CON laws and precedent in this regard. However, after careful consideration of the changes being proposed, Greenwich Hospital made a good faith determination that this was not a termination of services and that CON approval was not required. DPH should not therefore, take the fact that a newspaper article published several months before the contraction of services ultimately took place mentions a potential need for CON approval, to mean that Greenwich Hospital knew a CON was required and "willfully failed" to make application to OHCA.

The decisions we made that summer were not made lightly, but rather were made after much consideration of the impact that they would have on our community. Greenwich Hospital coordinated implementation of the cost-savings measures that were ultimately agreed upon and communicated the changes to the Hospital's staff and the public. My colleague Ms. Hamson is going to discuss in greater detail the process that was undertaken by Greenwich Hospital to determine that CON approval was not required for the contraction of dental services. What I will add is that based on my involvement in that process, we did not believe that a CON was required for the activities we were undertaking. If we had thought a CON was required, we would have applied for one. If we were unsure whether a CON was required, we would have requested a CON determination or made an informal inquiry of OHCA regarding the contraction of services. I believe our past history of compliance proves this to be true. We were confident in our position, and remain so today, so much so that we announced the contraction of dental services to our staff and the public, knowing that OHCA would ultimately learn of it. We had no worry

that we were violating CON laws and were surprised to hear of OHCA's concern. Nevertheless, we cooperated fully with OHCA's investigation and filed a CON Application when requested to do so, even though we respectfully disagree that our actions were a termination of services.

Nature and Amount of Penalty Is Excessive

As Ms. Hamson will tell you, there is nothing in the statutes or regulations or in OHCA precedent that would have informed us that a contraction (versus total elimination) of services required CON approval. We respectfully disagree with OHCA's conclusion that services were terminated, which is a prerequisite for a CON being required pursuant to Section 19a-638(a)(4) of the Connecticut General Statutes. Moreover, we strongly disagree with DPH's conclusion that Greenwich Hospital "willfully failed" to seek CON approval for an activity regulated by Section 19a-638. *Willful failure to file a CON application when an application is required* is a prerequisite to the imposition of a civil penalty under Connecticut General Statutes Section 19a-653.

No "Willful Failure" to Seek a CON

Section 19a-653 provides that a healthcare facility that "willfully fails to see certificate of need approval for any of the activities described in section 19a-638" shall be subject to a civil penalty. Although there is no guidance as to what "willful failure" means in the context of Section 19a-653, the courts have interpreted this phrase at it appears in other statutes. For example, in *Pabon v. Commissioner of Social Services et al.*, 1994 Conn. Super. LEXIS 966 (attached as Exhibit A), the Court discussed the meaning of "willful failure" as that term is used in Section 17-281a(a) of the General Statutes. In referencing a Department of Social Services

("DSS") General Assistance Program Policy Manual, the Court states that in determining whether a "willful failure" has occurred, DSS must look at whether an individual "clearly understood what was expected of him/her and whether the failure to comply was intentional … ." In *DeGregorio v. Glenrock Condominium Association, Inc.*, 2009 Conn. Super LEXIS 2729 (attached as Exhibit B), the Court sought to define "willful failure" as that term is used in the Common Interest Ownership Act, C.G.S. §47-278 ("CIOA"). This statute allows for the imposition of punitive damages against anyone who "willfully fails" to comply with the requirements of the CIOA. The *DeGregorio* Court looked to the Supreme Court for guidance regarding the definition of "willful" and in doing so concluded that it means "intentional and done with the purpose of producing injury." The Court in that case found that the plaintiff had sufficiently plead "willful failure" by alleging that the defendant knew of property defects and intentionally chose not to fix them.

Here, Greenwich Hospital did not know that the contraction of dental services was a termination of services under Section 19a-638. In fact, we believed and continue to believe this not to be the case. Accordingly, DPH cannot find that we understood a CON was required for our conduct and intentionally failed to request one. Greenwich Hospital lacked both the knowledge of the underlying requirement (because, as previously mentioned, we respectfully disagree with OHCA's conclusion that CON approval was required in these circumstances) and intent not to comply with the law. Without these, there can be no "willful failure" and without a "willful failure" to comply with CON laws, there can be no civil penalty.

Imposing Daily Maximum Penalty Is Inappropriate

Moreover, even assuming for the sake of this discussion that Greenwich Hospital "willfully failed" to file a CON application (which the Hospital denies), the penalty imposed by DPH is excessively punitive. The $1,000 per day penalty is the *maximum* penalty allowed by Section 19a-653(a). DPH has absolute discretion to impose a significantly lower penalty (C.G.S. §19a-653(c)). This discretion can and should have been exercised in this instance, where there is a legitimate disagreement as to the applicability of the law, where the provider made a good-faith attempt to comply with the CON statutes, and where the provider has a past history of compliance with CON laws and has cooperated fully and promptly with OHCA's investigation.[1] Our research of OHCA precedent reveals no other matter in which the agency imposed a significant civil penalty, and indeed in the very few instances in which DPH/OHCA has imposed civil penalties against providers for violating CON laws, merely nominal fines were imposed. The fine being assessed against Greenwich Hospital is more than ***100 times*** any amount previously imposed by OHCA and reported on the agency's website.

With all due respect, Greenwich Hospital believes that the imposition of penalties of such widely varying amounts is arbitrary and capricious and an unreasonable exercise of DPH/OHCA's discretion in enforcing its statutes. It is not reasonable to impose the maximum penalty allowed by law against a provider for its alleged failure to comply with a statute that is ambiguous at best, particularly when OHCA's precedent – both historical and recent - dictates a significantly less onerous outcome.

[1] These factors are consistent with those considered by DPH/OHCA in allowing an extension of time prior to imposing a civil penalty for failure to file data (OHCA Policies & Procedures, Section XXII(b)).

Imposition of Penalty for a Period of Eight Months Is Excessive

Again, solely for the sake of this discussion, even if a penalty were appropriate (which Greenwich Hospital does not believe to be the case), the amount of the penalty based on an alleged period of non-compliance for 256 days (for a total of $256,000) is also inappropriate given that for almost half of those days Greenwich Hospital had no control over OHCA's investigation and response time and was waiting for instruction from OHCA on how to proceed, and for an additional 95 days the Hospital relied on OHCA staff in delaying its CON filing. The relevant chronology is as follows:

- Dental services are contracted effective October 1, 2011.
- OHCA commences an investigation on October 28, 2011, giving Greenwich Hospital three weeks to respond to questions.
- Greenwich Hospital responds to OHCA's inquiry on November 7, 2011, approximately one week after the questions are received.
- OHCA issues follow-up questions to Greenwich Hospital on February 8, 2012, ***93 days*** after the Hospital's initial response.
- Greenwich Hospital provides OHCA with responses on February 14, 2012, six days later, again before the response deadline imposed by the agency.
- OHCA issues a determination that CON approval is required for the contraction of services on March 8, 2012, ***23 days*** after Greenwich Hospital's response is received.
- In discussions with OHCA staff on or around March 8, 2012 concerning Greenwich Hospital's then-planned April 20, 2012 implementation of a new electronic medical record ("EMR") system, Greenwich Hospital received assurance from OHCA staff that it would not be problematic for the Hospital to wait until after the EMR was implemented to file the CON application (so staff could focus their entire attention on this historic challenge). The Hospital's CON application was thus filed ***96 days*** later, on June 12, 2012, in reliance on this OHCA assurance.

As you can see, Greenwich Hospital was immediately responsive to OHCA's request for information in connection with this matter. Responses were filed in all instances before the

assigned response deadlines. In between Greenwich Hospital's responses, OHCA took a total of ***116 days*** to review and communicate with the Hospital, days that certainly cannot appropriately be deemed attributed to any delay or non-compliance by the Hospital. In addition, another ***95 days*** transpired (not including the day on which the CON application was filed) during which the Hospital held its CON application in reliance on OHCA assurances that it could focus its entire attention on its new EMR. Thus, we respectfully submit that a total of ***211 days***, representing ***$211,000***, should not under any interpretation of the facts be deemed appropriate for inclusion in any penalty assessed.

Imposition of Penalty Is Contrary to OHCA's Objectives and Statutory Mission

DPH's decision to impose the maximum penalty allowed by law against Greenwich Hospital for our alleged failure to file a CON application in a situation where the law is ambiguous at best will have far-reaching consequences in the healthcare industry in Connecticut. It will result in providers seeking OHCA approval prior to undertaking *any activity that could possibly be construed as requiring CON approval under any circumstances*. This precedent requiring CON approval for the contraction of services, coupled with the imposition of a significant penalty against a provider despite its good-faith interpretation of the law, may lead to CON submissions around such routine activities as the discontinuance of particular types of examinations, tests and/or equipment applications, all of which also constitute the contraction of services. All of this will lead to a significant increase in the workload of OHCA staff and is contrary to the stated intention of CON law reform in October of 2010, which was to streamline the CON process for the benefit of providers and the agency. These unnecessary filings will also cost providers money, causing them to expend limited financial resources, which should be used

to enhance the healthcare services available to their patients, on administrative and legal matters. This is inconsistent with the statutory mission of OHCA, which includes improving the financial stability of the healthcare system (C.G.S. §19a-637).

Conclusion

I want to conclude by thanking you again for the opportunity to present our evidence and arguments in opposition to the unprecedented civil penalty imposed against Greenwich Hospital. The decision we made to contract dental services was made out of necessity, to ensure the financial stability of the Hospital so that we can continue to provide core services to members of the Greenwich community. Greenwich Hospital has long been committed to the healthcare needs of our community, as is evidence by the millions of dollars expended by the Hospital each year for uncompensated and charity care and other community benefit activities.

DPH can only impose a civil penalty if a termination of services did, in fact, occur and if there is evidence that Greenwich Hospital "willfully failed" to file a CON when one was required. Our understanding, based upon a good-faith review of law and precedent, was that no CON was required to contract, but not eliminate, dental services. If we believed that no CON was required, we could not have "willfully failed" to seek approval that we knew to be necessary under Section 19a-638(a)(4) of the Connecticut General Statutes. Without proof of a "willful failure "to file the CON application, the civil penalty must be rescinded.

In light of the foregoing, we respectfully request that DPH exercise its discretion to waive imposition of the $256,000 civil penalty noticed on October 4, 2012.

Thank you again for your time and I am available to answer any questions that you have.

The foregoing is my sworn testimony.

Brian J. Doran, M.D.
Executive Vice President
& Chief Operating Officer
Greenwich Hospital

EXHIBIT A

RUFINO PABON v. COMMISSIONER OF SOCIAL SERVICES ET AL

CV93 052 81 68

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF HARTFORD - NEW BRITAIN, AT HARTFORD

1994 Conn. Super. LEXIS 966

April 14, 1994, Decided
April 15, 1994, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: MALONEY

OPINION BY: MALONEY

OPINION

MEMORANDUM OF DECISION

Plaintiff Rufino Pabon appeals the decision of the defendant commissioner of social services, which was rendered by a duly appointed fair hearing officer. The decision found the plaintiff ineligible for a three month extension of his General Assistance (GA) benefits. The basis of the decision was that the plaintiff's GA benefits had been suspended during the previous nine months for failure to complete his workfare assignments. The plaintiff appeals pursuant to General Statutes §§ 17-292f and *4-183*. The court finds in favor of the plaintiff and remands the case for further proceedings.

The essential facts are undisputed. The plaintiff is a resident of Meriden. He is Hispanic, illiterate in written English and not competent in spoken English. He requires an interpreter in order to communicate effectively in English. From July 1, 1992 to February 2, 1993, the plaintiff received GA benefits provided by the defendant city of Meriden, through its department of social [*2] services. The plaintiff was classified as "employable" and was obligated to participate in the workfare program pursuant to § 17-273b.

Effective February 2, 1993, the city suspended the plaintiff from the GA program for ninety days for failure to perform his workfare job for the required number of hours during a particular week. The plaintiff did not appeal that suspension, although he was authorized to appeal by § 17-292d. Accordingly, he did not receive GA benefits during the ninety day suspension period.

General Statutes § 17-273b provides that towns and cities are required to provide GA benefits to eligible employable persons for nine months in a twelve month period. The statute further provides that the municipalities may elect to extend the GA benefits for three additional months in a twelve month period for those recipients of benefits who are in compliance with program requirements. The city of Meriden has elected to extend benefits to its eligible GA population.

On May 7, 1993, in this case, the city sent the plaintiff a "Notice of Action" denying him the extension of his GA benefits, effective May 3, 1993. The stated

basis for the denial was that the plaintiff had been [*3] suspended from the GA program during the prior nine month period of assistance.

On May 19, 1993, pursuant to § 17-292d, the plaintiff appealed the denial of the extension of his GA benefits to the city social services official. The city social services department held a hearing, and on May 26, 1993, rendered a decision affirming the denial of the three month extension, again on the basis that the plaintiff was suspended from the GA program during the prior nine months of assistance.

On June 4, 1993, pursuant to § 17-292e, the plaintiff appealed the decision of the city hearing officer to the state department of income maintenance, which has subsequently merged into the department of social services. The department held a fair hearing on June 16, 1993, before a hearing officer designated by the defendant commissioner.

At the state department of social services fair hearing, the plaintiff testified and asserted a number of claims. He claimed that he never received notice of the suspension in Spanish and that he did not understand the notice sent to him in English. He did not know, therefore, that he had a right to appeal the suspension. The plaintiff claimed that no one from the [*4] city social services department explained the suspension notice to him or told him that he could appeal the suspension. The plaintiff further claimed that the suspension was unjustified in that he had misunderstood the workfare supervisor at the employment site and that he thought that he had completed his required workfare hours for the week. He claimed that he was never given the opportunity to make up the hours that he missed because of the misunderstanding. In essence, he claimed that he did not intend to miss any workfare hours and that his failure was not willful.

By decision dated June 21, 1993, the state fair hearing officer affirmed the denial of the three month extension of GA benefits on the sole basis that the plaintiff had been suspended from the GA program during the prior nine months. In his decision, the hearing officer held as follows:

> Regardless of the correctness of this suspension, the appellant was suspended for the three month period and this action was not contested or overturned. . . . It is simply too late to argue about the suspension that the appellant accepted and served, regardless of what led to that suspension. The appellant was suspended during [*5] this time period and he subsequently is not eligible for the three month extension.

The plaintiff raises a number of issues in his brief to the court in this appeal. In particular, he contends that the fair hearing officer wrongfully failed to accept and consider evidence that the plaintiff was, in fact, in compliance with workfare requirements prior to the suspension of his GA benefits by the city. He further contends that the hearing officer was required to accept and consider evidence that his failure to perform the workfare job for the required number of hours was not willful and, therefore, not a valid basis for the ninety day suspension. In short, he argues that the state fair hearing officer wrongfully based his decision on the bare fact that the plaintiff's benefits had been suspended by the city, without taking into consideration evidence tending to show that the suspension was imposed erroneously.

General Statutes § 17-281a(a) provides that "any such person who *refuses or wilfully fails to report for work* or to participate in an educational or training program or substance abuse counseling to which he is assigned by the public welfare official shall be ineligible [*6] for assistance for ninety days." (Emphasis added.) Policy Manual § XIII.F. provides: "The following policy and procedure applies to all 90-day suspensions, i.e., to suspensions that are the result of Workfare and case-management plan infractions. . . .1. An applicant/recipient who *refuses or willfully fails to participate* shall be denied or suspended from General Assistance financial aid, as appropriate, for 90 calendar days." (Emphasis added.) Policy Manual § XIII.F.2. provides definitions of an "overt refusal" or "willful failure" and further provides: "Before sanctioning a recipient for failing to participate in Workfare . . . the local welfare official shall first determine whether such failure was willful, i.e., whether the recipient clearly understood what was expected of him/her and whether the failure to comply was intentional or the result of illness, incapacity or some unforeseen or unavoidable event, e.g., an accident, death in the family, severe weather, etc. The local welfare official shall not sanction a person whose failure was not willful." The Policy

Manual is the equivalent of a state regulation and, as such, carries the force of law. General Statutes § 17-3f(c); [*7] *Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 (1990).*

The clear mandate of the statutes and regulations is that a municipality may not suspend a GA recipient's benefits for failure to complete his workfare assignment unless the failure was a willful failure; that is, the failure was deliberate and intentional.

With respect to the extension of benefits, Policy Manual § X.K.8.a. provides that a recipient of GA benefits is ineligible for the three month extension of benefits if he or she "was suspended from Workfare at any time during his/her nine months on assistance." The state fair hearing officer apparently interpreted this provision of the Policy Manual to mean that an unchallenged suspension creates an irrebuttable presumption that the plaintiff was not in compliance with the GA program requirements. Under this interpretation, for a recipient to be found ineligible for an extension, there must only be a finding that the plaintiff had been suspended, regardless of whether the underlying suspension was ever challenged and regardless of whether it was properly based upon an overt refusal or wilful failure to report to work. Thus, under this interpretation, [*8] even if a suspension was erroneous or improper, if it is not challenged, the extension of the recipient's benefits must be automatically denied.

A fair hearing conducted by the department of social services is a de novo proceeding. General Statutes § 17-292e provides that the hearing officer "shall have power to administer oaths and take testimony under oath relative to the matter of the hearing and may subpoena witnesses and require the production of records, papers and documents pertinent to such hearing." The hearing officer "shall render a final decision based upon *all the evidence introduced before him* and applying all pertinent provisions of law, regulations and departmental policy." (Emphasis added.) General Statutes § 17-292f.

"Hearings before administrative agencies, . . . although informal and conducted without regard to the strict rules of evidence, 'must be conducted so as not to violate the fundamental rules of natural justice.'" *Huck v. Inland Wetlands & Watercourses Agency, 203 Conn. 525, 536, 525 A.2d 940 (1987)*, quoting *Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 249, 470 A.2d 1214 (1984).* "Due process of law requires . [*9] . . that at the hearing the parties involved have a right to *produce relevant evidence,* and an opportunity to know the facts on which the agency is asked to act, to cross-examine witnesses and to offer rebuttal evidence.'" (Emphasis added.) *Huck v. Inland Wetlands & Watercourses Agency, supra,* quoting *Connecticut Fund for the Environment, Inc. v. Stamford, supra.*

In the present case, the plaintiff presented evidence at the fair hearing concerning the validity of the suspension of his GA benefits during the initial nine month benefit period. This evidence was also relevant to the issue of the three month extension of those benefits, which was the subject of the fair hearing, because the three month extension had been denied solely on the basis of the suspension. Since the hearing officer was required to hear the plaintiff's appeal of the city's decision de novo and was required to render his own decision on the issue, he was likewise required to take into consideration all evidence relevant to the city's decision, including evidence tending to show that the suspension was improper. As his decision makes clear, however, the hearing officer refused to consider the plaintiff's [*10] evidence on that subject.

General Statutes § 4-183 provides that this court must affirm the decision of an administrative agency unless it finds that "substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions , or decisions are: (1) In violation of constitutional or statutory provisions . . . or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." In this case, the court finds that the fair hearing officer's refusal to consider the plaintiff's evidence concerning the validity of the previous suspension of his GA benefits constituted an abuse of discretion by the hearing officer and a violation of the plaintiff's due process rights. Specifically, the plaintiff was entitled under § 17-292e and 17-292f to have that evidence considered by the fair hearing officer as relevant and material to the decision whether the GA benefits should be extended.

The court's findings and conclusions with respect to the evidentiary issue, as set forth above, make it unnecessary to consider the plaintiff's other claims at this time.

The plaintiff's appeal is sustained, and [*11] the case is remanded to the department of social services for a

new decision by the hearing officer, based on all the evidence in the record, including evidence concerning the validity of the suspension of the plaintiff's GA benefits.

MALONEY, J.

EXHIBIT B

Carmine DeGregorio v. Glenrock Condominium Association, Inc.

AANCV0750027965

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF ANSONIA-MILFORD AT DERBY

2009 Conn. Super. LEXIS 2729

October 9, 2009, Decided
October 13, 2009, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: [*1] Barbara N. Bellis, J.

OPINION BY: Barbara N. Bellis

OPINION

FACTS

In this civil action, the plaintiff, Carmine DeGregorio, has brought suit against the defendants, Glenrock Condominium Association, Inc. (Glenrock), CCMS, LLC and the Concord Group (Concord). [1] The plaintiff's two-count complaint alleges that he is the owner of a condominium unit known as 40 Glenrock Road, # 35, in Norwalk, Connecticut (the property). Glenrock is the condominium association for the property and CCMS, LLC, d/b/a The Concord Group [2] is the property management company and/or the agent for Glenrock. Count one alleges three specific claims, as follows: (1) in the summer of 2004, the porch outside of the property was "improperly and poorly stained, resulting in a worn and exposed looking wood porch"; (2) beginning in 2005, the property experienced exterior water leaks from faulty gutters, roofing and siding, resulting in mold and mildew damage to the property and water damage to the common stairwell and hallway; and (3) an outdoor jacuzzi, maintained by the defendants, "has been inoperable and/or unusable for more than a year." Although the plaintiff repeatedly requested that the defendants repair this damage and fix the inoperable [*2] jacuzzi, the defendants have refused to make such repairs.

1 The plaintiff served process on CCMS, LLC and the Concord Group on March 5, 2007. Glenrock Condominium Association, Inc. was served on March 15, 2007.

2 On the summons, the plaintiff has listed CCMS, LLC and the Concord Group as two distinct parties, however, in the complaint the plaintiff alleges that CCMS does business as The Concord Group. Specifically, the plaintiff alleges "Defendant CCMS LLC, d/b/a The Concord Group . . . is a property management company . . ." Furthermore, both CCMS and Concord were served with process at the same time, in the same place, and the same individual accepted service. They will be referred to as one entity.

The plaintiff alleges that the exterior gutters, roofing, siding, the porch and the jacuzzi are all "common elements and/or common areas as defined in the Declaration, By-Laws, Rules & Regulations, The Condominium Act . . . and the Common Interest

Ownership Act . . ." and, therefore, the neglect or refusal to promptly repair and remedy the defects and damages is a violation of the Declaration and *General Statutes §§ 47-75, 47-84* and *47-249*. Count two further alleges that the plaintiff has [*3] attempted to sell the property, but he has been unable to do so because of the unrepaired damages. Therefore, the plaintiff alleges that he has suffered continuing expenses including mortgage payments, taxes, insurance and common charges. As a result of these alleged damages, the plaintiff's prayer for relief seeks: (1) an injunction, (2) "[a] decree and order requiring the Defendants to make all necessary repairs and/or remediation to the exterior common areas and interior unit of the Plaintiff [sic] and to repair or replace the jacuzzi located in the common area at the Glenrock Condominiums," (3) money damages, (4) punitive damages and attorneys fees and costs pursuant to *General Statutes § 47-278* and (5) such other relief that the court deems fair and equitable.

The defendants filed a request to revise on May 22, 2007, to which the plaintiff filed an objection on June 22, 2007. The court, Hartmere, J., sustained the plaintiff's objection to the request to revise on July 30, 2007. [3] Then, on August 22, 2007, the defendants filed the subject motion to strike counts one and two and elements of the prayer for relief, as well as a memorandum of law in support. The plaintiff filed a memorandum [*4] in opposition on December 10, 2007. The matter was heard at short calendar on August 31, 2009.

3 Subsequently, on August 8, 2007, the defendants filed a request to reargue, which was also denied by the court, Hartmere, J., on August 28, 2007.

DISCUSSION

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 498, 815 A.2d 1188 (2003)*. In a motion to strike, "the moving party admits all facts well pleaded." *RK Constructors, Inc. v. Fusco Corp., 231 Conn. 381, 383 n.2, 650 A.2d 153 (1994)*. Therefore, "[i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Batte-Holmgren v. Commissioner of Public Health, 281 Conn. 277, 294, 914 A.2d 996 (2007)*. On the other hand, "[a] motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves, supra, 498*. When ruling on [*5] a motion to strike, the court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Sullivan v. Lake Compounce Theme Park, Inc., 277 Conn. 113, 117, 889 A.2d 810 (2006)*.

I

IMPROPER COMBINATION OF COUNTS

The defendants' first argument is that the plaintiff's complaint is in violation of *Practice Book § 10-26*, [4] which requires a plaintiff to allege different causes of action in separate counts. [5] Specifically, the defendants argue that "[t]he pleader in this case has entirely . . . failed to separate the intentional allegations from the negligence allegations nor the equitable claims from the legal claims." In response, the plaintiff contends that this argument should have been raised in a request to revise, and, therefore, it has been waived. Moreover, the plaintiff argues that his complaint properly alleges two causes of action in separate counts, in that count one alleges statutory and bylaw violations and count two alleges consequential damages.

4 *Practice Book § 10-26* provides: "Where separate and distinct causes of action, as distinguished from separate and distinct claims for relief founded on the same cause [*6] of action or transaction are joined, the statement of the second shall be prefaced by *Second Count*, and so on from the others; and the several paragraphs of each count shall be numbered separately beginning in each count with the number one."

5 Although the defendants argue that the complaint is in violation of *Practice Book § 10-26*, neither the defendants' motion nor their memorandum of law are clear as to precisely what the defendants are asking the court to strike as a result of this deficiency.

Practice Book § 10-35 provides that: "Whenever any party desires to obtain . . . (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined

in one defense . . . [that party may] file a timely request to revise that pleading." When a plaintiff has filed two or more causes of action in the same count, "the proper way to cure any confusion in that regard is to file a motion to revise, not a motion to strike the entire complaint." *Rowe v. Godou, 209 Conn. 273, 279, 550 A.2d 1073 (1988).* The only exception to this general rule is when the causes of action cannot be [*7] properly united in one complaint. See *Practice Book § 10-39*(4). Furthermore, as provided by *Practice Book § 10-38*: "Whenever any party files any request to revise or any subsequent motion or pleading in the sequence provided in [*Practice Book §§]10-6* and *10-7*, that party thereby waives any right to seek any further pleading revisions which that party might then have requested." *Practice Book §§ 10-6* and *10-7* together provide that a request to revise must be filed before a motion to strike, and if a party files a motion to strike, then that party has waived its right to file a subsequent request to revise.

As illustrated by these rules of practice and case law, a request to revise is the proper procedural vehicle used when the plaintiff has pleaded multiple causes of action in the same count. Since the motion that is currently before the court is a motion to strike, the defendants are using an incorrect procedural device to bring this issue to the court's attention. Moreover, *§ 10-38* specifically provides that the filing of a request to revise bars a defendant from seeking later pleading revisions, and the rules of practice require that a request to revise be filed before a motion to [*8] strike. On May 22, 2007, the defendants filed a request to revise, which did not include a request that the plaintiff revise his complaint because he alleged multiple claims in the same count. Here, the defendants have filed a motion to strike, and they are barred from filing a subsequent request to revise. Since the pleading of multiple claims in the same count should be addressed in a request to revise, and the defendants have waived this issue by filing a previous request to revise and subsequent motion to strike, the court rejects this argument.

II

PUNITIVE DAMAGES AND ATTORNEYS FEES UNDER THE COMMON INTEREST OWNERSHIP ACT

The defendants next move to strike the applicable "counts and corresponding prayers for relief" for failure "to properly allege the statutory requirements for imposition of punitive damages and attorneys fees." Specifically, the defendants argue that the plaintiff has failed to allege that the defendants' acts or omissions occurred as the result of a "willful failure to comply," as required by *General Statutes § 47-278*. Furthermore, the defendants contend that the court should strike the relevant counts and prayers for relief against Glenrock because there is no [*9] liability for punitive damages under the doctrine of vicarious liability.

The plaintiff responds by arguing that he sufficiently alleges that the defendants wilfully violated the Common Interest Ownership Act, *General Statutes § 47-200 et seq*., in that the defendants refused to rectify the alleged defects despite numerous requests by the plaintiff to fix the problems. Moreover, the plaintiff argues that the defendants' argument regarding Glenrock is a "red herring," and that the complaint alleges primary, as opposed to vicarious, liability against Glenrock.

General Statutes § 47-278(a) authorizes the recovery of punitive damages and attorneys fees for violations of the Common Interest Ownership Act. This statute provides: "If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court may award court costs together with reasonable attorneys fees."

In their memorandum of law in support of their motion [*10] to strike, the defendants cite a number of cases that generally discuss punitive damages, attorneys fees and what types of actions constitute a willful failure to comply. Only one of these cases, *Willow Springs Condominium Ass'n., Inc. v. Seventh BRT Development Corp., 245 Conn. 1, 717 A.2d 77 (1998)*, involves the Common Interest Ownership Act. Moreover, *Willow Springs* does not discuss what a plaintiff must allege in order to state a claim for punitive damages and attorneys fees under *§ 47-278*. There are no Connecticut cases that directly address what level of conduct the plaintiff must allege to sufficiently plead a "willful failure to comply" with the Common Interest Ownership Act. Therefore, I will look to how courts have defined the phrase "willful failure to comply." "Our Supreme Court defines 'willful misconduct' as 'intentional conduct' with 'the design to injure either actually entertained or to be implied from

the conduct and circumstances . . . Not only the action producing the injury but the resulting injury also must be intentional.' " *Witczak v. Gerald, 69 Conn.App. 106, 116, 793 A.2d 1193 (2002)*, quoting *Dubay v. Irish, 207 Conn. 518, 533, 542 A.2d 711 (1988)*. As a result, [*11] it stands to reason that a "willful failure to comply" means that the defendants' conduct was intentional and done with the purpose of producing injury.

In paragraphs eight and thirteen of the complaint, the plaintiff alleges that "[d]espite repeated requests by the Plaintiff to re-stain and/or replace the decking on the porch, the Defendants have refused to make such repairs to date" and "[d]espite repeated requests by the Plaintiff to remedy and/or remediate the aforementioned water issues and/or exterior water leaks and to repair the resulting water damage, the Defendants have refused to make such repairs to date." When viewed in a light most favorable to the pleader, these allegations suggest that the defendants had knowledge of the alleged defects and intentionally chose not to fix them. From this failure to comply with the requirements of the Common Interest Ownership Act, the plaintiff alleges that he has suffered damages. Accordingly, the plaintiff's complaint sufficiently alleges that the defendants wilfully failed to comply with the Common Interest Ownership Act, and, therefore, the plaintiff sufficiently alleges a claim for punitive damages and attorneys fees under *§ 47-278*.

The [*12] defendants further argue that the court should strike the punitive damages and attorneys fees claims against Glenrock because "the allegations against the defendant Glenrock assert liability for punitive damages and attorneys fees based on vicarious liability [principles]. At common law there is no vicarious liability for punitive damages . . . Nothing in the language of *Section 47-278* allows for abrogation of this common law principle." The defendants' memorandum of law fails to elaborate on what basis the plaintiff's complaint necessarily alleges liability against Glenrock based on the doctrine of vicarious liability. In fact, the plaintiff's memorandum of law in opposition states that the defendants are misrepresenting the allegations of the complaint because the plaintiff actually is alleging primary liability against Glenrock.

A review of the allegations of the complaint reveals the following. The plaintiff alleges that Glenrock has "[a]t all relevant times . . . been the Association in control of Glenrock Condominiums" and that "Concord has been and continues to be the property manager for the Glenrock Condominiums and/or acting as the Association's agent." The complaint alleges [*13] that Glenrock is in control of the subject property and also alleges that Concord acts as its property manager/agent. In paragraphs eight and thirteen of the complaint, the plaintiff alleges that he made a demand to "the Defendants" to fix his condominium. This allegation suggests that both Glenrock and Concord were told about the alleged defects. Moreover, paragraph seventeen alleges that "[t]he Defendants are in violation of Article 23 of the Declaration, which provides, *inter alia*, 'any portion of the Common Interest Community . . . which is damaged or destroyed shall be repaired or replaced promptly by the Association.' " According to paragraph five, "Association" refers to Glenrock. Therefore, if read together, paragraphs seventeen, thirteen and eight allege that Glenrock had a duty to repair and replace damages to the plaintiff's condominium and that it failed to do so upon notice of the defects. The complaint alleges a direct claim for liability against Glenrock, the defendants' argument that punitive damages are inappropriate under a theory of vicarious liability is without merit.

III

DUPLICATION OF COUNTS

Next, the defendants move to strike count two on the ground that it is [*14] redundant and duplicative of count one. The defendants' memorandum of law argues that the second count is "merely an amplification of damages and not a separate cause of action since it incorporates all paragraphs from the FIRST COUNT then merely adds assertions of additional damages." As a result, the defendants contend that count two should be stricken. In response, the plaintiff argues that the second count is not duplicative of the first count, and that this issue should be raised by a request to revise as opposed to a motion to strike.

Practice Book § 10-35 provides in relevant part that: "Whenever any party desires to obtain . . . (2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading . . . the party desiring any such amendment may file a timely request to revise that pleading." Consequently, the plain language of *§ 10-35* establishes that duplication of claims should be addressed in a request to revise.

Nevertheless, "[t]here is no explicit appellate authority on the issue of the proper vehicle for the elimination of duplicative claims . . . A split of authority exists within the Superior [*15] Court regarding how the duplication of claims should be addressed . . . [A] majority of Superior Court cases . . . [have] held that [a] request to revise, and not a motion to strike, is the proper procedural device for deletion of duplicative pleadings . . ." (Internal quotation marks omitted.) *Sandru v. Boyle, Superior Court, judicial district of New Haven, Docket No. CV 07 5014056 (September 3, 2008, Zoarski, J.T.R.) (46 Conn. L. Rptr. 238, 239, 2008 Conn. Super. LEXIS 2177)*, citing *Morales v. Kulig, Superior Court, judicial district of New Britain, Docket No. CV 07 5005451, 2008 Conn. Super. LEXIS 1517 (June 11, 2008, Gilligan, J.)* (pleading flaw of duplicative claims properly addressed by request to revise to eliminate duplication, not by motion to strike); *Ritchie v. Charlotte Hungerford Hospital, supra, Superior Court, Docket No. CV 07 5002368, 2008 Conn. Super. LEXIS 1165* ("to the extent that [the defendant] argues that count one and count six are duplicative, a motion to strike is not the appropriate procedural vehicle with which to address such an argument"); *Pike v. Bugbee, Superior Court, judicial district of Hartford, Docket No. CV 06 5005721, 2007 Conn. Super. LEXIS 2876 (October 30, 2007, Bentivegna, J.)* ("[s]ince a claim that a count is repetitious challenges the form of the pleading [*16] but not its legal sufficiency, the motion to strike either count one or count three is denied"); *Brookes v. New Haven Savings Bank, Superior Court, judicial district of Hartford, Docket No. CV 94 0544390 n.3, 1997 Conn. Super. LEXIS 209 (January 27, 1997, Hennessey, J.)* ("proper method by which to rid a complaint of duplicative counts is a request to revise"); *Chemlecki v. Decorative Screen Printers, Inc., Superior Court, judicial district of New London Docket No. CV 94 0532041, 1995 Conn. Super. LEXIS 1843 (June 19, 1995, Hurley, J.)* ("[the defendant's] argument that these counts are repetitive of count six should have been raised in a request to revise and is not properly raised in a motion to strike"); see also *Law Offices of Thomas E. Porzio, LLC v. Northern Expansion, LL, Superior Court, judicial district of Waterbury, Docket No. CV 08 5008203, 2009 Conn. Super. LEXIS 1013 (April 15, 2009, Brunetti, J.)* (same). There is, however, contrary authority. See *Cambodian Buddhist Society of Connecticut v. Planning & Zoning Commission, judicial district of Danbury, Docket No. CV 03 0348578, 2005 Conn. Super LEXIS 42 (January 10, 2005, Downey, J.)* (granting motion to strike "unnecessarily duplicative" counts without discussing if a request to revise is the correct procedural device); *Hayward v. Friendly Ice Cream Corp., Superior Court, judicial district of New Haven, Docket No. CV 95 0375622, 1995 Conn. Super LEXIS 3170 (November 9, 1995, Hadden, J.)* [*17] (granting motion to strike duplicative count).

Practice Book § 10-35 specifically provides that "unnecessary" and "repetitious" allegations should be addressed via a request to revise. This court adopts the majority view that redundant and duplicative allegations should be addressed in a request to revise, rather than a motion to strike. As such, the motion to strike count two is denied.

IV

PRAYER FOR EQUITABLE RELIEF

Finally, the defendants move to strike the plaintiff's claims for equitable relief on the ground that they are "fatally vague." The defendants argue that *Practice Book § 10-27* "mandates the pleader when seeking equitable relief to demand such with specificity sufficient to identify the relief sought." Specifically, the defendants contend that it is insufficient for the plaintiff to allege that he is seeking "injunctive relief" or "necessary repairs and/or mediation." The plaintiff responds by arguing that the defendants are misconstruing the directives of *§ 10-27* in that the rules of practice do not require that equitable relief must be identified with [*18] specificity. *Section 10-27* provides that: "A party seeking equitable relief shall specifically demand it as such, unless the nature of the demand itself indicates that the relief sought is equitable relief." When applying *§ 10-27*, the Connecticut appellate courts have held that "[w]here the nature of the case and the nature of the plaintiff's demand is such that equitable relief is clearly being sought, a specific demand for equitable relief is not necessary." (Internal quotation marks omitted.) *Giulietti v. Giulietti, 65 Conn.App. 813, 859, 784 A.2d 905*, cert. denied, *258 Conn. 946, 788 A.2d 95 (2001)*. "Our Supreme Court has stated that [a]ny relief can be granted under [a] general prayer which is consistent with the case stated in the complaint and is supported by the proof provided the defendant will not be surprised or prejudiced thereby . . . The addition of [a] general prayer for relief therefore permits the court to fashion a remedy as long as that remedy is in accordance with the plaintiff's stated case." (Citations omitted; internal quotation marks omitted.) *Total Aircraft, LLC v.*

Nascimento, 93 Conn.App. 576, 580-81, 889 A.2d 950, cert. denied, *277 Conn. 928, 895 A.2d 800 (2006)*.

In [*19] the present case, the plaintiff's prayer for relief requests "injunctive relief . . . A decree and order requiring the Defendants to make all necessary repairs and/or remediation to the exterior common areas and interior unit of the Plaintiff and to repair and replace the jacuzzi located in the common area at the Glenrock Condominiums . . , [and] [s]uch other and further relief as the Court may deem fair and equitable." Therefore, the plaintiff has specifically asked for an injunction, outlined the terms of the requested injunction as well as a prayer for additional equitable relief that the court deems fair and equitable. As a result, the plaintiff has certainly adhered to the requirements of *§ 10-27*, which only mandates that a party "specifically demand" that it is seeking equitable relief. Since this complaint clearly puts the defendants on notice that the plaintiff is requesting equitable relief in the form of an injunction, the defendants' motion to strike the plaintiff's claims for equitable relief is denied.

CONCLUSION

For all of the reasons stated above, defendant's motion to strike is denied in its entirety.

BELLIS, J.

Greenwich Hospital Dental Clinic
Docket No. 12-31797-CON

Civil Penalty Hearing
December 12, 2012

Prefiled Testimony of Nancy Hamson

Good morning Attorney Hansted and members of the Department of Public Health ("DPH") and Office of Health Care Access ("OHCA") staff. My name is Nancy Hamson and I am the Director of Operations at Greenwich Hospital. Thank you for this opportunity to testify about the reasons why Greenwich Hospital chose not to seek CON approval for the contraction of our preventative and restorative dental services. Before assuming my current position, I served as Greenwich Hospital's Director of Planning. In that role, I was responsible for making recommendations about whether a particular Hospital activity required CON review. My goal today is to help you understand why we did not, and do not, consider the contraction of our dental services to be a termination of services under the OHCA statutes. I will also address the allegation that Greenwich Hospital "willfully failed" to submit a necessary CON filing, an allegation with which we do not agree. There was no willful failure to abide by CON laws and therefore, no civil penalty should be assessed against Greenwich Hospital.

Professional Background

By way of brief background, I have been with Greenwich Hospital since 1989, and have held various marketing and planning positions over the course of the last 23 years. I served as Director of Planning at Greenwich Hospital for seven years, from 2005 to 2012, during which time I was responsible for overseeing planning, business development and the CON process. In October of this year, I assumed my current position as Director of Operations.

While I was the Director of Planning , it was my job to investigate and make recommendations to senior management about whether CON approval was required for changes in the Hospital's program and service offerings, among other things. I have handled numerous CON matters before OHCA, including determination requests, modification requests, waiver requests and CON applications. Greenwich Hospital has always had an excellent working relationship with OHCA staff, particularly the healthcare analysts in the CON unit. We pride ourselves on being forthcoming and cooperative. We seek guidance when we need it and we abide by the CON laws as they have been interpreted by the agency. I can assure you that if I thought a CON was required to contract the Hospital's dental services, I would have made the appropriate inquiry or application to OHCA.

Decision Not To Seek CON Approval for Contraction of Dental Services

It is Greenwich Hospital's position that (i) we did not terminate dental services such that CON approval was required pursuant to Section 19a-638(a)(4) of the Connecticut General Statutes; and (ii) because there is no clear evidence that a CON was required pursuant to Section 19a-638(a)(4), Greenwich Hospital could not have "willfully failed" to seek a CON required by that section.

Contraction of Services Is Not a Termination of Services Requiring a CON

When asked by Greenwich Hospital senior management whether CON approval was required for the contraction of dental services that was being proposed, I undertook an analysis similar to those I have undertaken in the past around changes to the Hospital's programs and services. First, I reviewed the details of the operational decision to reduce the then-existing dental services to eliminate preventative and restorative care, but retain emergency and surgical

care. Then, I reviewed the OHCA statutes, regulations and policies and procedures specific to termination of services for guidance. As you know, the OHCA statutes and regulations do not define "termination of services" for purposes of Section 19a-638(a)(4). Providers regularly make judgment calls as to whether a particular activity constitutes a termination of services and there is very little specific guidance to assist in this process. Nevertheless, our understanding has always been that in order for a service to be terminated for OHCA purposes, it must be terminated in its entirety. This was not the case with the contraction of dental services at Greenwich Hospital.

History of Termination of Services Jurisdiction

Historically, OHCA required CON approval for the termination of services, as well as the addition of services. However, when the CON laws were overhauled in October of 2010, OHCA's jurisdiction in this regard was eliminated. This was done in large part to assist in streamlining the CON process for the benefit of both providers and the agency. But less than one year later in 2011, in response to community concerns over the unregulated termination of hospital services without OHCA oversight, termination of services jurisdiction was reinstituted. This change in the law was prompted by the termination of a core hospital service – obstetrics – at a community hospital in northern Connecticut where there was a concern that patients were left without access to these services within a reasonable travel distance. When the bill (House Bill 5048) that included the reinstitution of termination of services jurisdiction was being discussed and debated, one representative (Rep. Carter) commented that it should apply to "essential services" only and not to "basically anything the hospital wants to stop doing." (See Excerpt of February 4, 2011 Public Health Committee Hearing Testimony, attached as Exhibit

A). In response, Rep. Janowski (who proposed the bill) gave no firm answer as to what does and what does not constitute a termination of services. Senators who debated the bill were also concerned about its breadth and the lack of clarity around what constitutes a service (see Excerpt of June 8, 2011 Senate Debate, attached as Exhibit B). Several representatives thought it was ill-advised to micromanage the termination of services at a time when hospitals were being taxed and forced to make difficult decisions to balance their budgets (see Excerpt of June 1, 2011 House Debate, attached as Exhibit C). The confusion experienced by legislators around what constitutes a "service" for OHCA purposes, and how this law would be applied going forward, shows that the statutory language may be subject to different interpretations by different people.

Moreover, our interpretation of the law – that CON approval is not required to contract services, meaning to eliminate select components along a larger continuum of services within a program – is consistent with another change in the CON laws that occurred in 2011, at the same time that termination of services jurisdiction was reinstituted. A new Section 19a-638(a)(6) was added, which states that CON approval is required for any termination of services by an outpatient surgical facility *except the termination of any subspecialty surgical services*. This statutory exception suggests that OHCA did not want to micromanage the provision of services by a healthcare facility within an overall continuum of services. Thus, as long as an outpatient surgical facility continues to provide surgical services, OHCA did not require a CON for contractions within those services such as the elimination of certain surgical subspecialties. This is analogous to the situation with Greenwich Hospital's dental services.

No OHCA Precedent That Contraction of Services Requires CON

As part of my due diligence I also reviewed OHCA precedent regarding terminations of services. OHCA routinely refers providers to its website to review decisions in similar matters, which are considered precedent when determining whether a CON is required by law. I did a comprehensive review of all determinations on the website (as far back as 2005) and found none that indicated a CON was required to contract the dental services provided by Greenwich Hospital. Virtually all of the determinations dealt with complete service terminations. Thus, in my best judgment I felt that a CON was not required for Greenwich Hospital to contract its dental services by discontinuing the preventative and restorative components of care.

In two recent determinations issued to The William W. Backus Hospital, OHCA found that CON approval was *not* required to (i) decommission the only CT scanner at an outpatient clinic site (Report No. 11-31728-DTR); and (ii) close a primary care clinic that was established without CON approval (Report No. 12-31779-DTR) (see Exhibit D attached). If the latter determination is authoritative, CON approval should not be required to contract our dental services because they too were established without a CON. Although these determinations were issued after our decision to contract dental services and are not based on the exact same factual scenario, they demonstrate a flexibility and permissiveness on the part of OHCA in allowing providers to manage contractions of services without going through the CON application process.

Preventative & Restorative Dental Services Are Not a Separate Line Item for OHCA Reporting Purposes

Contrary to OHCA's assertions in its March 8, 2012 CON Determination in this matter, preventative and restorative dental services do not represent a separate line item for OHCA reporting purposes. There is indeed a line item in Greenwich Hospital's OHCA financial report entitled "Dental Clinic," however the figures reported in this line item included emergency visits as well as preventative and restorative care.[1] This is further evidence that Greenwich Hospital looks at dental services as a whole and a continuum of care, which remains in place offering emergency services and oral surgery. Also, if line-item reporting is determinative of a "service" for OHCA purposes as the agency suggests, we respectfully submit this as proof that a complete service was not, in fact, terminated.

Greenwich Hospital Continues to Provide Outpatient Clinic Services

The preventative and restorative dental services at issue were provided as part of Greenwich Hospital's outpatient clinic. The Hospital continues to provide a wide array of outpatient clinic services, including but not limited to geriatric, adolescent and psychiatric services. While the dental portion of the outpatient clinic services was eliminated, the outpatient clinic itself was not terminated. Of note, as Dr. Doran mentioned, many of the outpatient clinic services that Greenwich Hospital provides result in losses for Greenwich Hospital, however the Hospital remains committed to providing clinic services for the benefit of the community. Indeed, it was the need to maintain mission-critical services that led Greenwich Hospital to the

[1] In addition, even assuming preventative and restorative dental services were their own cost center for Medicare cost reporting, that does not mean they constitute a service for CON purposes. Greenwich Hospital, like most hospitals, designates cost centers for a variety of internal accounting-related reasons, none of which are related to OHCA's jurisdiction over services.

difficult decision to contract its dental services and make the other staffing and operational changes necessary to offset the shortfall caused by the state hospital tax.

***

Based on the foregoing, we came to the conclusion that the contraction of dental services at Greenwich Hospital was not a termination of services requiring CON approval. Preventative and restorative dental services were part of a continuum of dental care at Greenwich Hospital, which also includes oral surgery and emergency care. As Dr. Doran testified, a decision was made to contract the overall suite of dental services provided at Greenwich Hospital in order to bridge the budget gap resulting from the state hospital tax, but not to terminate dental services altogether. We continue to provide dental services in the form of oral surgery and emergency care and still have licensed dentists on our Medical Staff who perform dental procedures.

No Willful Failure to Seek CON Approval

Because the statutes do not define "termination of services," and no precedent suggests that a CON is required for the contraction of services along a continuum, it is impossible for DPH to conclude that Greenwich Hospital "willfully failed" to seek CON approval for purposes of Section 19-653 of the Connecticut General Statutes. As Dr. Doran discussed in greater detail, in order for a civil penalty to be imposed, Greenwich Hospital must have known that a CON was required and made a conscious decision not to seek one. This is simply not the case. As Dr. Doran also mentioned, there are providers who have disobeyed orders from OHCA, as well as clear statutory language requiring CON approval, and have gotten nothing more than a slap on the wrist. Compare that with the disproportionately large penalty being imposed on Greenwich Hospital for making a judgment call that many other hospitals have surely made with respect to

similar service contractions. We respectfully submit that the imposition of a penalty in this case is unequal and unfair and inconsistent with the facts, which show that there was no "willful failure" to file a CON application.

OHCA Should Consider Greenwich Hospital's History of Compliance and Cooperation

As previously mentioned, Greenwich Hospital has a history of compliance with CON statutes and regulations and has not and would not attempt to circumvent CON review if we believed it were required.[2] Since 2007, I have overseen at least twenty-five (25) formal CON matters for Greenwich Hospital, as well as countless informal inquiries to OHCA staff related to CON requirements and process. Greenwich Hospital has a history of applying for CON approval when it is required and of requesting clarification when we are unsure. By way of example, in 2007, Greenwich Hospital sought to acquire several parcels of land adjacent to the main campus for future expansion. We were unclear whether these acquisitions, which were not tied to any immediate service expansions or relocations, required CON approval. Our CEO Frank Corvino met with then-Commissioner Cristine Vogel and at her request, submitted a written CON determination to OHCA for disposition. It is not our practice to shirk laws that we know apply to us. We are forthcoming with information, as is evidenced by the fact that we made a public announcement of the service contraction. This shows that we were completely unaware that OHCA would consider this conduct in violation of state statue. We also cooperated fully with OHCA's investigation of this matter and worked to rectify the situation by filing a CON application once we were told by the agency that a CON was required, even though we did not agree that the contraction of dental services was indeed a termination of services. Cooperation is

[2] Greenwich Hospital also has a history of completing all necessary OHCA financial filings, as required by statute.

a factor that is often considered by administrative agencies in determining the nature and amount of a civil penalty. Indeed, all of the above factors should be considered by DPH in deciding whether the civil penalty that has been imposed against Greenwich Hospital is appropriate.

Conclusion

In conclusion, I would simply like to reiterate the fact that Greenwich Hospital had no specific knowledge that a CON was required to contract our dental services. We conducted due diligence and made a good-faith attempt to comply with the CON laws. Past precedent and a common-sense interpretation of the law led us to the conclusion that we were authorized to proceed without CON approval. Because we had no knowledge of a statutory requirement to request a CON, we cannot be found to have "willfully failed" to seek CON approval. Here, where the law is ambiguous at best, DPH should not impose any civil penalty on Greenwich Hospital, let alone a penalty of the magnitude that has been proposed.

Thank you again for your time and I am available to answer any questions that you have.

The foregoing is my sworn testimony.

Nancy M. Hamson

Nancy M. Hamson
Director of Operations
Greenwich Hospital

EXHIBIT A

REP. CARTER: Thank you, Madam Chair; and thank your Representative for being here.

The one question I had, do the current statutes -- to the best of your knowledge, cover some of those instances where a certificate of need hospital -- or a certificate of need is required?

For instance, if you're getting rid of an emergency room or something like that, isn't that already covered?

REP. JANOWSKI: Yes, there is a list --

REP. CARTER: Right.

REP. JANOWSKI: -- in the statutes that says these are the things that are -- can be done under a certificate of need and these are the things that can happen without a certificate of need.

REP. CARTER: Right.

REP. JANOWSKI: And a termination of services used to be covered under these are -- can happen -- these -- a certificate of need has to be filed in order for these things to be done. And it used to be covered under that category. It was moved out last year and I believe it was done inadvertently.

REP. CARTER: Okay. I understand. My my concern I guess is the -- the broadness or the scope of talking about outpatient or inpatient services. If we were talking about essential services again, for instance, an emergency room, maybe in this case maternity services would be in that list, right now this gives a broad basically anything the hospital wants to stop doing has to be done through OHCA. Is that the way I'm understanding it?

REP. JANOWSKI: No. I mean the -- the hospital can transfer equipment to the -- the hospital can do other things, this is a -- a service. This is -- for example, the maternity ward, you know, you have to look at the statutes themselves to see what's under a CON requirement and what is not.

What I am trying to do is put this back on -- because technically if this doesn't go back under a certificate of need requirement any hospital basically -- any -- services at any hospital -- my hospital for example, could be reduced to a walk-in clinic and that wasn't the intent of the hospital to begin with.

EXHIBIT B

Thank you, Mr. Speaker. And I'm going to oppose the Bill even though I supported the Amendment. I do think the Amendment made the Bill better.

I have a philosophical problem with the CON process as it exists right now, and I certainly don't approve of or support the expansion of that process.

I think in many ways this places an undue burden on hospitals in the State of Connecticut and in this instance whereby a hospital needs to pull back a service they provide, either a) because it's simply not profitable or b) they don't have the proper clinicians in place to provide the service, as was the case with Rockville General.

We are now putting that hospital in the crosshairs of DPH to determine whether or not that service should be withheld.

And what I've heard in the past is that well, you know, DPH won't deny a CON, a certificate of need, in those instances where it doesn't make financial sense or clinical sense for the hospital to offer the service.

But at the same time what we are stating in this Bill is that DPH can prohibit a hospital from terminating a service that it provides, even if they don't have the clinicians to provide it, and even if it is cost prohibitive to provide it.

With that, I certainly appreciate the intention of the Bill. It's meant to address a specific instance, but I certainly cannot support it today.

Thank you, sir.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. Through you, Mr. Speaker, to the proponent of the Bill.

DEPUTY SPEAKER GODFREY:

Please proceed.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. I also felt supporting of the Amendment, but the underlying Bill I will not be able to support, too.

And through you, I remember in the public hearings when the hospitals came up and addressed us and talked about the rationale or the reasons, and the reasons why they had to terminate their services, it was a very logical reason that they had to do what they needed to do to keep moving on.

And in this climate, where just a couple of, not even a couple of weeks ago last week, I think now, we passed an increase, a tax on the hospitals on the one hand, and now when they're curtailing their services, we are holding them tight and accountable and saying you cannot do this and the other. I find that very difficult for hospitals to do.

And I also feel the title itself of the Bill need approval for the termination of inpatient and outpatient services, and I find that difficult because here they are terminating because they're not able to provide those services as Representative Perrillo very appropriately said, whether it be financial or it be the lack of services.

You know, they don't have the support staff and are we going to jeopardize our patients in that environment, in that area because we don't have adequate facilities, adequate physicians, adequate healthcare providers, and that was why the hospital in Rockville had to shut down the particular service.

To go back to this entire process for a need, when the need is there, I can imagine the certificate is required. But when the need, the hospital feels is not there anymore for reason a or b, to then hold them accountable to another body I find is asking too much of a hospital and of the healthcare system at this time.

And for that, through you, Mr. Speaker, I have to say that I will not be able to support this Bill today.

Thank you.

DEPUTY SPEAKER GODFREY:

Representative Betts.

And -- and that's -- those are all the questions I have, for now, for Senator Gerratana. I -- I do thank her for those answers.

And, you know, she, in -- in answering those questions, she's highlighted what to me is one of my biggest concerns about -- about this bill. And -- and that is, is we -- we don't know if OHCA's determination after the end a Certificate-of-Need process is now or may be in the near future an absolute bar from an institution from terminating those -- those services.

And so I, you know, as -- as I read the statute, we're requiring -- we're requiring institutions to go through the Certificate-of-Need process for establishing a new health care facility. That's current law; that makes a lot of sense to me. We're requiring it for a transfer or ownership, too, of a health care facility. That's currently law, Madam President, and that makes a lot of sense to me. And then we're also talking about a Certificate of Need for the establishment of a free-standing emergency department, and, again, that's current law and that makes a lot of sense to me.

But what with -- the change we're talking about making right now is requiring a Certificate of Need for the termination of inpatient or outpatient services offered by a hospital. And -- and that's really, really broad. I think that what we are doing with this language is overreaching. It's -- it's too expansive, and we could be requiring institutions to go through the Certificate-of-Need process for terminating services that just clearly aren't needed at all.

And, you know, forgive the redux ad absurdia. But, you know, for instance, if a hospital had a special wart removal clinic and it was a money loser, well, now they would have to go, conceivably, through the Certificate-of-Need process to -- to close that down, under a fair reading of -- of this statute.

So, with that, Madam President, I cannot support this bill. Regrettably, I think the Certificate-of-Need process is a process that is good for the state. It makes a lot of public health sense in a number of situations but not in all of the potential situations that could be reached within the purview of what's proposed here.

Thank you for your time, Madam -- Madam President.

And thank you, Senator Gerratana for -- THE CHAIR:
Thank -- SENATOR WELCH:

-- the answers to the questions. THE CHAIR:
Thank you, Senator.

Senator Roraback. SENATOR RORABACK:
Thank you, Madam President.

And to follow up on -- I followed the debate between Senator Gerratana and Senator Welch -- and to follow up on Senator Welch's questions and through my -- in my mind's eye I'm wondering, Well, what services does my local hospital, in Torrington, Charlotte Hungerford Hospital provide in the community?

They go to the senior center, provide nutritional counseling. They send someone to the soup kitchen to be kind of a first line of intake for people that have health issues. I get the little newspaper from my hospital; you know, the PR Department generates a very nice newsletter telling me all the good things that my hospital is doing in the community, screenings for this disease and that disease.

And, through you, Madam President, when I read this bill, the language suggests that all of those good programs that the Charlotte Hungerford Hospital offers in the community could not be terminated, no matter what reason they chose to terminate them, unless and until they had secured a Certificate of Need pursuant to the requirements of this bill.

So, through you, Madam President, to Senator Gerratana, what is the -- is the term "outpatient services" a defined term?

Through you, Madam President, to Senator Gerratana. THE CHAIR:
Senator Gerratana. SENATOR GERRATANA:
Thank you, Madam President.

Through you, if we look at the bill -- I'm moving up just a little bit -- we see that the bill delineates what a Certificate of Need is required for and what a Certificate of Need is not required for. And if you start reading on line 53, you will see a long list of agencies and entities that a Certificate of Need is not required for.

When you read what it is required for and then the language regarding a termination, the termination is specific to -- it

talks of inpatient and outpatient services offered by a hospital.

Now, through you, Madam President, I'm not sure that I would consider that the criteria or the list of things they, you know, a hospital may offer would be considered inpatient or outpatient services.

Through you, Madam President. THE CHAIR:
Senator Roraback. SENATOR RORABACK:

Thank you, Madam President.

And -- and I was trying to follow Senator Gerratana's answer. I think she referred me to line 53. And I'm -- I'm looking at File 876, Madam President. Through you, is that the line that Senator Gerratana was -- was referring me to, line 53? Through you, Madam President. THE CHAIR:
Senator Gerratana. SENATOR GERRATANA:

Through you, Madam President, I was actually referring to the lack -- or I should say line 42 where it says, A Certificate of Need shall not be required for. And then I will refer you to, I think it's line 15. I'm sorry; I'm using the computer here, so -- SENATOR RORABACK:

Yup. SENATOR GERRATANA:

-- through you. Nope. SENATOR RORABACK:
Thank --. SENATOR GERRATANA:

Through you, Madam President, what a Certificate of Need is issued by. And then if we go -- and that starts on line 2. And line 4 says a Certificate of Need issued by the office shall be required for -- and then if we look to line 8 -- the termination of inpatient or outpatient services; this is line 8. SENATOR RORABACK:

Yes. SENATOR GERRATANA:

(Inaudible) -- SENATOR RORABACK:

And I -- SENATOR GERRATANA:

-- for -- SENATOR RORABACK:

I'm -- SENATOR GERRATANA:

-- the termination of inpatient or outpatient services offered by a hospital, including but not limited to the termination by a short-term, acute care, and it goes on from there.

Inpatient and outpatient services, in my interpretation -- and I believe Senator Roraback was concerned about some of the activities that may happen in the hospital -- but inpatient and outpatient services are usually those with -- with a fee associated with it, services that the hospital provides, you know, with a fee.

Through you, Madam President. THE CHAIR:
Senator Roraback. SENATOR RORABACK:
Thank you, Madam President.

And my concern is, I -- I understand there's a universe of things that one needs to procure or secure a Certificate of Need in order to do them. SENATOR GERRATANA:

Uh-huh. SENATOR RORABACK:

Is it only those things for which you need to secure a Certificate of Need to do that you need to secure a Certificate of Need not to do?

Through you, Madam President, to Senator Gerratana, if she --
THE CHAIR:
Senator Gerratana. SENATOR GERRATANA:

Through you, Madam President, the bill speaks to the termination of services, specifically inpatient, outpatient. I was trying to explain to you, Senator Roraback, that I would interpret that -- you were talking about other services that hospitals may offer people --

SENATOR RORABACK:

Right. SENATOR GERRATANA:

-- and I'm talking about services, inpatient or outpatient, where a fee is usually associated.

I think you were talking about or referring to things that hospitals may provide that may not have that fee associated; it sounds like services that it provides to the community at large rather than specific services offered in the hospital, which are medically related.

EXHIBIT C

And in fact, it is my understanding that there aren't that many decisions that have been made by OHCA that have resulted in refusing such a request.

What this does is make the process transparent so that the community, the town officials and also members of the community, especially those who have a stake in the process also have the opportunity to request a public hearing from OHCA as part of the decision-making process. That's all this Bill does. Thank you.

DEPUTY SPEAKER GODFREY:

Representative Betts.

REP. BETTS (78th):

Thank you for that answer, and thank you, Mr. Speaker. I strongly have to oppose this for a number of reasons. One is, I really believe and I have faith that local hospitals will do the right thing for their community. They are no small part of the community. They are a very large part of the community and it affects employees. It affects programs and services, and believe me, anything that they terminate, the whole community is going to know about it, and it's not going to be in their best interest not to make the decision transparent.

The second thing is, I think that's why the board is there and why the administration is there. That is their fiduciary responsibility to do that and I'm sure it's an extreme situation that leads to a termination. I would think it's the exception to the rule rather than the norm.

I also think, given this fact that the hospitals have very limited resources now. They are being taxed again and they are barely able to stay in the black. Most are in the red. I think this is an additional and poorly timed burden placed on them, and for those reasons, Mr. Speaker, I will be opposing this Bill. Thank you very much.

DEPUTY SPEAKER GODFREY:

Thank you, sir. My good friend from Danbury, Representative Giegler.

REP. GIEGLER (138th):

EXHIBIT D

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Office of Health Care Access

December 9, 2011

VIA FACSIMILE ONLY

Janette Polaski, MPH, MBA
Manager, Community Benefit
The William W. Backus Hospital
326 Washington Street
Norwich, CT 06360

RE: Certificate of Need, Report No.: 11-31728-DTR
The William W. Backus Hospital
Decommissioning a Computed Tomography Scanner located at the Backus Health Center-Colchester

Dear Ms. Polaski:

On October 12, 2011, the Office of Health Care Access ("OHCA") received your determination request on behalf of The William W. Backus Hospital ("Hospital"), with respect to whether a Certificate of Need ("CON") is required for the Hospital to decommission a Computed Tomography ("CT") scanner currently located at its Backus Health Center-Colchester ("BHCC") location.

The CT Scanner proposed for decommissioning was acquired by the Hospital through an OHCA CON Determination (Report No.: 03-30179-DTR) in 2003. Since 2006, the proposed CT scanner has experienced a steady annual decline in utilization. Between FY 2010 and FY 2011, the proposed CT scanner's utilization dropped 41%. Although the Hospital is decommissioning the proposed CT scanner at this location, it continues to provide CT scanning services utilizing higher quality CT scanners (a total of three) in close proximity to BHCC in Norwich. The CT scanners are located on the Hospital's main campus and at its Backus Outpatient Care Center. Both locations are approximately a 15-20 minute drive from BHCC and have available capacity to absorb the low number of scans performed annually at BHCC (approximately 300 in FY 2011).

Based upon the foregoing, OHCA concludes that a CON is not required for the Hospital to decommission the CT scanner located at BHCC. Pursuant to General Statutes § 19a-638 (a) (9) a CON is only required for the acquisition of a CT scanner.

Thank you for informing OHCA of your plans and if you have any questions regarding this letter, please contact Steven W. Lazarus, Associate Health Care Analyst at (860) 418-7012.

Sincerely,

Kimberly R. Martone
Director of Operations, OHCA

C: Rose McLellan, License and Applications Supervisor, DPH, DHSR

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Office of Health Care Access

August 17, 2012

VIA FACSIMILE ONLY

Janette Polaski
Manager, Community Benefits
CONNCare, Inc.
112 Lafayette Street
Norwich, CT 06360

RE: Certificate of Need, Report No.: 12-31779-DTR
CONNCare, Inc.
Closure of Primary Care/Walk-in Services at the Backus Plainfield Center

Dear Ms. Polaski:

On August 2, 2012, the Office of Health Care Access ("OHCA") received your determination request on behalf of CONNCare, Inc., ("CONNCare") with respect to whether a Certificate of Need ("CON") is required for termination of adult primary care and walk-in services at the Backus Plainfield Medical Center ("BPMC") on December 1, 2012.

Connecticut General Statutes Sec. 19a-639e sets forth the actions for a proposed termination of service by a health care facility. Specifically Sec. 19a-639e(c) mandates that "*Any health care facility that proposes to terminate the operation of a facility or service for which a certificate of need was not obtained shall notify the office not later than sixty days prior to terminating the operation of the facility or service.*"

On November 19, 2009, in the CON Determination Request Report Number 09-31423-DTR, the office determined that CONNCare's proposal to establish an adult primary care and walk-in care services at BPMC did not require a CON.

Based upon the foregoing, OHCA concludes that a CON is not required for CONNCare to terminate the adult primary care/walk-in services at BPMC. Further, your August 2, 2012 CON determination request serves as notification to the office prior to the service termination date as required by the statute.

Thank you for informing OHCA of your plans and if you have any questions regarding this letter, please contact Olga Armah, Associate Research Analyst at (860) 418-7070.

Sincerely,

Kimberly R. Martone
Director of Operations, OHCA

Cc: Rose McLellan, License and Applications Supervisor, DPH, DHSR