

## Constantino, Mike

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**From:** maryjane.yothment@hklaw.com on behalf of Clare.Ranalli@hklaw.com  
**Sent:** Wednesday, May 16, 2012 12:22 PM  
**To:** Avery, Courtney  
**Cc:** Michelle.Wiest@fmc-na.com; Lori.Wright@fmc-na.com; Constantino, Mike  
**Subject:** Opposition to Project 12-004  
**Attachments:** Opposition to Project 12-004.PDF

Please see the attached.

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May 16, 2012

*Via Email and U.S. Mail*

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

Re: Opposition to Project 12-004

Dear Ms. Avery:

On behalf of Fresenius Medical Care, I am responding to the opposition from Drs. Shakaib and Usman. First, Fresenius would like to point out that both physicians have privileges at the area Fresenius facilities. These physicians simply do not have medical director agreements (i.e. Fresenius does not pay them for administrative services). Their opposition to Fresenius can be summed up as: Drs. Shakaib and Usman want to "compete" with Fresenius, despite the fact they have no application pending to provide service in the area. The existing facilities have been providing services to Peoria and Pekin residents for over 15 years. Dr. Usman has practiced in the area for less than one year, and Dr. Shakaib for less than 3 months.

The HFSRB is not, through the Health Facilities Planning Act ("Planning Act") or otherwise, tasked with antitrust analysis or review. The policy behind the Certificate of Need process is not to guaranty either patient choice or competition. The opposite to health planning, i.e., free market competition would do that. The continuing assertions by other dialysis facilities that their projects should be approved, or Fresenius projects denied, because Fresenius has a dominant "market share" are inaccurate, and irrelevant. Anecdotal and unsupported competition arguments present a slippery slope in derogation of the statutory purposes of the HFSRB. Those supporting or opposing a Certificate of Need application should focus on the review criteria under the Planning Act rather than asking for approval to "increase competition" or provide patient choice. The arguments asserted by Dr. Shakaib and Usman are unrelated (and in fact contrary) arguments to the policies behind the Planning Act.

Furthermore, the theoretical and vague argument that a predominant player in a market has less incentive to provide quality is not supported. There is no evidence before this Board that

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Fresenius' quality is anything but excellent. In fact the two hospitals in the area (Pekin Memorial and OSF Saint Francis) use Fresenius to provide acute dialysis services. They do have a choice in which dialysis provider they use for acute services, as the provision of chronic in center hemodialysis has nothing to do with acute dialysis in a hospital setting. The only patient complaint offered by the physicians as part of their opposition was that the East Peoria facility was cold and the patient had to use blankets.

Interestingly, the physicians strongly support the need for another facility in Pekin. We urge the HFSRB to approve Fresenius application. There is a recognized need by physicians supporting and opposing the application, the physicians at Renal Care Associates have worked with the existing area facilities for many years, Fresenius has the support of the hospitals in the area, and the HFSRB has stated a need in the Planning Area. All of these factors support approval under the Board's criteria.

Very truly yours,

HOLLAND & KNIGHT LLP



Clare Connor Ranalli

CCR/mjy

cc: Michelle Wiest (via email)  
Lori Wright (via email)  
Mike Constantino (via email)