

## Constantino, Mike

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**From:** Lori Wright [Lori.Wright@fmc-na.com]  
**Sent:** Friday, September 16, 2011 2:31 PM  
**To:** Constantino, Mike  
**Cc:** clare.ranalli@hklaw.com  
**Subject:** #11-022  
**Attachments:** Response to ITD - #11-022.pdf

Mike,

Please see attached additional information for #11-022 in response to the Intent to Deny issued August 16, 2011. A hard copy will be sent via UPS overnight.

Thank you,  
Lori Wright  
Senior CON Specialist

Phone: 708-498-9121  
Fax: 708-498-9334

Fresenius Medical Care  
One Westbrook Corporate Center  
Tower One, Suite 1000  
Westchester, IL 60154



## Fresenius Medical Care

September 16, 2011

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: Additional Information**  
**Project: #11-022, Fresenius Medical Care Lockport**

Dear Ms. Avery,

The enclosed pages contain additional information in response to the Intent to Deny given to the above mentioned project at the August 16, 2011 meeting.

Thank you for your time and consideration of this information.

Sincerely,

Lori Wright  
Senior CON Specialist

cc: Clare Ranalli

## APPLICANTS SUBMISSION OF

### SUPPLEMENTAL INFORMATION FOR #11-022, Fresenius Medical Care Lockport

In response to the Intent to Deny issued to project number 11-022, at the August 16, 2011 meeting, Fresenius Medical Care Lockport is submitting this information for the Board's consideration. This project was originally approved by the Illinois Health Facilities Planning Board on December 1, 2009. The applicant requests the Board reconsider its Intent to Deny based on the following 5 points. The facility was previously approved; conditions placed on original permit have already been met; general need still exists; need/excess of stations is similar; numerous stations have been approved within 30 minutes of the original Lockport approval; and lastly our desire to fulfill our commitment to our patients.

#### **1. THIS FACILITY WAS PREVIOUSLY APPROVED.**

The developer of the site for the approved Lockport facility would not commence work at the site. Fresenius was unsuccessful in encouraging the developer to do so in a timely manner. In order to proceed with the due diligence expected of a permit holder, Fresenius chose to relocate the facility across the street. Had it thought this Board would turn down an already approved project and not see it similar to a relocation, it may have continued to take a wait and see approach on the original location. However, knowing that the patients, the town of Lockport and the physicians were anxiously awaiting its opening Fresenius chose to keep its promise of establishing this facility by finding another site.

We have seen a precedent set by the IHFSRB for "re-approving" dialysis projects previously approved. Below is a list of those projects which were not able to move forward at the approved site and had to surrender permits and re-file at a different address. All were re-approved.

- Fresenius Oswego #04-045 & #06-013
- Fresenius Chatham #09-061 & #10-074
- DaVita Barrington Creek #09-036 & #11-010

#### **2. CONDITIONS PLACED ON ORIGINAL PERMIT WERE ALREADY MET.**

When the original Lockport permit, #09-037 was granted, a condition was placed on the approval requiring Fresenius Medical Care to discontinue 4 ESRD stations at its Willowbrook facility, which was within 30 minutes travel time and was performing under 80% utilization (copy of permit letter attached). These stations were decertified as of March 17, 2010. Thus, Fresenius only added 8 stations to the inventory. Due to surrender of the original permit, Fresenius has given back 12 stations and should be entitled to add those 4 stations back to its Willowbrook facility; however, it sees a greater need for them in Lockport as it did in 2009.

#### **3. GENERAL NEED STILL EXISTS.** Area conditions are similar now to what they were when this project was originally approved reflecting that if it was needed then it should still be needed now.

- a. Overall utilization within 30 minutes is similar.
- b. Excess of stations is similar in 2009 as currently.

a. **SIMILARITIES OF AREA NEED 2009 VS 2011**

**#09-037** When this project was originally approved in 2009, the overall utilization of facilities within 30 minutes was 66%.

**Table Four from SAR for #09-037, December 1, 2009**

TABLE FOUR Facilities within 30 minutes of the proposed site <sup>(1)</sup>						
Facility	City	Miles	Minutes	Stations	September 2009 Utilization	Met Standard
Silver Cross Hospital	Joliet	5.03	5	14	97.62%	Yes
Sun Health	Joliet	9.54	20	17	58.52%	No
Fresenius Orland Park	Orland Park	10.1	20	16	82.29%	Yes
Fresenius Bolingbrook	Bolingbrook	12.5	22	20	83.33%	Yes
Silver Cross West	Joliet	10.03	23	29	82.76%	Yes
Fresenius Plainfield <sup>(2)</sup>	Plainfield	12.25	24	12	1.39%	NA
Fresenius Mokena	Mokena	13.77	24	12	36.11%	No
Fresenius Willowbrook	Willowbrook	16.67	29	20	57.50%	No
Fresenius Downers Grove	Downers Grove	20.56	30	19	90.35%	Yes

1. Information taken from September 2009 Renal Network Data  
 2. Project #07-130 Fresenius Medical Care Plainfield permit renewal submitted for approval to the State

**#11-022** When the replacement project was given an Intent to Deny on August 16, 2011, the overall utilization of facilities within 30 minutes was 61%. This is close to the original 66% in 2009, considering 2 facilities were subsequently approved. Although their stations are in the inventory they are not operating, significantly dragging down average utilization rates. If these 2 facilities were removed from the count and only the facilities in table four above were considered, the overall utilization (using March 2011 data) would be 76%.

**Table Five From SAR for #11-022, August 16, 2011**

TABLE FIVE Facilities within 30 minutes of the FMC Lockport <sup>(1)</sup>						
Facility	City	Minutes <sup>(1)</sup>	Miles	Stations	March 2011 Utilization	Met 80% Standard
Silver Cross Renal Ctr.	New Lenox	10.35	5.6	19	78%	No
FMC Joliet	Joliet	11.5	5.62	16	0.00% *	No
FMC Orland Park	Orland Park	16.1	9.98	18	74%	No
FMC Bolingbrook	Bolingbrook	20.7	12.4	24	79.1%	No
Sun Health	Joliet	21.85	9.58	17	52.9%	No
Palos Park Dialysis	Orland Park	21.85	12.86	12	0.00% *	No
FMC Mokena	Mokena	21.85	13.8	12	72.2%	No
Silver Cross Renal Ctr. West	Joliet	23	10.07	29	85%	Yes
Fresenius Plainfield	Plainfield	24.15	12.26	12	79.2%	No
FMC Willowbrook	Willowbrook	25.3	16.54	16	85.4%	Yes
Average					61%	

1. Mileage calculated using MapQuest. Time calculated per 77 IAC 1100.510 (d)  
 2. \*Recently approved facility, no data available.

**#11-022 MOST CURRENT UTILIZATION DATA** 2<sup>nd</sup> Quarter Renal Network Data (June 2011) shows that the average utilization within 30 minutes of Lockport has risen to 63% since March despite two facilities not yet in operation.

Name	City	Zip Code	MapQuest		Adjusted Time	Stations	6/30/2011 Patients	6/30/2011 Util
			Miles	Time				
Silver Cross Hosp	New Lenox	60432	5.65	9	10.35	19	85	74.6%
Fresenius Joliet	Joliet	60432	5.62	10	11.5	16	0	0.0%
Fresenius Orland Park	Orland Park	60462	9.98	14	16.1	18	89	82.4%
Fresenius Bolingbrook	Bolingbrook	60440	12.4	18	20.7	24	115	79.9%
Sun Health	Joliet	60435	9.58	19	21.85	17	58	56.9%
Fresenius Mokena	Mokena	60448	13.8	19	21.85	12	50	69.4%
DaVita Pabs Park	Orland Park	60462	12.86	19	21.85	12	0	0.0%
Silver Cross West	Joliet	60435	10.07	20	23	29	154	88.5%
Fresenius Plainfield	Plainfield	60586	12.26	21	24.15	12	65	90.3%
Fresenius Willowbrook	Willowbrook	60527	16.54	22	25.3	16	83	86.5%
<b>Total</b>						175	699	67.3%
<b>Average Utilization</b>								<b>63.0%</b>

**b. DETERMINED NEED/EXCESS STATION COUNTS SIMILAR**

**#09-037 (2009)** When this project was approved there was an **excess of 51** ESRD stations in HSA 9.

**Excerpt From SAR For #09-037**

State Agency Report  
Project #09-037  
Page 3 of 33

Fresenius Medical Care Lockport is the operating entity/licensee. The proposed facility will be located in Lockport in the HSA IX hospital planning area. HSA IX is comprised of the Illinois Counties of Grundy, Kankakee, Kendall, and Will. There are 13 other providers of ESRD services in HSA IX. According to the November 2009 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA IX shows a computed excess of 51 ESRD stations.

**#11-022 (2011)** When this project was given an intent to deny there was an **excess of 55** stations in HSA 9.

**Excerpt From SAR For #11-022**

**1) 77 Ill. Adm. Code 1100 (formula calculation)**

According to the July 2011 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA-09 shows a computed excess of 55 ESRD stations. This project is requesting 12 stations in 8,000 GSF of leased space in Lockport.

During the questioning at the August 16<sup>th</sup> meeting, a Board member asked staff if there was an excess of stations or if there was a need at the time the project was originally approved. It was mistakenly reported that there was a need when originally approved, when as noted above there was actually a similar number of **excess** stations in the HSA. **The Board felt the project was needed despite the excess of stations at that time.**

4. **37 STATIONS ADDED WITHIN 30 MINUTES TRAVEL TIME SINCE APPROVAL.** Since the Board first acknowledged the need for the original Lockport facility, they have also acknowledged additional need for stations within 30 minutes of Lockport. The Lockport project was approved in December of 2009. During the time we were waiting for construction of the Lockport facility the Board approved a total of 37 additional stations in the area. The Board was well aware that the Lockport facility was permitted and obviously, this Board felt the need in the area went far beyond the approval of the Lockport facility. This need has not changed.

**Stations permitted since the approval of #09-037**

Facility	Project Number	Description	Permitted Stations	Permit Date
Fresenius Lockport	09-037	Establishment	12	12/2009
<b><u>Post Lockport Approvals</u></b>				
DaVita Palos Park	09-055	Establishment	12	01/2010
Silver Cross Renal Center	10-020	Relocate 14 stations & Expansion	5	07/2010
Fresenius Bolingbrook	10-043	Expansion	4	09/2010
Fresenius Joliet	10-066	Establishment	16	03/2011
<b>Total Stations Approved After Lockport</b>			<b>37</b>	

5. **THE IMPORTANCE OF KEEPING OUR COMMITMENT TO OUR PATIENTS.**

Whenever a new facility is approved it is not just a victory for the provider. While we are excited to gain approval, it is a victory for our patients. News spreads quickly to pre-ESRD and dialysis patients alike when a new dialysis facility is promised in their community. Patients anxiously anticipate shorter travel times giving them more time to enjoy their hours outside of dialysis treatment and to save money on transportation costs. It also lightens the burden of acquiring transportation to and from treatment. The shorter the travel distance the easier it is to accommodate. Lockport runs a bus that can transport these patients to the proposed site. It will not cross county lines and transport patients to Orland Park or Palos Park where other facilities are located. Family members who must give a patient rides round trip before and after treatment, three times weekly, can save many hours to devote to family or jobs. The Lockport patients inquire frequently when the new site will open so their already difficult lives can become a little easier. It would be an overwhelming disappointment to tell these patients who have been waiting for the Lockport facility, that they are now being denied treatment in their community and that they must continue to endure travel hardships. As mentioned in the public hearing for the original Lockport project, it is difficult for these patients to travel to Fresenius Orland Park via 159<sup>th</sup> street as it will be for them to travel to DaVita Palos Park, which is also in Orland Park.

In addition, the applicant would like to point out that there was no opposition to this project and no public hearing. A public hearing was held prior to the #09-037 approval showing overwhelming support from healthcare professionals, patients and the town of Lockport. A portion of these transcripts are attached to the application for #11-022.

Fresenius Medical Care respectfully asks that the Board thoughtfully review this information and reconsider the Intent to Deny given this project. We urge you to once again approve this project so the hope of dialysis services for the Lockport patients will not be abandoned.

Thank you for your time and attention to this matter.

**ATTACHMENTS TO ADDITIONAL INFORMATION FOR #11-022**

1. Conditional Permit for #09-037
2. Notification of conditions met
3. Permit surrender for #09-037
4. Copy of support letter from Dr. Alausa
5. Copy of support letter from Dev Trivedi, Mayor of Lockport



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217)782-3516 FAX: (217) 785-4111  
December 4, 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Lori Wright, Senior CON Specialist  
Fresenius Medical Care North America  
One Westbrook Corporate Center, Tower One, Suite 1000  
Westchester, Illinois 60154

**RE: PERMIT: Illinois Health Facilities Planning Act 20 ILCS 3960**

Dear Ms. Wright:

On December 1, 2009, the Illinois Health Facilities and Services Review Board approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, and any testimony made before the State Board.

- **PROJECT: #09-037- Fresenius Medical Care Lockport** - The permit holders are approved to establish a 12 station end station renal dialysis facility to be located at 1050-1062 Thornton Avenue, Lockport, Illinois in 6,000 gross square feet of space. The operating entity licensee is Fresenius Medical Care Lockport, LLC d/b/a Fresenius Medical Care Lockport. The owner of the site is Palos Bank & Trust.
- **PERMIT HOLDERS:** The permit holders are Fresenius Medical Care Lockport LLC, d/b/a Fresenius Medical Care Lombard, Fresenius Medical Care Ventures, LLC, Fresenius Medical Care Ventures Holding Company, Inc., National Medical Care, Inc., Fresenius Medical Care Holdings, Inc. 920 Winter Street, Waltham, MA. 02541.
- **CONDITION AND STIPULATION:** As a condition of approval of this permit the permit holders will discontinue four ESRD stations located at 6300 South Kingery Highway, Willowbrook, Illinois.
- **PERMIT AMOUNT:** \$2,920,362
- **PROJECT OBLIGATED BY:** June 1, 2011
- **PROJECT COMPLETION DATE:** August 31, 2011

This permit is valid only for the defined construction or modification, site, amount and the named permit holder and is not transferable or assignable.

In accordance with the Planning Act, the permit is valid until such time as the project has been completed, provided that all post permit requirements have been fulfilled, pursuant to the requirements of 77 Ill. Adm. Code 1130. The permit holder is responsible for complying with the following requirements in order to maintain a valid permit. Failure to comply with the requirements may result in expiration of the permit or in State Board action to revoke the permit.

1. OBLIGATION-PART 1130.720

The project must be obligated by the **Project Obligation Date**, unless the permit holder obtains an "Extension of the Obligation Period" as provided in 77 Ill. Adm. Code 1130.730. Obligation is to be reported as part of the first annual progress report (see 2. below) for permits requiring obligation within 12 months after issuance. For major construction projects which require obligation within 18 months after permit issuance, obligation must be reported as part of the second annual progress report. If project completion is required prior to the respective annual progress report referenced above, obligation must be reported as part of the notice of project completion. The reporting of obligation must reference a date certain when at least 33% of total funds assigned to project cost were expended or committed to be expended by signed contracts or other legal means.

2. ANNUAL PROGRESS REPORT-PART 1130.760

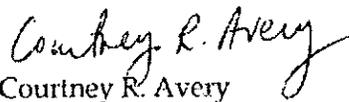
An annual progress report must be submitted to IDPH every 12-month from the permit issuance date until such time as the project is completed.

3. PROJECT COMPLETION REQUIREMENTS-PART 1130.770

The permit holder must submit a written notice of project completion as defined in Section 1130.140. Each permit holder shall notify IHFSRB within 30 days following the project completion date and provide supporting documentation within 90 days following the completion date and must contain the information required by Section 1130.770.

This permit does not exempt the project or permit holder from licensing and certification requirements, including approval of applicable architectural plans and specifications prior to construction. Should you have any questions regarding the permit requirements, please contact Mike Constantino.

Sincerely,



Courtney R. Avery  
Acting Chairman

Illinois Health Facilities and Services Review Board

cc: William Bell  
Karen Senger  
Jody Gudgel  
Project File



## Fresenius Medical Care

March 24, 2010

Mike Constantino  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: Fresenius Medical Care Willowbrook  
6300 Kingery Highway  
Willowbrook, IL 60527**

Dear Mike,

Per a condition of CON permit #09-037 for Fresenius Medical Care Lockport, Fresenius Medical Care agreed to surrender 4 stations at its Willowbrook facility.

I am writing to notify the Board that these 4 stations have been removed and the facility was recertified with 16 stations on March 17, 2010.

I can be reached at 708-498-9121 if you have any questions or concerns.

Sincerely,

Lori Wright  
Senior CON Specialist

cc: Clare Ranalli



## Fresenius Medical Care

May 19, 2011

Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson, 2<sup>nd</sup> Floor  
Springfield, IL 62761

Re: **PROJECT**: # 09-037, Fresenius Medical Care Lockport  
**APPLICANTS**: Fresenius Medical Care Lockport, LLC, Fresenius  
Medical Care Ventures, LLC, Fresenius Medical Care Ventures Holding  
Company, Inc. and Fresenius Medical Care Holdings, Inc.

Dear Ms. Avery:

Please be advised that Fresenius Medical Care would like to surrender the above mentioned Certificate of Need permit, granted on December 1, 2009, effective immediately. The developer failed to initiate construction of the site with due diligence. Fresenius Medical Care will be submitting a new application for this project at a different site.

If you require any additional information please contact me at 708-498-9121.

Sincerely,

Lori Wright  
Senior CON Specialist

cc: Clare Ranalli



# KIDNEY CARE CENTER

812 Campus Drive • Joliet, IL 60435  
Tel: (815) 741-6830 • Fax: (815) 741-6832

Tunji Alausa, M.D.

M.S. Shafi, M.D.

Stella Awua-Larbi, M.D.

Nitesh Thakker, M.D.

Amit Jamnadas, M.D.

September 6, 2011

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 West Jefferson, 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: Project # 11-022, Fresenius Medical Care Lockport**

Dear Ms. Avery,

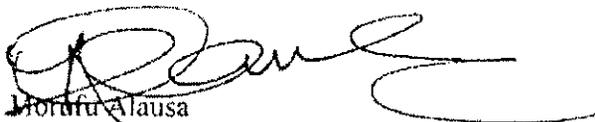
My name is Morufu Alausa, M.D. and I am a nephrologist practicing in the Joliet area. I am the Medical Director of the Fresenius Plainfield and Joliet facilities. I also admit patients to the Silver Cross units and Sun Health. Over the years I have witnessed extensive growth not only of population but of ESRD patients. Attesting to this is the Plainfield facility's climb above 80% in approximately 18 months. With the pre-ESRD patients in my practice from the Joliet area I expect the Joliet facility to climb to 80% in a similar fashion.

I have many pre-ESRD patients in my practice that I was anticipating referring to the Fresenius Lockport facility upon its opening and was very disappointed for my patients when I heard that the facility was forced to surrender its permit and re-file at a new site in Lockport. I along with my patients that live in Lockport are eager to have this much awaited facility located in their community.

I currently have patients from Lockport dialyzing in Plainfield, FMC this is a long distance to travel. The newly approved Joliet facility will not be a reasonable option for Lockport patients either due to the high number of pre-ESRD patients I have who live in the immediate vicinity in this underserved area who will dialyze there.

I urge you to keep the promise of dialysis services made to the residents of Lockport in 2009 with the approval of the original Lockport facility, by once again approving the same facility which is merely a move across the street.

Sincerely,

  
Morufu Alausa  
Medical Director

# LOCKPORT

**Mayor**  
Dev Trivedi

**City Clerk**  
Alice Matteucci

**Administrator**  
Tim Schloneger



**Alderman**  
Pete Colarelli - 1st Ward  
Dick Van Dyke - 1st Ward  
Kelly Turner - 2nd Ward  
Brian Smith - 2nd Ward  
Tom Kelly - 3rd Ward  
Justin Fentress - 3rd Ward  
Denise Marynowski - 4th Ward  
Robert Perretta - 4th Ward

*City of Historic Pride*

222 E. Ninth Street ♦ Lockport, IL 60441-3497

September 6, 2011

Courtney Avery, Administrator  
Health Facilities and Services Planning Board  
525 W. Jefferson Street, 2nd Floor  
Springfield, IL 62761

Re: Fresenius Medical Care - 12 station in-center hemodialysis facility

Dear Mr. Avery,

I am writing to express my support for the proposed 12-station dialysis clinic at 1143-1165 9th Street. This facility will not only provide easier access to a life-dependent service such as dialysis, but the leasing and employment opportunities would benefit the local economy as well.

A Certificate of Need (CON) was approved by the Illinois Health Facilities and Services Review Board for a facility on Thornton Street in December 2009. After waiting a year and a half for construction to begin, Fresenius decided to surrender its CON permit for that site and refile the application at a location across the street in an already existing building. This is not the first time Fresenius, or other providers, have done this. The CON approval has always been granted again.

However, on August 16<sup>th</sup> the Illinois Health Facilities and Services Review Board gave Fresenius an "Intent to Deny" vote for the location across the street. Therefore I am writing to express my support for the project. This project was previously approved, and the City has been patiently awaiting it.

Sincerely,

City of Lockport

  
Dev Trivedi  
Mayor