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August 21, 2012

Via UPS

Ms. Courtney Avery
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: DaVita Tazewell County Application, Project No. 12-052

Dear Ms. Avery:

On behalf of Fresenius Medical Care, and as its legal counsel, I am corresponding to express opposition to the Tazewell County Application, Project No. 12-052, on the basis that (1) it does not meet the Board's criteria for establishment of a health care facility and (2) it will negatively impact existing Fresenius facilities in the area. The fact that the Fresenius facilities are the only current dialysis facilities in the area is not a basis, within the Board's statutory authority, to approve the DaVita Tazewell application in light of the aforementioned deficiencies.

Fresenius respects the health planning process and the Board's role and authority therein. It recognizes that it, as well as its competitors, file applications that do not meet the Board's review criteria. The Board has discretion to approve these applications and it occasionally does based on convincing facts relating typically to need or access. The Board also votes down dialysis applications that do not meet its criteria. Fresenius may respectfully disagree with a decision along these lines but has always supported the fair application of the Board's rules and *has never* challenged a Board decision. However, it is concerned that there has been a pattern of comparative review whereby the Board has denied Fresenius applications and approved other provider's applications - on the same agenda or on the two contiguous agendas - when both applications have the same fact patterns under the Board's administrative rules. The Board has voiced its concern that Fresenius has too much market share and patients deserve a choice - neither of which are review criteria under the Board's rules.

The Fresenius North Pekin application was heard by the Board for the first time on June 5, 2012 and Dr. Ahsan Usman appeared to offer public comment. He stated that he and DaVita intended to develop a facility in Pekin, and that an application had been filed to do so. (See attached Tab A which is the Transcript of Proceedings of the Health Facilities and Services Review Board meeting of June 5, 2012, excerpt pages 95 to 113, pages 96-98, hereinafter). This was the first time that Fresenius or the Board had heard of the proposed DaVita Tazewell application. Mr. Constantino confirmed that an application had not been filed yet. Tab A, pg. 99. Dr. Usman commented that there was no choice in the area and Fresenius had a monopoly. (Tab A, Pg. 96).

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Subsequently, Fresenius Medical Care presented its North Pekin application to the Board. After some discussion, the Board expressed concern about the lack of choice and competition in the area, and the excess capacity in the Fresenius Peoria facilities. It voted an Intent to Deny. (Tab A, Pgs. 112-113). The Board vote made it clear that the reason for the Intent to Deny was not simply the failure of the application to meet its need and maldistribution of services review criteria due to existing excess capacity in the area, but also its desire to provide for a choice of providers in the area. The Board vote is set forth below:

CHAIRMAN GALASSIE: Moved and seconded. Roll call, please?

MR. ROATE: Motion made by Mr. Penn, seconded by Ms. Olson.

Dr. Burden?

MR. BURDEN: I'm going to vote no. Fresenius already is the major player in the country and certainly in this area, in lieu of the possibility there's a competing individual who is interested in being involved in this area.

MR. ROATE: Mr. Baker?

MR. BAKER: I'm going to vote no, same reason.

MR. ROATE: Justice Greiman?

MR. GREIMAN: I vote no also.

MR. ROATE: Mr. Hayes?

MR. HAYES: I'm going to vote no because of the competition and choice issues involved with that, and also because of the Planning Area need and unnecessary duplication and maldistribution of services. I'm not also very - - I'm not impressed by taking the time and the effort to move four stations from an operating facility that is 15 to 25 miles away, and I don't think that's an effective use of healthcare dollars. So I'm going to vote no.

MR. ROATE: Ms. Olson?

MS. OLSON: I vote no for the same reason just stated by Mr. Hayes.

MR. ROATE: Mr. Penn?

MR. PENN: I'm voting no, same reason as Mr. Hayes.

MR. ROATE: Mr. Sewell?

MR. SWELL: No. Mr. Hayes's reasons.

MR. ROATE: Chairman Galassie?

CHAIRMAN GALASSIE: The chair is voting yes, because I see no other applications in front of us at this time.

MR. ROATE: One vote in the affirmative, seven votes in the negative.

MR. URSO: You'll be receiving an Intent to Deny. You'll have an opportunity to submit additional information, as well as come back before this Board, if you so desire.

CHAIRMAN GALASSIE: Good luck. (see Tab A)

On July 24, 2012 the Fresenius North Pekin facility application was again before the Board. It voted the project down on the basis that it did not meet the need in the area, the existence of excess capacity *and the lack of choice of providers*. See Tab B, which is the excerpt from the July 24, 2012 Board Hearing transcript regarding the Board's consideration of the North Pekin application.)

I respectfully suggest that the Board's focus on ensuring greater choice of providers (or that Fresenius does not have market share) exceeds its statutory authority and should not be a basis for approval of the DaVita Tazewell application. The Illinois Health Facilities Planning Act (20 ILCS 3960 et. seq.) was enacted to control what were then seen as spiraling health care costs, driven by health care providers establishing competitive facilities. The Planning Act calls upon the Health Facilities and Services Review Board to engage in the orderly development of health care facilities to avoid duplication of services and/or facilities, to address unmet need and to require a person establishing a facility to have the necessary background, character and financial resources to adequately provide a proper service for the community. The Act does not call upon the HFSRB to provide for competition or to break down perceived monopolies. Mr. David Carvalho, Deputy Director of the Illinois Department of Public Health, noted this in his comments during the discussion of the North Pekin application at the July 24, 2012 Board meeting. In fact, he stated that "*The statute almost demands an indifference to who the provider is.*" Tab B, Pg. 112.

The Board's process for designating Health Service Areas, its need formulas and maldistribution of services criteria do not require (or even reference) the Board's review of the number of different corporate entities providing care in the area. There is nothing in the DaVita Tazewell application which supports that approving it and allowing for choice in the market area will allow for better quality of medical care. To the contrary, the area Fresenius facilities quality statistics surpass State and National averages (see Tab A, Ps. 101-102 and Tab C, which are Ps. 24-30 the Public Hearing Transcript on project 12-052 and part of the record). Finally, there is nothing in the record to support that free market competition in the healthcare industry improves outcomes or controls health care costs.

The DaVita Tazewell application exceeds the stated need for stations in the area, by proposing eight (8) stations when there will be a need for only two (2). The maldistribution criteria is not met because the Fresenius Peoria facilities have capacity to accept Dr. Usman's patients, particularly if the current Fresenius Pekin facility relocates and adds two stations (a much less costly project than the proposed DaVita Tazewell establishment, and one which meets the Board's need criteria). Thus, even if Dr. Usman's patient projections are accurate, there will be

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no access issue - just as the Board determined there would not be when it denied the Fresenius North Pekin application. As acknowledged on the record Dr. Usman and his partner have privileges at all Fresenius facilities and admits patients there. His patients will not have to transfer to a new physician when they require dialysis treatment - they will still be seen, followed and treated by him (and his partner).

In sum, Fresenius accepted the Board's denial of its North Pekin application because it was in part based on the Board's review criteria pertaining to need and maldistribution of services. The Board should not approve the DaVita Tazewell application after having turned down the Fresenius North Pekin application just a month and a half earlier, because the need is no different and the excess capacity in the area has not changed. We urge the Board to deny the proposed DaVita Tazewell County project for the same legitimate reasons it denied the Fresenius North Pekin project - it exceeds the number of necessary stations, and exacerbates existing excess capacity.

Sincerely yours,

HOLLAND & KNIGHT LLP



Clare Connor Ranalli

CCR/mjy

cc: Michelle Wiest
Lori Wright (w/encl.)
Richard Stotz
Julie Hawkins (w/encl.)
Ericka Snyder

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

**PROCEEDINGS HELD IN OPEN SESSION
MEETING**

JUNE 5, 2012

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STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761
217-782-3516

OPEN SESSION

Regular session of the meeting of the State of
Illinois Health Facilities and Services Review Board was
held on June 5, 2012, at the Bolingbrook Golf Club, 2001
Rodeo Drive, Bolingbrook, Illinois.

1 PRESENT:

Dale Galassie - Chairman

2 Ronald Eaker

John Hayes

3 John Burden

Alan Greiman

4 Kathy Olson

5 Richard Sewell

6 David Penn

7

8 ALSO PRESENT:

9 Courtney Avery - Administrator

10 Frank Urso - General Counsel

11 Juan Morado - Assistant Counsel

12 Alexis Kendrick - Board Staff

13 Michael Constantino - IDPH Staff

14 George Roate - IDPH Staff

15 Bonnie Hills - IDPH Staff

16 Claire Burman - Board Staff

17 Michael C. Jones - DHFS

18

19 Reported by:

20 Karen K. Keim

21 CRR, RPR, CSR-IL, CRR-MO

22 Midwest Litigation Services

23 711 North 11th Street

24 St. Louis, Missouri 63101

1 Dr. Burden?

2 MR. BURDEN: Yes.

3 MR. ROATE: Mr. Eaker?

4 MR. EAKER: Yes.

5 MR. ROATE: Justice Greiman?

6 MR. GREIMAN: Yes.

7 MR. ROATE: Mr. Hayes?

8 MR. HAYES: Yes.

9 MR. ROATE: Ms. Olson?

10 MS. OLSON: Yes.

11 MR. ROATE: Mr. Penn?

12 MR. PENN: Yes.

13 MR. ROATE: Mr. Sewell?

14 MR. SEWELL: Yes.

15 MR. ROATE: Chairman Galassie?

16 CHAIRMAN GALASSIE: Yes.

17 MR. ROATE: That's eight votes in the

18 affirmative.

19 CHAIRMAN GALASSIE: Motion passes.

20 Congratulations.

21 We now are moving on to 12-004, and we have a

22 request for two public comments. Ahsan Usman.

23 (Pause)

24 CHAIRMAN GALASSIE: Good afternoon.

1 MS. USMAN: Good afternoon.

2 CHAIRMAN GALASSIE: If you could just spell
3 your name for our reporter. You don't have to be sworn in.

4 MR. USMAN: My name is Ahsan Usman, U-s-m-a-n.

5 CHAIRMAN GALASSIE: Thank you very much.
6 Welcome.

7 MR. USMAN: I'm here in opposition to
8 Fresenius Medical Care's application to establish a
9 9-station dialysis facility in North Pekin. I would like
10 to take this opportunity to briefly address the comments
11 filed by Fresenius and Renal Care Associates, which are
12 known by Illinois Kidney Disease and Hypertension regarding
13 my letter in opposition to Fresenius, North Pekin
14 application.

15 I would like to state my intention to compete
16 directly with Fresenius in the Pekin market. Currently,
17 Fresenius is the only dialysis provider in Pekin. They are
18 the only game in town. I strongly believe patients deserve
19 a choice of provider. In fact, I have (inaudible) an
20 application to this Board for an 8-station dialysis
21 facility in Pekin yesterday. I hope this application will
22 be heard by this Board at the September 11, 2012 meeting.

23 The north Pekin application before you today
24 does have several negative findings, and I ask that you

1 reject this proposal today. I agree with Fresenius that
2 additional stations are needed in Pekin to serve the
3 growing number of ESRD, end-stage renal disease, patients.
4 However, the alternative Fresenius chose to give
5 insufficiencies and duplication of resources.

6 MR. MORADO: Thirty seconds.

7 MR. USMAN: The alternative Fresenius could
8 have put forward, but did not, was the expansion of the
9 current facility or the relocation or expansion of its
10 current facility. And I believe that if I was given the
11 opportunity to serve the community, then we can take the
12 quality of patient care to the next level in the region and
13 the patient will have the choice of providers. I have
14 already been given a letter from Proctor Hospital, Regional
15 Hospital, and the OSF Hospital, who have limited my ability
16 to practice and get the privileges at those hospitals, and
17 I have the letter here from the Proctor Hospital, who are
18 not going to give me privileges and try to lock me out of
19 the area.

20 MR. MORADO: Please conclude your comments.

21 MR. USMAN: You want me to read it?

22 MR. MORADO: No. Conclude your comments.

23 CHAIRMAN GALASSIE: That will be part of the
24 package you submit, if you do, in fact, submit an

1 application.

2 MR. USMAN: I believe the dialysis patient are
3 the most sickest patient, and they need the choice of the
4 care that we can provide them, and all the U.S. citizens
5 who are on the dialysis have choices to pick a dialysis
6 facility in their area. The residents of Pekin do not have
7 that choice.

8 CHAIRMAN GALASSIE: Thank you very much.
9 Good luck in your endeavor.

10 Moving forward, if there is any
11 representatives from Project 12-004, Fresenius Medical
12 Care, North Pekin.

13 (Pause)

14 CHAIRMAN GALASSIE: Good afternoon. If you
15 folks would come up to the table and please introduce
16 yourselves, spelling your names, and we'll get you sworn
17 in.

18 (Pause)

19 MS. TORREY-ROMANUS: Good afternoon. My name
20 is Connie Torrey-Romanus. The last name is T-o-r-r-e-y,
21 hyphen, R-o-m-a-n-u-s.

22 MR. PFLEDERER: My Name is Timothy Pflederer,
23 and that's P-f-l-e-d-e-r-e-r.

24 MR. STOTZ: Rick Stotz, S-t-o-t-z.

1 MS. WRIGHT: Lori Wright, W-r-i-g-h-t, from
2 Fresenius.

3 MS. RANALLI: Clare Ranalli, R-a-n-a-l-l-i,
4 counsel to Fresenius.

5 CHAIRMAN GALASSIE: Thank you.

6 (Oath given)

7 CHAIRMAN GALASSIE: Thank you very much.
8 Staff report, please.

9 MR. CONSTANTINO: Thank you, Mr. Chairman.

10 The applicants are proposing the establishment
11 of a 9-station ESRD facility in North Pekin, Illinois. The
12 approximate cost of the project is \$2.9 million. There was
13 no public hearing requested. We did receive letters of
14 support and opposition. The anticipated project completion
15 date is May 31st, 2014.

16 I would like to note one other thing, that we
17 haven't to date received another application for this North
18 Pekin, Illinois area.

19 CHAIRMAN GALASSIE: You have?

20 MR. CONSTANTINO: We have not as of today.

21 CHAIRMAN GALASSIE: Thank you very much.

22 Who would like to address the Board?

23 MS. TORREY-ROMANUS: I will. Good afternoon.

24 My name is Connie Torrey-Romanus. I'm a registered nurse

1 and the Area Manager for the current facility in Pekin.
2 I've worked in this area for over 33 years, and I am a
3 life-long resident of the Peoria-Pekin area. I'm here
4 today to support the establishment of an additional
5 facility in the -- in North Pekin.

6 The current facility was 83 percent utilized
7 when we submitted our application. It currently is 94
8 percent. So, the population of the clinic is nearly full.
9 There are many more patients who will need dialysis in the
10 Pekin area in the near future, and they will have nowhere
11 else to go but to Peoria, if this facility is not
12 established. That's a burden on the patients to travel to
13 a congested, inner city area and traffic patterns, and
14 these patients are from rural areas south and east of North
15 Pekin, which means they live even further from Peoria than
16 where the North Pekin clinic would be located.

17 I would also like to point out that the CEO of
18 Alexius St. Francis Medical Center in Peoria has provided a
19 letter of support for the additional Pekin facility.
20 Fresenius Medical Care provides acute services for both the
21 St. Francis Medical Center and Pekin Community Hospital
22 programs.

23 The population of Pekin is aging. 15 percent
24 of the area population is over 65 years of age. At our

1 current Pekin facility, 65 percent of the patients are over
2 65, and 21 percent are over of the age of 80. The patient
3 population has higher incidents of illnesses that lead to
4 kidney failure, including hypertension and diabetes. It's
5 also difficult for them to travel long distances,
6 especially in the winter weather and, again, the heavy
7 traffic patterns in Peoria they're not used to.

8 If we could expand our current facility, we
9 would. However, it is landlocked. We are located within
10 Pekin Hospital. Because the space we're currently in is
11 attached to Pekin Hospital, there's no room to expand that,
12 and there is no option for the elderly patients who live in
13 the area south and east of North Pekin if the facility is
14 not established there.

15 I urge the Board to consider the geographics
16 as well as the demographics of the area. The North Pekin
17 facility will provide the same high quality care that our
18 current Pekin facility does. Much of that quality is due
19 to Dr. Pfleiderer's focus to have all patients who have
20 catheters replace those with a permanent access, with a
21 fistula, as soon as possible. 84 percent of our patients
22 do not have a catheter which allows them to have a more
23 effective treatment with better outcomes. This is much
24 higher than the Renal Network average of 77 percent.

1 The many letters of support from Pekin area
2 representatives, agencies, and patients are testimony to
3 the need for this clinic, as seen by those who live, work,
4 and receive treatment in Pekin. I urge you to approve this
5 project, and I thank you for your time.

6 CHAIRMAN GALASSIE: Thank you very much.

7 MS. TORREY-ROMANUS: I would like to introduce
8 Dr. Pflederer.

9 CHAIRMAN GALASSIE: Sure.

10 MR. PFLEDERER: Good afternoon. I'll try to
11 keep my introductory comments brief. Once again, my name
12 is Tim Pflederer, and I'm a nephrologist, practicing with
13 Renal Care Associates in Peoria. I live in Tremont, a
14 small rural community next to Pekin. My Medical Director
15 of the FMC Pekin Dialysis Center and I also serve on the
16 Renal Network 4, 9 and 10 Medical Review Board where I
17 chair the Vascular Access Advisory Subcommittee. In that
18 role, I assist with the network's contract to oversee the
19 quality of dialysis care in Illinois, Indiana, Ohio,
20 Kentucky, Pennsylvania, and Delaware.

21 I want to tell you briefly a little bit about
22 our practice. Our Renal Care Associates is a group of
23 twelve nephrologists and two surgeons in private practice.
24 We treat patients with kidney disease in central Illinois.

1 Our practice provides care in dialysis facilities,
2 predominantly Fresenius, but also a DaVita facility, from
3 Interstate 80 in the north to Lincoln in the south, from
4 Bloomington-Normal in the east to Macomb in the west.
5 We've been committed over the past 35 years of our practice
6 to provide high quality care to the very aging patient
7 population. My father started our practice a number of
8 years ago, when dialysis was just beginning, and it had
9 just come to Peoria.

10 As you know, many of our patients -- all of
11 our patients have a number of serious comorbidities,
12 including blindness, amputations from diabetes, heart
13 disease, cardiovascular disease. These comorbidities, in
14 addition to their renal disease, make dialysis care very
15 difficult. As a practice, we have a commitment to home
16 dialysis therapies in our central Illinois region. Over 15
17 percent of our patients are dialyzing with home therapies,
18 either peritoneal dialysis or hemo dialysis. We also have
19 a strong commitment to transplantation, and at our facility
20 in Pekin, we have seven patients on the transplant list and
21 four who have been transplanted in the last year. Both of
22 those priorities are very good for patients and lower the
23 cost to healthcare overall.

24 The existing Pekin facility is at capacity.

1 Pekin area patients have to go to Peoria for dialysis at
2 present, and that's been going on now for over a year.
3 Really, there hasn't been questions from -- the community
4 is in full support for the need of another facility in
5 Pekin. At first blush, that's not obvious, maybe. There
6 is capacity in Peoria. Our patients, however, don't live
7 all in Pekin. They live in surrounding areas. So,
8 actually, the travel for them is sometimes different than
9 what it looks like from just Pekin to Peoria.
10 Additionally, these rural, elderly patients, who rely on
11 their families for transportation, find driving into
12 congested Peoria, driving across a bridge, across a river,
13 things that we see as insignificant, are really not
14 insignificant to them, and for many of our patients, that's
15 a real challenge, a real barrier. Additionally, when their
16 families bring them to dialysis, if they drive twenty,
17 thirty, forty minutes to come to a dialysis facility in
18 Peoria, they're faced with the decision, "Now, do I stay
19 with my family member for the four hours of the treatment,
20 or do I return home and make this trip twice in the day,
21 three days a week?" So, the challenge is there.

22 There's enough patients in this region that
23 really the community needs another facility. In my letter
24 of support for this project, I told you the story of one of

1 my patients, and her story is not an isolated one. More
2 and more patients are having difficulty accessing care in
3 our Pekin community and the area, and I want to urge you to
4 approve this project. I would certainly be glad to address
5 the issues of quality and competition and choice, if you'd
6 like me to do that, and any other questions that you have.

7 Thank you.

8 CHAIRMAN GALASSIE: Thank you, Doctor.

9 I open it up to the Board for any questions.

10 (Pause)

11 CHAIRMAN GALASSIE: Dr. Burden?

12 MR. BURDEN: I'm going to pick on you. Help
13 me. "Hormone Might Help Predict Need for Dialysis".
14 Interesting, I thought. "Kidney disease affects 20 million
15 Americans, many who end up on dialysis." Jumping down,
16 "Study researchers said measuring a hormone called fgf/23
17 can predict which patients are going to end up needing
18 dialysis."

19 How accurate -- this the lay press. This is
20 not the Journal of Medicine. Help me out. I read this. I
21 say, "Wait a minute. I've never heard this." Is this far
22 reaching? Is it reasonable? Is it unknown?

23 MR. PFLEDERER: At this point, we are moving
24 towards having predictors of acute kidney injury and acute

1 kidney failure early in the course of an acute kidney
2 injury. We're not very close to having good marker of
3 chronic kidney failure, end stage renal disease, and it's
4 really a matter of following renal function over time and
5 trying to delay progression of that renal function, renal
6 failure over time.

7 MR. BURDEN: Do serum phosphorus levels help
8 you determine it?

9 MR. PFLEDERER: Serum phosphorus levels go up
10 early in chronic kidney disease, but they are not a good
11 marker of who is going to go on to end stage kidney
12 disease.

13 MR. BURDEN: Now back to your application.
14 How many miles is it from your town to Peoria?

15 MR. PFLEDERER: From Pekin to Peoria, it's --
16 depending on the facility in Peoria, anywhere from probably
17 about 15 to 25.

18 MR. BURDEN: So it's about maybe a half hour
19 trip?

20 MR. PFLEDERER: Yeah, average of about a half
21 hour trip from the Pekin facility --

22 MR. BURDEN: Three times a week, an elderly
23 patient who has comorbidity problems.

24 MR. PFLEDERER: Correct.

1 MR. BURDEN: I won't address the
2 comorbidities. You heard your competitors. I think that's
3 interesting, the comorbidity problem. Thank you.

4 MS. OLSON: What's the population of Pekin?

5 MS. TORREY-ROMANUS: About 17,000 people.

6 CHAIRMAN GALASSIE: Other questions from the
7 Board?

8 MR. PENN: I have one. Calculated need of
9 four beds. You're asking for nine. So can you speak to
10 that?

11 MS. RANALLI: I believe we're asking for
12 eight. Correct me -- nine? Okay. One isolation. I
13 apologize. So, we would have eight regular stations and
14 one isolation station. The isolation station is going to
15 be used, as it sounds, for patients who have hepatitis or
16 other communicable diseases. So, it is, under your rules,
17 factored into the utilization rate, but the isolation
18 station, obviously, is not a highly-utilized station. It's
19 very helpful.

20 We looked at the State Agency Report,
21 obviously, regarding the fact that there's a need for four
22 stations and if you approve this facility, then there would
23 be an excess of four or five stations. The East Peoria
24 facility has 24 stations. It has been in the area, serving

1 the residents for many, many, many years. It dialyzes full
2 on the first two shifts. We could surrender, as a
3 condition of this permit, four of those stations, so that
4 we will meet your need criteria. If we did that, the East
5 Peoria facility would be a 77 percent utilization, so very
6 close to your target. We were reluctant to put that in the
7 application, and the reason is, if we -- because it's full
8 on the first two shifts, if we do that, then 12 of the
9 patients will need to be transitioned to the third shift.
10 That's not ideal for those 12 patients. It disrupts their
11 schedules. We would be willing to do it because of the
12 need in Pekin. I mean, it's trading one problem for
13 another problem, but there's such a need, as we heard from
14 the other physician in the area, that if you want to make
15 this as a condition, we would do it. We would ask that you
16 consider that it will significantly impact 12 patients, but
17 it's possible.

18 MR. PFLEDERER: The information from our
19 practice, as well as Dr. Usman's practice, about chronic
20 kidney disease patients in the area makes us concerned that
21 we need -- we will need the stations, because we will see
22 this disease, the ESRD population, growing in the next few
23 years. We'd like to plan for that increasing-need
24 population.

1 MR. PENN: I hear that a lot, people wanting
2 to plan for the future. It says here three of four
3 facilities within thirty minutes are under utilized. It
4 says three of four in this table here, thirty minutes from
5 Pekin, are under utilized. I am from Bloomington. I don't
6 believe it would take me 25 minutes to drive from Pekin to
7 Peoria, Illinois. It's about 10 miles, and I understand
8 what you're saying facility to facility. I heard that.
9 So, I do have concern that three facilities listed on this
10 table are under utilized and you're asking for excess. You
11 can justify four, and you're asking for 9.

12 MR. PFLEDERER: I did want to -- the travel
13 from Pekin to Peoria is not as straightforward as travel
14 from, for instance, Morton, which would be a town of
15 similar distance, but Morton is immediately on Interstate
16 74, directly into Peoria. Pekin -- actually, travel from
17 Pekin to Peoria is mainly secondary roads, unless you take
18 a significantly further -- down Route 9 and then to
19 Interstate 155 to 74, which adds significant distance to
20 the trip. So, actually, the travel from Pekin to Peoria is
21 (inaudible), and many of our patients are coming from a
22 distance further than the Pekin dialysis unit, than Pekin
23 Hospital. So, just keep that in mind in terms of the
24 complexity of the travel and the time involved in the

1 travel.

2 MR. BURDEN: Mr. Chairman, can I ask a
3 question of Mr. Urso?

4 CHAIRMAN GALASSIE: Sure.

5 MR. BURDEN: We heard a statement from a
6 competing physician, Dr. Usman, regarding his interest in
7 pursuing and applying to build a facility in the area which
8 we are now discussing. However, we don't have that
9 application in place. If we approve this application, do
10 we not have to consider what we heard from the opposing
11 discussion? Is that correct? Is our -- the future of this
12 potential application would certainly be somewhat limited,
13 am I right, if we approve this current application?

14 MR. URSO: I think you only have to deal with
15 the facts that are in front of you.

16 MR. BURDEN: We don't have to deal with that
17 other application?

18 MR. URSO: And we don't have that application,
19 is the latest information we have.

20 MR. PENN: I have one more question. You say
21 you're willing to amend this to ask for four?

22 MS. RANALLI: We would be willing to accept a
23 conditional permit to remove four stations from East
24 Peoria, which would then address your concerns about the

1 need. If we did that, Mr. Constantino would have to tell
2 us if we met the need criteria, but I believe we would. It
3 would also address your concerns about under utilization,
4 because then, of the four facilities, two would be under
5 utilized, but at 71 and 77, percent which this Board knows
6 is fairly close to your standards. It doesn't take many
7 patients, particularly in areas like this, to then reach
8 capacity.

9 CHAIRMAN GALASSIE: Are we ready for a
10 motion? I would be proposing a motion that will establish
11 the nine stations. If, as a member, you're not feeling the
12 nine stations, or the eight and one, should be approved,
13 don't second the motion, and an alternative could be
14 brought forth for the four.

15 Let me just ask for clarification. Is it the
16 four and one, or the four and isolation, or just the four?

17 MS. WRIGHT: There's four needed in the HSA.
18 We're willing to give up four from East Peoria. So that
19 would leave us one excess station in HSA.

20 CHAIRMAN GALASSIE: So really five.

21 MR. URSO: So North Pekin would maintain the
22 nine.

23 CHAIRMAN GALASSIE: Motion -- may I have a
24 motion to approve Project 12-004, to authorize the

1 establishment of a 9-station ESRD facility in Pekin,
2 Illinois?

3 MR. PENN: So moved.

4 MS. OLSON: Second.

5 CHAIRMAN GALASSIE: Moved and seconded. Roll
6 call, please?

7 MR. ROATE: Motion made by Mr. Penn, seconded
8 by Ms. Olson.

9 Dr. Burden?

10 MR. BURDEN: I'm going to vote no. Fresenius
11 already is the major player in the country and certainly in
12 this area, in lieu of the possibility there's a competing
13 individual who is interested in being involved in this
14 area.

15 MR. ROATE: Mr. Eaker?

16 MR. EAKER: I'm going to vote no, same reason.

17 MR. ROATE: Justice Greiman?

18 MR. GREIMAN: I vote no also.

19 MR. ROATE: Mr. Hayes?

20 MR. HAYES: I'm going to vote no because of
21 the competition and choice issues involved with that, and
22 also because of the Planning Area need and unnecessary
23 duplication and maldistribution of services. I'm not also
24 very -- I'm not impressed by taking the time and the effort

1 to move four stations from an operating facility that is 15
2 to 25 miles away, and I don't think that's an effective use
3 of healthcare dollars. So I'm going to vote no.

4 MR. ROATE: Ms. Olson?

5 MS. OLSON: I vote no for the same reason just
6 stated by Mr. Hayes.

7 MR. ROATE: Mr. Penn?

8 MR. PENN: I'm voting no, same reason as
9 Mr. Hayes.

10 MR. ROATE: Mr. Sewell?

11 MR. SEWELL: No. Mr. Hayes's reasons.

12 MR. ROATE: Chairman Galassie?

13 CHAIRMAN GALASSIE: The chair is voting yes,
14 because I see no other applications in front of us at this
15 time.

16 MR. ROATE: One vote in the affirmative, seven
17 votes in the negative.

18 CHAIRMAN GALASSIE: Motion loses.

19 MR. URSO: You'll be receiving an Intent to
20 Deny. You'll have an opportunity to submit additional
21 information, as well as come back before this Board, if you
22 so desire.

23 CHAIRMAN GALASSIE: Good luck.

24 Next item, 12-009, Schaumburg. There is one

1 did, and the Board members did an excellent dialogue.

2 Thank you.

3

4 END TIME: 4:34 P.M.

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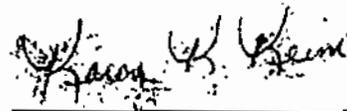
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CERTIFICATE OF REPORTER

I, KAREN K. KEIM, RPR, CRR, a Certified Court Reporter, do hereby certify that the proceedings in the above-entitled cause were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



KAREN K. KEIM

CRR, RPR, CSR-IL, CCR-MO

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STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761
217-782-3516

OPEN SESSION

July 24, 2012

Regular session of the meeting of the State of
Illinois Health Facilities and Services Review Board was
held on July 23 and 24, 2012, at the Bolingbrook Golf Club,
2001 Rodeo Drive, Bolingbrook, Illinois.

DRAFT

1 PRESENT:

Dale Galassie - Chairman

2 Ronald Eaker

John Hayes (present July 24 only)

3 James Burden

Alan Greiman

4 Kathy Olson

Richard Sewell

5 David Penn

Robert Hilgenbrink

6

ALSO PRESENT:

7 Courtney Avery - Administrator

Catherine Clark - Administrative Assistant

8 Frank Urso - General Counsel

9 Juan Morado - Assistant Counsel

10 Alexis Kendrick - Board Staff

11 Claire Burman - Board Staff

12 Michael Constantino - IDPH Staff

13 George Roate - IDPH Staff

14 David Carvalho - IDPH

15 Bill Dart - IDPH

16 Michael C. Jones - DHFS

17 Michael Pelletier - DHS (present July 23 only)

18

19 Reported by:

20 Karen K. Keim

21 CRR, RPR, CSR-IL, CRR-MO

22 Midwest Litigation Services

23 401 N. Michigan Avenue

24 Chicago, IL 60611

~~DRAFT~~

1 MR. GREIMAN: Yes.

2 MR. ROATE: Mr. Hayes?

3 MR. HAYES: Yes.

4 MR. ROATE: Mr. Hilgenbrink?

5 MR. HILGENBRINK: Yes.

6 MR. ROATE: Ms. Olson?

7 MS. OLSON: Yes.

8 MR. ROATE: Mr. Penn?

9 MR. PENN: Yes.

10 MR. ROATE: Mr. Sewell?

11 MR. SEWELL: Yes.

12 MR. ROATE: Chairman Galassie?

13 CHAIRMAN GALASSIE: Yes.

14 MR. ROATE: Nine votes in the affirmative.

15 Motion passes. Thank you very much.

16 MS. FRIEDMAN: Thank you.

17 CHAIRMAN GALASSIE: Moving on to Item 12-004,

18 North Pekin. We have two public comment requests. If

19 those two individuals are here in the room, this would be

20 the time to come up to the table.

21 (Pause)

22 CHAIRMAN GALASSIE: Welcome. As you begin to

23 speak, if you would introduce yourself and spell your last

24 name, and pull the microphone close to your face, please.

DRAFT

1 MS. EMLEY: Cindy, last name Emley, E-m-l-e-y.
2 I'm here for opposition.

3 CHAIRMAN GALASSIE: Thank you.

4 MS. EMLEY: Good afternoon, and thank you to
5 the Board for listening to my comments this afternoon.

6 My name is Cindy Emley. I'm a Regional
7 Operations Director for the Central Illinois Region for
8 DaVita. I am here today to oppose the Fresenius
9 application for the establishment of a dialysis facility in
10 North Pekin.

11 While I agree with Fresenius that additional
12 stations are needed in Pekin to serve the growing number of
13 ESRD patients, the alternative that Fresenius chose creates
14 inefficiencies and duplication of resources. The
15 alternative that Fresenius could have put forward, but did
16 not even consider as an alternative in its application, was
17 the relocation and expansion of its current facility. An
18 expanded facility would allow Fresenius to eliminate
19 functional redundancies and additional costs associated
20 with operating multiple smaller facilities.

21 As you're likely aware, DaVita, which would be
22 a new provider in the market, currently has an application
23 pending before this Board, which is scheduled to be heard
24 at the September meeting. If the Board finds a second

~~DRAFT~~

1 facility is needed, allowing a new provider in the market
2 would better serve the residents of Pekin.

3 Thank you for your time and attention, and I
4 respectfully request the Board deny the application for
5 Fresenius Medical Care North Pekin.

6 CHAIRMAN GALASSIE: Thank you very much.
7 Appreciate your comments.

8 Good afternoon.

9 MR. USMAN: Good afternoon. My name is Anju
10 Usman, U-s-m-a-n, and I'm a nephrologist. I am here to
11 oppose Fresenius Medical Care's application to establish a
12 new dialysis facility in North Pekin. For the past 30
13 years, three decades, Pekin residents have had no choice in
14 renal care and dialysis treatment. For seniors, Fresenius
15 Care have used intimidation and exclusive contracts to
16 prevent other renal professionals and dialysis providers
17 from providing a choice to central Illinois residents.
18 Over a year ago, I came to Pekin to establish a practice
19 with DaVita, who provides quality of care and freedom of
20 choice. In that short period of time, hundreds of Pekin
21 residents have selected my practice.

22 On July 18th, a public hearing held in Pekin
23 demonstrated that the community is for a new choice and
24 establishment of (unintelligible) dialysis in Pekin by

DRAFT

1 DaVita. In fact, out of 89 individuals, well over 55 give
2 their support for the (unintelligible) dialysis program,
3 including Pekin City Mayor. Further, the sentiment of the
4 public testimony was that patients in Pekin need a choice
5 of dialysis provider by DaVita.

6 Please approve DaVita's application on
7 September 11th. DaVita's application filed and deemed
8 complete on June 6th, 2012. I appreciate Mr. Penn
9 attending the public hearing in Pekin and giving Pekin
10 residents a say in their choice. Therefore, I respectfully
11 request this Board, please deny Fresenius their
12 application.

13 I just want to summarize about my credentials
14 also.

15 MR. MORADO: Thirty seconds.

16 MR. USMAN: My credentials are unchallenged.
17 I have completed residency in nephrology at Cleveland
18 Health System, at the University of Southern California in
19 Los Angeles, and then I (unintelligible) nephrology
20 training at Washington University in St. Louis, Barnes
21 Jewish Hospital. All these are top-end universities and
22 institutions in the country.

23 And, please, I respectfully again request,
24 deny Fresenius North Pekin's application today and approve

~~DRAFT~~

1 DaVita's application on September 11th.

2 Thank you.

3 CHAIRMAN GALASSIE: Thank you, Doctor.

4 I will now call up representatives from
5 Fresenius Medical Care North Pekin to the table.

6 (Pause).

7 CHAIRMAN GALASSIE: Those of you who have not
8 been sworn in, if you will introduce yourself and spell
9 your last name, we'll get you sworn in.

10 MR. PFLEDERER: My name is Tim Pfelderer,
11 P-f-l-e-d-e-r-e-r.

12 MR. STOTZ: My name is Rick Stotz, S-t-o-t-z.

13 (Oath given)

14 CHAIRMAN GALASSIE: Thank you. Staff report?

15 MR. CONSTANTINO: Thank you, Mr. Chairman.

16 The applicants are proposing the establishment
17 of a 9-station ESRD facility, located in approximately
18 1,600 gross square feet of leased space in North Pekin,
19 Illinois. The anticipated cost of the project is \$2.9
20 million.

21 The State Board Staff notes that this project
22 received an Intent to Deny at the June 2012 meeting. No
23 public hearing was requested, and we received both
24 opposition and support letters for this project.

DRAFT

1 Thank you, Mr. Chairman.

2 CHAIRMAN GALASSIE: Thanks, Michael.

3 Member Penn, did you want to make any comment
4 about the public hearing, or let the record stand?

5 MR. PENN: I'll let the record stand. I'll
6 make comments about that through questions.

7 CHAIRMAN GALASSIE: Thank you.

8 And you folks have four minutes to present to
9 the Board.

10 MR. PFLEDERER: Thank you for allowing me to
11 make brief remarks.

12 My practices work with Fresenius to develop
13 the North Pekin dialysis unit, because area patients had
14 difficulty getting into the Pekin unit, which is at 94
15 percent utilization. They frequently express to us the
16 difficulty in traveling to Peoria as a hardship, and the
17 Peoria units have limited shift choices. We recognized
18 that this was truly an access-to-care issue, but I had no
19 idea the strength of patient and community sentiment about
20 the need for additional dialysis capacity until
21 experiencing this CON process.

22 I believe the record reflects very strong
23 support for this project. It is also clear to me from this
24 process that patients are very concerned that their doctor

DRAFT

1 will be able to direct their care. The Fresenius North
2 Pekin facility, like the Pekin and Peoria facilities, will
3 be open to all physicians and their patients. My patients
4 hold no special place of preference at Fresenius
5 facilities, and as a practice, we're committed to getting
6 back to working cooperatively with the other Pekin area
7 nephrologists for the benefit of all our mutual patients.

8 Renal Care Associates, my practice, along with
9 Fresenius has served the area for many years. That's true.
10 We enjoy the support of independent entities like Central
11 Illinois Memorial Kidney Fund and OSF St. Francis Medical
12 Center. I urge you to recognize the need for additional
13 dialysis capacity, the strength of the Fresenius
14 application, and our commitment to the area, and approve
15 this project in North Pekin.

16 CHAIRMAN GALASSIE: Thank you, Doctor.

17 MR. STOTZ: We've been serving the Pekin area
18 for many years and are the provider with the most
19 well-developed network of care in the area. We were the
20 first to make the proposal to the Board to address the need
21 here. Our proposal has a number of strengths. However,
22 the most important is that we run an open facility. All
23 doctors, including Dr. Usman and his partners, can refer
24 patients there, and do. All patients admitted to Fresenius

DRAFT

1 clinics get shift choice based on first-come first-serve
2 basis, regardless of their physician.

3 When you considered this project previously,
4 you had a concern about excess capacity. However, I would
5 weigh that against the very clear need for a facility in
6 this area, as suggested by two projects, and the
7 overwhelming support for this project. Your inventory
8 states a need for three stations, but your Rules require us
9 to establish at least eight because this area is a MSA. We
10 propose eight regular stations and one isolation station to
11 serve patients in the area who happen to have hepatitis.
12 The Pekin facility does not have an isolation station
13 currently.

14 In conclusion, if you deny this project due to
15 excess capacity, no provider could change that finding and
16 the area residents would have to travel to Peoria.
17 However, we believe there is clear evidence of need in the
18 area, and, given the points presented, our project before
19 you today addresses that need very effectively.

20 Thank you.

21 CHAIRMAN GALASSIE: Thank you, Mr. Stotz.

22 MS. WRIGHT: This map addresses concerns
23 brought up at the last meeting regarding the Pekin area
24 patients' ability to drive from North Pekin into Peoria.

DRAFT

1 Each red dot on this map represents a Renal Care
2 Associate's pre-ESRD patient's residence. Our current
3 facility is in Pekin, which is in the middle of all of
4 those patients there, and that is also where the other
5 competitor's project is proposed to be, and we are
6 proposing to go --

7 MS. KENDRICK: Thirty seconds.

8 MS. WRIGHT: -- to North Pekin, and that's
9 separate from Pekin. The problem is that while it may be a
10 20-minute drive from North Pekin to Peoria, not all
11 patients live in North Pekin. The patients along this
12 radius here (indicating) are going to drive 30 minutes to
13 get to North Pekin. If they are forced to drive into
14 Peoria for treatment, you're adding another 20 minutes.
15 So, that's a 50-minute drive, one way. Patients outside of
16 this radius are going to be driving in excess of an hour
17 for treatment.

18 For this reason, we feel that additional
19 access is needed in North Pekin, not Pekin, where it would
20 be a duplication of services. Thank you.

21 CHAIRMAN GALASSIE: Thank you.

22 I'd like to open it up to questions from
23 members of the Board.

24 Dr. Burden?

DRAFT

1 MR. BURDEN: Thank you. Help me on this one.
2 I reviewed what we did the last time, but this appears more
3 and more like a turf battle between two opposing dialysis
4 companies. Is it not fair to say that your -- the Renal
5 Associates have 12 nephrologists and 2 surgeons, probably
6 for access, I presume. You don't do transplantation, do
7 you?

8 MR. PFLEDERER: We do. Alexius St. Francis
9 Medical Center is the transplant --

10 MR. BURDEN: That's in Peoria. Are you
11 connected to St. Francis in Peoria?

12 MR. PFLEDERER: We're not connected as a
13 practice, but we practice there.

14 MR. BURDEN: Let's get down to what -- this is
15 my interpretation of what this is. You have a competing
16 operation in town who hasn't had their application reviewed
17 as yet -- or they haven't presented it to us -- who are
18 asking for us to not vote positively for you so he gets a
19 chance to -- it's a competition for who gets the added unit
20 in town. This is a complicated -- somewhat complicated to
21 me, but am I wrong on that? I hear you guys saying you got
22 12 people in the group and they have access, the other two
23 people, Dr. Usman's group, can use your facility. But he
24 won't have ownership. This is an economic battle,

DRAFT

1 especially in view that you have enough ESRD -- we're
2 becoming an ESRD board here. We're looking at numerous
3 applications for chronic and renal disease. I recognized
4 with all of the projections there may be a need for another
5 unit here in time, but as we sit today, there are enough
6 stations to handle your population. Maybe not within a
7 couple years, which is maybe your point, but there already
8 are a need for three stations, according to the State
9 Agency Report, I see.

10 So, I'm coming back to my original statement.
11 Is there a reason why, other than economics, that you would
12 feel that the competing group couldn't use your facility?
13 Could it use your facility, as you described, if he so
14 desired, for his patients?

15 MR. PFLEDERER: The current Pekin facility is
16 utilized by both physician practices, and I would
17 characterize both physician practices as active and growing
18 in the area. The problem that we have is that that
19 facility, at 94 percent utilization, is truly full for both
20 of our practices' patients, and we're both -- both
21 practices, physician practices, are seeing that our
22 patients are having to drive to Peoria. What we hear from
23 our patients is that that's a hardship. I actually drove
24 that, to each of the Peoria facilities that are under

DRAFT

1 utilized, and I understand why they say that that's a
2 hardship. It is -- the closest one, when I drove it, is 22
3 minutes. It's not a simple drive. It is congested. Even
4 though we're a relatively rural area, Peoria is not
5 entirely rural, and patients find that very difficult.

6 So, our patients, our community doesn't want
7 to have to drive to Peoria, even though there is capacity
8 there. We acknowledge that. So, that's the purpose in us
9 bringing in June this proposal for a unit in North Pekin.
10 Certainly, the community -- the fact that another
11 application has come just emphasizes the sentiment that
12 this community wants another facility.

13 MR. BURDEN: So I'm wrong in presuming there's
14 a competition going on? You're implying that you need,
15 despite the SAR -- what I have -- the State Board standards
16 say there's enough units in town now, but you're projecting
17 that you need more than one unit, you need more stations
18 than what you propose. You're telling me there's a
19 shortage that I don't see here in black and white, and I'm
20 listening to what you say, because of distance, travel.

21 MR. PFLEDERER: Yes. And you're not wrong.
22 Certainly there's competition in the area by two growing
23 physician practices and dialysis providers that's providing
24 those services, but this community and both physician

1 practices don't feel like the excess capacity that's
2 present in Peoria is adequate to serve the patients of
3 Pekin in Tazwell County, and we feel that it's quite
4 appropriate in this setting that, indeed, not only three
5 chairs are needed, but the additional eight, plus one
6 isolation station, is appropriate, and we acknowledge that
7 because of the excess capacity in Peoria, that that exceeds
8 the utilization requirements of the Board.

9 MS. RANALLI: Dr. Burden, could I also point
10 out what Dr. Pfleiderer was saying, and Rick alluded to it,
11 but your rules require that we come in with eight stations,
12 because this is an MSA. So, you know, although there is a
13 need for three, we had to come in for eight, and we added
14 an isolation station as well. And I would also say that
15 when Fresenius submitted its application, we had no idea
16 that there was going to be another application until the
17 day of the hearing, when there was comment, saying, "Now
18 we're going to submit an application." I think this
19 process has actually resulted in potentially maybe an area
20 for some collaboration among the physician practices at
21 issue, and the point is, all Fresenius clinics are open.
22 Dr. Usman and his partners can and do admit there. That's
23 always been the case and will always be the case. All
24 Fresenius clinics are open.

DRAFT

1 And the other comment that Dr. Pflederer made
2 is that although his practice has been in the area for a
3 long time, Fresenius' policy is, patients come in
4 first-come first-serve. So, despite the relationship that
5 Fresenius has had with Dr. Pflederer's partners and
6 Dr. Pflederer for many years, it makes no difference.
7 Dr. Usman's patients get as much priority as theirs.
8 That's a Fresenius policy. And this clinic also offers
9 nocturnal and home. It will. That's, I think, important,
10 along with the station for hepatitis patients. Those are
11 distinguishing factors.

12 The current Pekin clinic in the Pekin hospital
13 does not have those. And we do have a lease there. We
14 didn't have the alternative of just picking up and moving.
15 That's something we would consider, if this is turned down,
16 DaVita is turned down, but that alternative is not quite as
17 easy as it sounds.

18 CHAIRMAN GALASSIE: Thank you.

19 Just a reminder for the Board. We need to be
20 looking at this project and any project on its own merit.
21 Again, we're not to be comparing. Even though there is
22 another application, we should be looking at this on its
23 own merits.

24 Mr. Penn had some comments.

DRAFT

1 MR. PENN: I want to echo what we talked about
2 earlier. This Board does not have the rule to let us
3 compare yet and, hopefully, we'll be able to get to that
4 point where there is a fairness from both applicants or
5 multiple applicants applying for beds or hospitals or
6 whatever the needs are.

7 What I'm looking at is your Table 4, charity
8 care. I see a steady increase of net revenue but a steady
9 decrease in charity care. Could you speak to that, please?

10 MS. RANALLI: Those are Fresenius numbers, and
11 I'm so glad that I looked at them when I was on my way out
12 here, because the Medicaid numbers go up. When you look at
13 the total number of Medicaid patients, which are in the
14 thousands, like thousand and a few hundred patients, those
15 numbers go up quite a bit. The charity care, which is
16 really self-paid numbers, go down very slightly. But
17 because of the population -- you have about two to three
18 hundred patients that are self-pay and over a thousand that
19 are Medicaid -- the percentage ranges reflect that what's
20 happening is more patients are getting Medicaid coverage.
21 Also, from a charity care standpoint, I mean, for any
22 dialysis company in Illinois, it's probably less than one
23 percent of the patient population. All patients can get
24 coverage. So -- just to reaffirm what we've always said

DRAFT

1 here before, Fresenius treats all patients, regardless of
2 ability to pay. We never turn a patient away.

3 I think you raised some questions about
4 physician practices, so I'll let Dr. Pfleiderer speak to
5 their policy, if you have questions about it.

6 MR. PFLEDERER: Well, I can comment that Renal
7 Care Associates treats all patients, irrespective of their
8 ability to pay, and we have a mechanism to assist patients
9 or recognize their financial hardship and discount their
10 fee or have no fee involved, if that's the case, as we
11 provide for their care. So, we do make those
12 accommodations and never turn a patient away based on their
13 ability to pay.

14 MS. OLSON: Mr. Chairman?

15 CHAIRMAN GALASSIE: Yes.

16 MS. OLSON: Can I ask Member Penn a question?

17 CHAIRMAN GALASSIE: Sure.

18 MS. OLSON: I'm looking at Table 1 on page 6,
19 and from your impression at being at the hearing, is the
20 choice of the people in Pekin they're talking about not a
21 choice between North Pekin or East Peoria, but a choice
22 about provider? Is that the choice they're looking for?
23 Because it seems to me that that's sort of what the Board
24 has been trying to say. This supplemental information

DRAFT

1 talks about choice between a Fresenius site, wherever it
2 be, and I don't believe that's the choice the patients are
3 asking for. Is that a correct assumption?

4 MR. PENN: Mostly, yes. The meeting -- there
5 was probably fifty-fifty split on the number of people who
6 approached for public comment. It is just like today. We
7 had to have these boundaries where we're not comparing
8 applications. It's the same thing here. Sometimes we had
9 to go into recess and talk about why we are here, to hear
10 one and not hear the argument against the other, but what I
11 heard from the community, there was a choice that they were
12 looking for. The opposition came primarily from opposing
13 staff and why their facility was better. The community was
14 talking about, "we'd like to have a community choice of
15 where we go" and even got down to some tactics that I
16 thought were close to being unethical of accusations
17 towards doctors and so on and so forth, which -- but bottom
18 line was people wanted a choice.

19 MR. PFLEDERER: I would just point out that in
20 that choice, patients clearly have choice of physician, or
21 we've seen that in physician practices, and Mr. Penn can
22 comment on his take at that meeting, but I heard certainly
23 the most -- the strongest comments and emotion, sentiment
24 from patients when they were speaking in terms of their

DRAFT

1 physicians and the choice of physician and the choice of
2 that physician being able to carry across care and, again,
3 I would just point out that that's true no matter who the
4 dialysis provider is in our region, because all the
5 facilities are open units.

6 CHAIRMAN GALASSIE: Mr. Carvalho?

7 MR. CARVALHO: Two questions and comments.

8 First, we hear a lot of bass-akwards arguments, this Board,
9 so I don't mean to pick on you, but the reason why there's
10 a threshold of need is not so that people will come in
11 eight when there is only a need for three. It's so people
12 will wait until there is a need for eight and come in.
13 Because until we have comparative review, we're kind of
14 expecting everybody to sit on the side lines, waiting until
15 the need is there and then file. If one of you files early
16 and says, "We need only three, but since your rules say
17 eight, please approve eight," then everybody else who
18 waited is a chump because they followed the rules, and
19 somebody else came in early and said, "I know we're asking
20 for eight. There's only a need for three, but that's
21 because your rules made me do it." That's not the idea.
22 The idea is that you wait until there's a need for eight.
23 MS. RANALLI: I think that's fair, as long as
24 it's applied uniformly. I understand your point.

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1 MR. CARVALHO: The second was, the Board
2 recently went through an exercise of seeking legislation to
3 change the statute, and you may want to consider changing
4 the statute to remove the ESRD, because the premise of the
5 statute which seems to talk at the Board is the idea you
6 only allow a number of facilities that are necessary to
7 serve the population. The statute almost demands an
8 indifference to who the provider is. If there's enough
9 facilities to service the area, then the theory of the
10 Certificate of Need is you're done, but if the Board is
11 concerned that -- well, Fresenius should have as many as
12 its doctors and patients want and U.S. Renal should have as
13 many and DaVita should, that's a different theory. And
14 your instincts are telling you we really don't want this
15 jurisdiction, because the jurisdiction you have is supposed
16 to just allow the facilities the area needs, not each
17 provider to build as many as its patients want.

18 CHAIRMAN GALASSIE: Thank you.

19 Mr. Hayes?

20 MR. HAYES: In your application before, from
21 the last being here, in the June 5th there, you mentioned
22 that you were going -- there was a possibility you would
23 have an option or that we would receive basically that --
24 basically you would take four stations from the East Peoria

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1 facility to facilitate the need calculation in the area.

2 MS. RANALLI: Right. As I recall, I think it
3 was you that did not like that suggestion very well, but we
4 did propose that, because of what we see here with this
5 constellation of patients here and up here (indicating) and
6 Peoria over here, and those facilities have been operating
7 two shifts, and they're full in Peoria, but they are -- you
8 know, we could open up a third shift and reduce the number
9 of stations, and then they would be at your target
10 utilization rate, which is a suggestion that we had to
11 address your concern about excess capacity, and we'd be
12 willing to do that as a conditional permit, I think.
13 That's up to Rick.

14 MR. STOTZ: Yes.

15 MS. RANALLI: But we heard your concerns
16 previously, that that's not something you choose for us to
17 do. Our goal is to bring access to the patients in the
18 geography where they are, and there is a clear outcry --
19 and I think Mr. Penn can attest to this -- for not wanting
20 to go to Peoria and wanting to have more dialysis in North
21 Pekin, Pekin. The current Pekin facility is at 94 percent.

22 MR. HAYES: Well, still have the same
23 objections that I had at the last meeting there. Why
24 didn't you come back and propose that in a new application

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1 or modification?

2 MS. WRIGHT: One of the reasons we didn't do
3 that is because, while it looks like it would be a good
4 option to even out the distribution of stations, these
5 facilities operate two shifts a day, and they're primarily
6 full. Patients don't -- a lot of them are coming in from
7 rural areas. They don't want to drive at night. If we
8 took four stations out, what we're going to have to do then
9 is take some of the patients off those first two shifts of
10 the day, shift them to the night shift, which is going to
11 be very difficult for them, and for those reasons, we
12 thought maybe we would try to get the additional eight
13 without doing that.

14 MR. HAYES: Okay. Thank you.

15 CHAIRMAN GALASSIE: Doctor, I think you
16 wanted to make a comment.

17 MR. PFLEDERER: Mr. Chairman, thank you. I
18 just wanted to address why this application came in June.

19 This application was driven by my practice to
20 Fresenius. The need -- and the reason my partners brought
21 this to Fresenius and said we need to build units in Pekin
22 is because we heard from our patients that being -- having
23 to drive to Peoria for their dialysis was inadequate. It
24 truly was. While we came early, we came early from the

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1 standpoint of utilization, because we really heard from our
2 patients that this is a problem and we want this addressed,
3 and Fresenius was responsive to addressing that need. I
4 just wanted --

5 CHAIRMAN GALASSIE: Appreciate that.

6 I think I'm going to ask that we make a
7 motion, but prior to doing that, I think Member Carvalho
8 makes a valid point that I'd like us to put on our agenda
9 at some point in time, to have a dialogue about this issue,
10 because we all know how many of these things come in front
11 of us how many are approved, and I think it's a very viable
12 dialogue for us to revisit.

13 That having been said, may I have a motion to
14 approve Project 12-004, Fresenius Medical Care, to
15 establish a 9-station end stage renal dialysis facility in
16 North Pekin?

17 MR. HILGENBRINK: So moved.

18 MR. SEWELL: Seconded.

19 CHAIRMAN GALASSIE: Moved and seconded. Roll
20 call, please.

21 MR. ROATE: Motion made by Mr. Hilgenbrink,
22 seconded by Mr. Sewell.

23 Dr. Burden.

24 MR. BURDEN: I continue to vote no, based on

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1 lack of area need.

2 MR. ROATE: Mr. Eaker?

3 MR. EAKER: I vote no same reason.

4 MR. ROATE: Justice Greiman?

5 MR. GREIMAN: No for the same reason.

6 MR. ROATE: Mr. Hayes?

7 MR. HAYES: I'm going to vote no because of
8 the competition and choice issues involved with that, and
9 also because of the Planning Area need and unnecessary
10 duplication and maldistribution of services.

11 MR. ROATE: Mr. Hilgenbrink?

12 MR. HILGENBRINK: Yes.

13 MR. ROATE: Ms. Olson?

14 MS. OLSON: I vote no for the reasons stated.

15 MR. ROATE: Mr. Penn?

16 MR. PENN: I'm voting no for the
17 maldistribution of services.

18 MR. ROATE: Mr. Sewell?

19 MR. SEWELL: Vote no for reasons stated.

20 MR. ROATE: Chairman Galassie?

21 CHAIRMAN GALASSIE: Chair votes no.

22 MR. ROATE: That's eight votes in the
23 negative, one vote in the affirmative.

24 CHAIRMAN GALASSIE: Motion does not pass.

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1 MR. URSO: You'll be receiving a letter of
2 denial shortly, and you can partake in the due process
3 rights, if you so desire.

4 MS. RANALLI: Thank you.

5 CHAIRMAN GALASSIE: Thank you.

6 Moving forward, we're into "Other Business" at
7 this point in time. Looking at Staff, Alexis is going to
8 give us a Legislative update, which no doubt will be
9 thrilling.

10 MS. KENDRICK: It will be brief. Senate Bill
11 2934 has been sent to the Governor. The last update I got
12 from the Governor's office was there has been no action and
13 no non-action taken on the bill.

14 CHAIRMAN GALASSIE: 2934 is --

15 MS. KENDRICK: Proposed from Senator Garrett.
16 It involves about 13 changes to the Planning Act. It's a
17 number of changes that affects our operations and was
18 proposed through changes from outside interests of parties,
19 through Board Staff, and Senator Garrett.

20 CHAIRMAN GALASSIE: Alexis, I apologize. In
21 that bill, is the recommendation to allow Staff to
22 represent at public hearings, or does it still include
23 Board member representation?

24 MS. KENDRICK: Board member representation.

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

**TAZEWELL COUNTY DIALYSIS - PEKIN
Re: Project # 12-052**

***DRAFT*
PUBLIC HEARING**

JULY 18, 2012

NATIONWIDE SCHEDULING

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STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761
217-782-3516

TAZEWELL COUNTY DIALYSIS - PEKIN

Re: Project # 12-052

DRAFT

Public hearing held on July 18th, 2012, at the
Pekin City Hall, 111 South Capitol, 2nd Floor
Council Chambers, Pekin, Illinois, 61554.

(START TIME: 10:00 A.M.)

1 PRESENT ON BEHALF OF THE HEALTH FACILITIES AND
2 SERVICES REVIEW BOARD:

3

4 MR. GEORGE ROATE
5 Reviewer, Program Review Section
6 Division of Health Systems Development

7

8 MS. COURTNEY AVERY
9 Administrator

10

11 MS. ALEXIS KENDRICK
12 Board Staff

13

14 MR. DAVID PENN
15 Board Member

16

17 Reported by:

18 Kathy Johnson
19 CSR
20 Midwest Litigation Services
21 15 S. Old State Capitol Plaza
22 Springfield, IL 62701
23 217-522-2211 | 217.523.4282
24 fax | 217-523-4282

1 MR. ROATE: Mr. Steffen, do you have
2 written copies of your testimony there on the
3 table? Thank you, sir. Next, Board staff would
4 like to call William Fisher.

5 MR. FISHER: Good morning. I'm Dr. Bill
6 Fisher. I've got a written statement here,
7 official. My name's Dr. Curtis William Fisher,
8 F-i-s-h-e-r. I'm a physician in the Family
9 Practice specialty, and I've been practicing in
10 Pekin for 21 years.

11 There's no question in my mind that
12 another clinic to provide dialysis services is
13 needed for this area as the population is aging
14 and travel outside of Pekin is difficult for
15 dialysis patients. I am here today to support
16 the dialysis clinic proposal made by RenalCare
17 Associates and Fresenius Medical Care.

18 As a longtime physician in the area I
19 have enjoyed an excellent working relationship
20 and have acquired mutual respect for the
21 RenalCare physicians as well as Fresenius Medical
22 Care.

23 I have first-hand knowledge of their
24 quality of care and expertise with many of my

1 patients who have chronic kidney disease. My
2 patients have experienced exemplary care and
3 compassion at the current Fresenius Pekin Clinic
4 and my patients know them and trust them.

5 The partnership between RenalCare
6 Associates and Fresenius exhibits an ongoing
7 commitment to the Pekin area and both have proven
8 themselves over and over throughout the years as
9 premier providers of patient care and dialysis
10 services.

11 I see no reason to experiment with new
12 and untried services when we have positive and
13 proven results with our current providers.
14 DaVita is an unknown entity in this area, and to
15 my knowledge there's been no previous interest in
16 serving the patients in the Pekin community.

17 I stand corrected after listening to the
18 other people speak. I urge the Illinois Health
19 Facilities and Services Review Board to approve
20 and allow the time-tested, proven provider to
21 continue to care for residents of the Pekin area.

22 And I am in support of the original
23 application as submitted by Fresenius Medical
24 Care for a clinic in North Pekin. Thank you.

1 Here's a copy.

2 MR. ROATE: Thank you, Dr. Fisher. Thank
3 you. Next, Board staff would like to call Mr.
4 Bill Fleming.

5 MR. FLEMING: Good morning. Thank you
6 for coming to Pekin and allowing our residents to
7 talk about this issue and make their comments
8 known. My name is Bill Fleming, F-l-e-m-i-n-g.
9 I'm the Executive Director of the Pekin Area
10 Chamber of Commerce.

11 I'm here to speak in support of the
12 Tazewell County Dialysis Project proposed by
13 DaVita and Dr. Usman. While I'm offering my
14 support of the DaVita project I'm not speaking
15 out against any other service providers in the
16 area.

17 In fact, earlier this year I wrote a
18 letter of support for the North Pekin Project
19 that several people have referenced. The Pekin
20 Area Chamber of Commerce recognizes that the
21 legislative and regulatory actions of a
22 government at all levels can have a significant
23 impact on the business community's ability to
24 conduct business in Pekin.

1 The Chamber believes all levels of
2 government should encourage the retention and
3 expansion of existing businesses, the relocation
4 of new businesses, and the startup of new
5 businesses in the Pekin area.

6 I understand there's an existing dialysis
7 facility in Pekin. I also understand there's a
8 need for additional treatment opportunities. Not
9 only will this facility help meet the local
10 patient demand, it will enhance the quality of
11 life in our community and fill an empty store
12 front.

13 Again, thank you for the opportunity to
14 speak on this issue.

15 MR. ROATE: Thank you, sir. Do we have a
16 written copy of your testimony, sir?

17 MR. FLEMING: I have one. I can get
18 another one if you want me to.

19 MR. ROATE: If you could just leave it
20 there I'll make sure a copy's made. Next, Board
21 staff would like to call G. Jack Desatnick. Mr.
22 Desatnick.

23 MR. DESATNICK: Good morning. My name is
24 G. Jack Desatnick. G, J-a-c-k,

1 D-e-s-a-t-n-i-c-k, and I am a Board member of
2 Central Illinois Memorial Kidney Foundation. We
3 are a non-profit organization that helps with the
4 financial needs of dialysis patients.

5 I am therefore very familiar with the
6 difficulties dialysis patients face. I am here
7 today to voice my opposition to the DaVita
8 Tazewell County application. I am, however, very
9 supportive of the originally proposed Fresenius
10 Medical Care North Pekin application.

11 Our foundation has been serving dialysis
12 patients in central Illinois for over 30 years,
13 and have worked closely with RenalCare
14 Associates. Dr. Robert Pfleiderer and his
15 partners have collectively served area patients
16 since dialysis first came to the area.

17 Their commitment to Central Illinois
18 patients to provide the highest quality outcomes
19 as well as patient satisfaction is shared by
20 Fresenius Medical Care, whom they have chosen to
21 partner with. I see no need to bring a separate
22 provider into the area simply for the sake of
23 competition.

24 This will disrupt the current cooperative

1 care that has been long established between the
2 area hospitals, dialysis clinics, primary care
3 physicians, and residents of Pekin. This will
4 not promote quality but will disjoint it.

5 I agree, as both DaVita and Fresenius do,
6 that additional access is needed in the Pekin
7 area. Pekin already has a dialysis clinic to
8 serve its residents. It seems a better choice of
9 location to build the clinic in neighboring North
10 Pekin for additional access rather than to
11 duplicate services in Pekin.

12 The Fresenius Medical Care is well
13 equipped and preferred to provide that access.
14 The Fresenius North Pekin facility will greatly
15 benefit our community by minimizing the challenge
16 of driving to and from treatment.

17 Patients will then have a choice of Pekin
18 or North Pekin, creating shorter travel times,
19 which is especially important to this elderly
20 population.

21 For the sake of the aging population of
22 our region to enhance the quality of life for
23 those senior citizens on dialysis and to gain
24 additional access to first-rate dialysis

1 services, I urge the Board to deny the DaVita
2 Tazewell Dialysis and allow Fresenius Medical
3 Care and RenalCare Associates to offer ongoing
4 services to this community by approving the
5 Fresenius North Pekin application. Thank you for
6 this opportunity.

7 MR. ROATE: Thank you, Mr. Desatnick.
8 Next, Board staff would like to call Deborah
9 Berardi. Deborah Berardi.

10 MS. BERARDI: Yes. Hello. My name is
11 Deborah Berardi, D-e-b-o-r-a-h, B-e-r-a-r-d-i. I
12 have both written and oral testimony. I'm
13 writing this letter in support for the
14 establishment of the Tazewell County Dialysis
15 facility by DaVita.

16 From what I have read and been informed
17 there's a definite need for another dialysis
18 facility in the Pekin area. Patients from
19 surrounding areas will utilize the facility.

20 My husband, Joe, who has had, who has
21 served four years on the Fulton County Board and
22 four years on the Canton City Council, was very
23 interested in this project. He has passed, but I
24 would like to speak for him and myself in support