

## Constantino, Mike

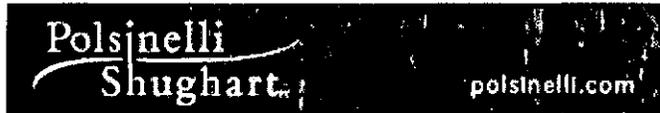
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**From:** Anne Cooper [ACooper@Polsinelli.com]  
**Sent:** Wednesday, April 06, 2011 3:43 PM  
**To:** Constantino, Mike  
**Subject:** Crest Hill Dialysis Proj. No. 11-004  
**Attachments:** Provena Transfer Agreement.pdf, pdf

Mike,

Attached please find a second transfer agreement for Crest Hill Dialysis. If you have any questions, please feel free to contact me.

Anne



**Anne M. Cooper**  
*Attorney*

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Suite 4200  
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## HOSPITAL TRANSFER AGREEMENT

**THIS HOSPITAL TRANSFER AGREEMENT** ("Agreement") is made this 10th day of January, 2011 (the "**Effective Date**") by and between Joliet Dialysis, LLC d/b/a Crest Hill Dialysis, a Delaware Limited Liability Company, (the "**Transferring Facility**"), and **Provena Hospitals**, d/b/a Provena Saint Joseph Medical Center, an Illinois not-for-profit corporation ("**Receiving Hospital**"). (Transferring Facility and Receiving Hospital may each be referred to herein as a "**Party**" and collectively as the "**Parties**").

### RECITALS

**WHEREAS**, Transferring Facility provides health care services to the community; and

**WHEREAS**, patients of Transferring Facility ("**Patients**") may require transfer to a Hospital for acute-inpatient or other emergency health care services; and

**WHEREAS**, Receiving Hospital owns and operates a licensed and Medicare certified acute care Hospital, which has a twenty-four (24) hour emergency room and provides emergency health care services, and is located in reasonable proximity to Transferring Facility; and

**WHEREAS**, the Parties desire to enter into this Agreement in order to specify the rights and duties of each of the Parties and to specify the procedure for ensuring the timely transfer of patients to Receiving Hospital.

**NOW, THEREFORE**, to facilitate the timely transfer of patients to Receiving Hospital, the Parties hereto agree as follows:

### ARTICLE I TRANSFER OF PATIENTS

In the event that any Patient needs acute inpatient or emergency care and has either requested to be taken to Receiving Hospital, or is unable to communicate a preference for Hospital services at a different Hospital, and a timely transfer to Receiving Hospital would best serve the immediate medical needs of Patient, a designated staff member of Transferring Facility shall contact the admitting office or emergency department of Receiving Hospital (the "**Emergency Department**") to facilitate admission. Receiving Hospital shall receive Patient in accordance with applicable federal and state laws and regulations, the standards of The Joint Commission ("**TJC**") and any other applicable accrediting bodies, and reasonable policies and procedures of Receiving Hospital. Responsibility for patient care shall begin when Patient arrives upon Receiving Hospital's property.

**ARTICLE II**  
**RESPONSIBILITIES OF TRANSFERRING FACILITY**

Transferring Facility shall be responsible for performing or ensuring the performance of the following:

- (a) Arranging for ambulance service to Receiving Hospital; and
- (b) Designating a person who has authority to represent Transferring Facility and coordinate the transfer of Patient to Receiving Hospital; and
- (c) Notifying Receiving Hospital's designated representative prior to transfer to alert him or her of the impending arrival of Patient and provide information on Patient to the extent allowed pursuant to Article IV; and
- (d) Notifying Receiving Hospital of the estimated time of arrival of the Patient; and
- (e) Recognizing and complying with the requirements of any federal and state laws and regulations or local ordinances that apply to the care and transfer of individuals to Receiving Hospital for emergency care.

**ARTICLE III**  
**RESPONSIBILITIES OF RECEIVING HOSPITAL**

Receiving Hospital shall be responsible for performing or ensuring performance of the following:

- (a) Designating a person who has authority to represent and coordinate the transfer and receipt of Patients into the Emergency Department; and
- (b) Timely admission of Patient to Receiving Hospital when transfer of Patient is medically appropriate as determined by Receiving Hospital attending physician subject to Hospital capacity and patient census issues; and
- (c) Recognizing and complying with the requirements of any federal and state laws and regulations or local ordinances that apply to Patients who present at Emergency Departments.

**ARTICLE IV**  
**PATIENT INFORMATION**

In order to meet the needs of Patients with respect to timely access to emergency care, Transferring Facility shall provide information on Patients to Receiving Hospital, to the extent approved in advance or authorized by law and to the extent Transferring Facility has such information available. Such information may include: Patient Name, Social Security Number, Date of Birth, insurance coverage and/or Medicare beneficiary information (if applicable), known allergies or medical conditions, treating physician, contact person in case of emergency

and any other relevant information Patient has provided Transferring Facility in advance, to be given in connection with seeking emergency care. Transferring Facility shall maintain the confidentiality of medical/insurance information provided by Patient and received from Patient, in connection with Patient's provision of such information, Patient's authorization to disclose such information to Emergency Department personnel, in accordance with applicable state and federal rules and regulations governing the confidentiality of patient information.

#### **ARTICLE V NON EXCLUSIVITY**

This Agreement shall in no way give Receiving Hospital an exclusive right of transfer of Patients of Transferring Facility. Transferring Facility may enter into similar agreements with other receiving hospitals, and Patients will continue to have complete autonomy with respect to choice of receiving hospital service providers, as further described in Article VI.

#### **ARTICLE VI FREEDOM OF CHOICE**

In entering into this Agreement, Transferring Facility in no way is acting to endorse or promote the services of Receiving Hospital. Rather, Transferring Facility intends to coordinate the timely transfer of Patients for emergency care. Patients are in no way restricted in their choice of emergency care providers.

#### **ARTICLE VII BILLING AND COLLECTIONS**

Receiving Hospital shall be responsible for the billing and collection of all charges for professional services rendered at Receiving Hospital. Transferring Facility shall in no way share in the revenue generated by professional services delivered to Patients at Receiving Hospital.

#### **ARTICLE VIII INDEPENDENT RELATIONSHIP**

**Section 8.1** In performing services pursuant to this Agreement, Receiving Hospital and all employees, agents or representatives of Receiving Hospital are, at all times, acting and performing as independent contractors and nothing in this Agreement is intended and nothing shall be construed to create an employer/employee, principal/agent, partnership or joint venture relationship. Transferring Facility shall neither have nor exercise any direction or control over the methods, techniques or procedures by which Receiving Hospital or its employees, agents or representatives perform their professional responsibilities and functions. The sole interest of Transferring Facility is to coordinate the timely transfer of Patients to Receiving Hospital for emergency care.

**Section 8.2** Receiving Hospital shall be solely responsible for the payment of compensation and benefits to its personnel and for compliance with any and all payments of all taxes, social security, unemployment compensation and worker's compensation.

**Section 8.3** Notwithstanding the terms of this Agreement, in no event shall Receiving Hospital or any Receiving Hospital personnel be responsible for the acts or omissions of non-Receiving Hospital personnel.

**ARTICLE IX**  
**INSURANCE**

Both Parties shall maintain, at no cost to the other Party, professional liability insurance in an amount customary for its business practices. Receiving Hospital shall provide evidence of the coverage required herein to Transferring Facility on an annual basis.

**ARTICLE X**  
**INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless the other Party from and against any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs), imposed by a third party and arising out of, incident to or in any manner occasioned by the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying Party, or any of its employees, agents, contractors or subcontractors.

**ARTICLE XI**  
**TERM AND TERMINATION**

**Section 11.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue in effect for one (1) year (the "*Initial Term*") and SHALL RENEW ON AN ANNUAL BASIS ("**RENEWAL TERM**") ABSENT WRITTEN NOTICE BY EITHER PARTY OF NON-RENEWAL TO THE OTHER PARTY THIRTY (30) CALENDAR DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR ANY SUBSEQUENT RENEWAL TERM OF THIS AGREEMENT.

**Section 11.2 Events of Termination.** Notwithstanding the foregoing, this Agreement may be terminated upon the occurrence of any one (1) of the following events:

- (a) Either Party may terminate this Agreement at any time upon sixty (60) days' prior written notice to the other Party.
- (b) If either Party shall apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or if an order, judgment, or decree shall be entered by a court of competent jurisdiction or an application of a creditor, adjudicating such Party to be bankrupt or insolvent, or approving a petition seeking reorganization of such Party or appointing a receiver, trustee or liquidator of such Party or of all or a substantial part of its assets, and such order, judgment,

or decree shall continue in effect and unstayed for a period of thirty (30) consecutive calendar days, then the other Party may terminate this Agreement upon ten (10) business days' prior written notice to such Party.

**Section 11.3 Immediate Termination.** Notwithstanding anything to the contrary herein, this Agreement will be terminated immediately upon the following events: (a) the suspension or revocation of the license, certificate or other legal credential authorizing Receiving Hospital to provide emergency care services; (b) termination of Receiving Hospital's participation in or exclusion from any federal or state health care program for any reason; (c) the cancellation or termination of Receiving Hospital's professional liability insurance required under this Agreement without replacement coverage having been obtained.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

**Section 12.1 Entire Agreement.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement supersedes any and all other prior agreements either written or oral, between the Parties with respect to the subject matter hereof.

**Section 12.2 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

**Section 12.3 Waiver.** Any waiver of any terms and conditions hereof must be in writing, and signed by the Parties, a waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms and conditions hereof.

**Section 12.4 Severability.** The provisions of this Agreement shall be deemed severable, and, if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the Parties.

**Section 12.5 Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**Section 12.6 Assignment.** This Agreement, being intended to secure the services of Receiving Hospital, shall not be assigned, delegated or subcontracted by Receiving Hospital without prior written consent of Transferring Facility.

**Section 12.7 Governing Law.** This Agreement shall be construed under the laws of the State of Illinois, without giving affect to choice of law provisions.

**Section 12.8 Notices.** Any notice herein required or permitted to be given shall be in writing and shall be deemed to be duly given on the date of service if served personally on the other Party, or on the fourth (4th) day after mailing, if mailed to the other Party by certified mail, return receipt requested, postage pre-paid, and addressed to the Parties as follows:

**To Transferring Facility**

Joliet Dialysis, LLC  
601 Hawaii Street  
El Segundo, California 90245

**Copy to:**

Steve Lieb  
Group General Counsel  
DaVita, Inc.  
2611 North Halstead Street  
Chicago, Illinois 60657

**To Receiving Hospital**

Provena Saint Joseph Medical Center  
333 North Madison Street  
Joliet, Illinois 60435

**Copy to:**

General Counsel  
Provena Health  
19065 Hickory Creek Drive, Suite 115  
Mokena, Illinois 60448

or such other place or places as either Party may designate by written notice to the other.

**Section 12.9 Amendment.** This Agreement may be amended upon mutual, written agreement of the Parties.

**Section 12.10 Regulatory Compliance.** The Parties agree that nothing contained in this Agreement shall require Transferring Facility to refer patients to Receiving Hospital for emergency care services or to purchase goods and services. Notwithstanding any unanticipated effect of any provision of this Agreement, neither Party will knowingly and intentionally conduct its behavior in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs.

**Section 12.11 Access to Books and Records.** If applicable, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, Receiving Hospital shall make available to the Secretary or to the Comptroller General those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing its services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such service. This Section is included pursuant to and is governed by the requirements of Public Law 96-499 and Regulations promulgated thereunder. The Parties agree that any attorney-client, accountant-client or other legal privileges shall not be deemed waived by virtue of this Agreement.

**IN WITNESS THEREOF,** the Parties have caused this Agreement to be executed by their duly authorized officers hereto setting their hands as of the date first written above.

**TRANSFERRING FACILITY**

Joliet Dialysis, LLC  
A Delaware Limited Liability Company

By: [Signature]

Its: Regional Director

**RECEIVING HOSPITAL**

Provena Saint Joseph Medical Center  
An Illinois Not for Profit Corporation

By: [Signature]

Its: EW/100