

SunNephrology

Bhuvan Chawla, MD

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Services

Chronic Kidney Disease Clinic
Clinical Laboratory
IV Infusion Therapy
Medical Nutrition Therapy
ADA Recognized
Diabetes Education Program

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

VIA OVERNIGHT MAIL/FAX/EMAIL

Sun Health, Inc.

Services

Hemodialysis
LDL Apheresis
Dietary Counseling
Social Services

July 6, 2010

Mr. Dale Galassie, Acting Chairman
Illinois Health Facilities and Services Review Board
525 West Jefferson
Springfield, IL 62761

Re: Comments on Silver Cross Hospital's Certificate of Need
Application Proposing to Relocate and Expand its ESRD Facility
(Project No. 10-020) (the "Application").

Dear Acting Chairman Galassie:

On behalf of Sun Health Dialysis ("Sun Health"), I strongly oppose the above-referenced Application submitted to the Health Facilities and Services Review Board (the "Board") by Silver Cross Hospital (the "Hospital"). The Hospital's Application asks the Board to approve a certificate of need ("CON") permit, which will allow the Hospital to relocate its End Stage Renal Disease ("ESRD") facility from Joliet, Illinois to New Lenox, Illinois. The CON Application also requests an increase in the number of approved ESRD stations from 14 to 19 stations.

I respectfully disagree with the Hospital's assertion that the proposed project will not have an adverse impact on area providers; and oppose the Application for the reasons provided in this letter.



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NEED FOR THE PROJECT

A. Excess Station Supply

Sun Health opposes the Application because our planning area already has an over-supply of dialysis stations and the relocation and/or expansion of dialysis stations within the service area may adversely affect current dialysis providers like Sun Health. Current ESRD providers, like Sun Health, already struggle to maintain a sufficient patient base and cannot achieve the Board's ESRD facility utilization standard of 80 percent. According to the revised bed need determinations issued on February 16, 2010, Health Service Area 9 ("HSA 9") has the third largest number of excess dialysis stations in the state. In fact, a statewide analysis shows that none of the planning areas need additional dialysis stations (see the following chart).

REVISED BED NEED DETERMINATIONS				
2/16/2010				
ESRD STATIONS				
HSA Area Service ESRD	Approved Existing Stations	Calculated Station Need	Additional Stations Needed	Excess ESRD Stations
HSA 7	1,023	881	0	142
HSA 6	971	877	0	94
HSA 9	204	141	0	63
HSA 5	173	118	0	55
HSA 10	79	46	0	33
HSA 3	143	117	0	26
HSA 8	280	254	0	26
HSA 11	151	125	0	26
HSA 4	156	135	0	21
HSA 1	131	112	0	19
HSA 2	143	124	0	19
TOTAL	3,454	2,930	0	524

Sun Health is presently operating its dialysis stations at a utilization rate under 60 percent. Our current utilization is stable; but our facility clearly has the capacity to accommodate additional dialysis patients from HSA 9 and other nearby areas. In fact, Sun Health is not alone—many existing facilities in HSA 9 are currently under-utilized and able to accommodate additional patients. Sun Health's utilization percentage is not a factor of our capacity or geographic location; rather, our under-utilization demonstrates the consequences related to the Board's approval of new dialysis stations and subsequent over-development of dialysis facilities within HSA 9 and other nearby areas. Sun Health is actually located 2

blocks from Provena St. Joseph Medical Center and 2.6 miles from the Silver Cross Hospital's Renal Center West dialysis facility.

If this Application is approved, the Board will not only exacerbate the maldistribution of services that already exists in HSA 9; but, the Board will also create further excess to the state's over-supply of dialysis stations.

B. Current Under-Utilization Shows New Stations Are Unnecessary

The Board's approval of new ESRD facilities and stations following the approval of Sun Health's facility led to the current over-supply of dialysis stations in HSA 9 and has clearly contributed to our present under-utilization and inability to achieve the Board's target ESRD facility utilization rate of 80 percent. After Silver Cross Hospital rejected my request for a dialysis facility on the west side of Joliet, I decided to develop a dialysis facility for residents of the west side of Joliet. Sun Health submitted its original CON application in October of 1989 (Project #89-116) and received Medicare Certification on June 6, 1991. Silver Cross Hospital then submitted its CON application for Renal Center West (to be located 2.6 miles from Sun Health) on September 12, 1990 (Project 90-018), and received Medicare Certification on October 8, 1991. Subsequently, the Board has approved the creation of new ESRD facilities owned by large-scale, multi-national ESRD providers like Fresenius and DaVita. By allowing these corporate giants into HSA 9, the Board has indirectly hindered our ability to generate new patients. Moreover, allowing a large hospital like Silver Cross to develop and expand an ESRD service further challenges Sun Health's ability to operate and expand our patient base. As a result, Sun Health simply cannot support any project that proposes to expand dialysis stations in our service area.

In September of 2009, Silver Cross Hospital presented its opposition to the Fresenius Lockport Dialysis CON application, and listed underutilization at a number of facilities. A few months later, Silver Cross is now seeking to add stations to its own relocation application.

I also submit this letter to inform the Board of another unintended consequence of this over-supply of stations – the creation of an unfair competitive environment for small dialysis providers such as Sun Health relative to large hospitals and large dialysis providers, thus reducing our access to patients, especially those with health insurance. Hospitals tend to have intrinsic advantages in the area of patient referrals, and both hospitals and large dialysis providers have better access to insurance contracts. For example, United HealthCare has repeatedly refused to negotiate a contract with Sun Health, even after its Contract with Silver Cross Hospital was terminated and Sun Health was the only remaining dialysis provider in Will County. United HealthCare claimed that its network was closed, apparently on the basis of some relationship with Fresenius. Sun Health has encountered similar problems in negotiating fair contracts with Aetna and Cigna; recently, one of my pre-ESRD patients needed

dialysis, and his insurance carrier Aetna refused to negotiate a contract with Sun Health, and forced him to be transferred to Silver Cross Renal Center West for dialysis even though Aetna had only a hospital and not a dialysis contract with Silver Cross. In short, the door is closed for Sun Health when we seek inclusion into health insurance provider networks. Thus, small providers such as Sun Health may end up caring for a disproportionate share of underinsured patients. The current economy with job loss and loss of insurance benefits further compounds the situation, and adds additional stress for the small provider.

I submit that the existence of hospital and other large-scale dialysis provider's ESRD programs, which were approved by the Board after our facility was granted its CON, allows key insurance providers to exclude small providers like Sun Health from the private pay market. Consequently, Sun Health has become David, a small-scale provider that is now forced to compete with Goliath (i.e., the Hospital and other large-scale dialysis providers). Unfortunately, Sun Health is running out of options to enhance its patient base and asks this Board to end the unchecked growth of ESRD services provided by large providers in HSA 9.

C. Hospital's Failure to Respond to Our Proposed Joint Venture

I also oppose this CON Application because the Hospital has not considered all of the possible alternatives to the proposed project. Sun Health submitted a letter to Silver Cross, dated March 25, 2010, which has become part of this Application's record. In this letter, Sun Health informed the Hospital of its opposition to the project because of dialysis station under-utilization in HSA 9. The letter also stated Sun Health's willingness to work with the Hospital, perhaps in a joint venture or other formal relationship, and develop a plan to meet the needs of the area's dialysis patients. The letter indicated that Sun Health has additional capacity and could immediately serve new ESRD patients at our facility. The Hospital, however, never responded to our suggested alternative, which I submit would result in the utilization of existing dialysis stations, avoid creating new dialysis stations, and stop the unnecessary expenditure of health care funds.

D. Population Growth

The Hospital also argues that its Application should be approved to address an alleged need for new dialysis stations created by Will County's record population growth. However, I question the Nielsen Claritas population data submitted by the Hospital because it was compiled in April 2009. Since that date, the local economy and population growth in Will County appear to be slowing down again. As a result, the Hospital's population trends appear to be unreliable and may not provide useful population growth estimates; therefore, the data may not accurately demonstrate a need for new dialysis stations in HSA 9.

Sun Health does not dispute that from 2006 through 2008 reports document that Will County, including Joliet and New Lenox, experienced significant growth at

that time. The decline in our economy, however, continues to affect population growth throughout Will County. This is understandable since Will County cannot be expected to be immune from economic stresses facing the state and the nation as a whole. Consequently, in the absence of reliable projections establishing that the area's population base will continue to grow to an extent that such growth will fully utilize current dialysis stations and adequately support new dialysis stations as well, we submit that the Board should not approve the Hospital's Application.

Reports issued after April 2009 provide population growth information that is not consistent with the Application's view of a growing and robust Will County. For example, in September 2009, Will County Executive Lawrence Walsh gave his annual State of the County address wherein Walsh noted that the county's population boom was slowing and housing starts were on the decline. Walsh's speech came almost 6 months after the Hospital's growth data was compiled.

As a result, I ask the Board to be prudent and consider the slow-down of Will County's population growth and its possible effect on dialysis station need in HSA 9. The Board must recognize that after a rapid rise, the decline in the housing market is taking its toll. Consequently, less construction means lower population growth, and will likely lessen the demand for new dialysis stations in our area.

PROJECT COST

I also oppose the Application because the project is inconsistent with the state Board's primary purpose—to prevent the unnecessary expenditure of money by health care providers and thereby hold down the overall cost of providing health care in our state. I submit that the Hospital's present facility has not reached the end of its useful life; therefore, the request to develop a new facility appears premature. The Hospital would better serve the community spending its health care dollars elsewhere, perhaps by expanding its charity care program to new patients in the community. A partnership with Sun Health could alleviate the Hospital's reported need for dialysis stations in HSA 9, an alternative that remains unaddressed by Silver Cross Hospital. I submit that requiring the Hospital to work with current providers presents a better alternative than the approach offered by the Hospital in this Application because it would utilize current providers and be less costly than developing a new ESRD facility in New Lenox, Illinois.

CONCLUSION

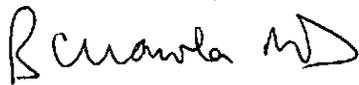
This letter outlines Sun Health's opposition to the Hospital's CON Application. The Hospital simply cannot demonstrate the need for this project, especially the addition of new dialysis stations in a service area with a published over-supply of dialysis stations. The Hospital does not provide sufficient justification for the expenditure of funds for this project when the present facility still has useful life and when other area providers, like Sun Health, have existing

station capacity. In addition, the project cannot be justified by population growth estimates for Will County as growth data for 2010 and beyond appears to be unreliable. Therefore, Sun Health has concluded that the Hospital's project is unnecessary and respectfully requests that the Board denies this Application.

Sun Health welcomes the opportunity to discuss this matter further, with the Hospital and/or the Board, and hope that this Board directs area providers like Silver Cross Hospital to work local dialysis providers and find the best solution for serving the needs of dialysis patients living in HSA 9.

If you have any questions, do not hesitate to call me at (815) 744-9300.

Sincerely,

A handwritten signature in black ink that reads "B Chawla MD". The signature is written in a cursive style with a large initial "B" and a stylized "MD" at the end.

Bhuvan Chawla, M.D.
Sun Health Inc.