

Holland & Knight

131 South Dearborn Street | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Clare Connor Ranalli
(312) 578-6567
clare.ranalli@hklaw.com

RECEIVED

OCT 12 2012

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

October 10, 2012

Via Email and U.S. Mail

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

Re: Opposition to Project 12-052/Tazewell County Dialysis

Dear Ms. Avery:

Fresenius Medical Care submits this supplemental comment in opposition to the above application for an 8-station dialysis center in Pekin, Illinois, and particularly notes the Board's recent denial of Fresenius's North Pekin application for a 9-station dialysis clinic two miles away from the proposed Tazewell site.¹ The two applications are virtually identical, although Fresenius's was denied three months ago after the Board determined 9 stations exceeded the established need and the area to be served already had excess capacity. Fresenius is not seeking comparative review of the two applications but believes the Board's stated concerns about need and excess capacity in the Pekin area apply equally to the DaVita Tazewell's application.

Fresenius also is concerned that the Board might consider granting the Tazewell application in order to break Fresenius's perceived "monopoly" and/or to increase DaVita's market share. Indeed, competitors of Fresenius have urged the Board to favor them over Fresenius in order to increase competition among dialysis providers, and the Board indicated that Fresenius's market share was a basis for denying its North Pekin application. The desire to inject competition into the geographic service area would be the only distinguishing factor that would cause the Board to approve DaVita's Tazewell application three months after rejecting Fresenius's identical application. However, we believe such a position, if taken, would be legally and factually untenable.

¹ Fresenius has submitted a nearly identical memorandum in opposition to U.S. Renal Care's application for a 13-station dialysis center in Plainfield, which the Board is scheduled to consider at the October 30th meeting. U.S. Renal Care's application is identical to Fresenius's application for a 12-station dialysis center in Plainfield for which the Board issued an Intent to Deny at the September 12th meeting.

To explain our reasoning and assist the Board with its analysis, the following memorandum illustrates that the Planning Act and applicable regulations prohibit the Board from considering an applicant's perceived market share or competition when reviewing a CON application. In fact, the Board is expressly prohibited from engaging in comparative review among applications/providers, and the Illinois Antitrust Act tasks the Illinois Attorney General with public enforcement of any restraints to competition. Even if the Board were permitted to consider such criteria, we do not believe the factual record supports the inference that Fresenius's market share impedes the quality of care it provides to patients or increases the cost of dialysis services.

Accordingly, this memorandum addresses the following: (a) the Board's prior comments regarding market share and competition as bases to accept or reject CON applications, (b) any preference for smaller providers over a larger provider such as Fresenius exceeds the Board's statutory authority under the Planning Act and constitutes impermissible comparative review, (c) consideration of market share and competition exceeds the Board's regulatory authority because it has not promulgated applicable rules and regulations to guide applicants on those criteria, and (d) the lack of evidence in any record to support the argument that market share is a relevant consideration to the quality of care or cost efficiency of Fresenius or other for-profit dialysis providers.

I. The Board's Reliance on Market Share And Competition In Prior CON Applications.

The Board has been clear that it may approve or deny certain CON applications in order to decrease Fresenius's market share or increase its competitors' market share. For example, one Board member likened Fresenius to McDonald's and expressed concern for how many facilities Fresenius will have in five years. *See* Transcript of April 17, 2012 Board hearing (attached as Exhibit A, p. 263). Another Board Member indicated in the course of three meetings and three applications that he might deny Fresenius's applications once its market share exceeds 50% in the HSA. *See* Transcripts from Board hearings, dated January 10, 2012 at pp. 57-61 (attached as Exhibit B); February 28, 2012 at pp. 222, 227 (attached as Exhibit C); and April 17, 2012, at pp. 263-264 (attached as Exhibit A), addressing RAI's CHOW and Fresenius' Cicero and East Aurora CON applications. That Board Member previously approved a DaVita application after noting that he was concerned about large national corporations such as Fresenius providing medical treatment. *See* Transcript from October 12, 2011 Board hearing, Day 1, addressing U.S. Renal Care's Oak Brook application (attached as Exhibit D, at pp. 68-69). Another Board Member indicated he would vote in favor of applications from Satellite Dialysis of Glenview and DaVita so that they could provide competition against Fresenius. *See* Transcripts from October 12, 2011 Board hearing, Day 1 (attached as Exhibit D, at p. 74), addressing U.S. Renal's Oak Brook and Transcript from October 13, 2011 Board hearing, Day 2, addressing Satellite Dialysis of Glenview application (attached as Exhibit E, at pp. 112-113).

Fresenius is concerned that the Board's concerns about market share and competition in the dialysis community will continue to result in comparative review among providers and inconsistent positions on similar to identical CON applications. The Board is faced with two such examples at its October 30th meeting.

(1) Fresenius's North Pekin Application and DaVita's Tazewell County Application

On January 19, 2012, Fresenius submitted a CON application to establish a 9-station in-center hemodialysis facility in North Pekin, Illinois. The proposed Fresenius facility was located in Illinois' Health Service Area ("HSA") IV. On June 5, 2012, the Board held a public meeting, at which point Dr. Ashan Usman advised the Board that he and DaVita intended to file (or had filed) an application to develop an 8-station kidney dialysis facility in Pekin to compete with Fresenius and offer patients a choice of providers. See Transcript of June 5, 2012 Board hearing (attached as Exhibit F, at p. 96).

The Board then voted an Intent to Deny Fresenius's application. See *id.* at p. 112-13. The Board indicated that one reason for the Intent to Deny was an alleged failure to meet the statutory criteria of established need and maldistribution of services review. However, the Board also indicated its desire to promote competition by preserving the opportunity for Davita to open a competing facility (although it had not yet filed its application):

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. Eaker?

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. SEWELL: No. Mr. Hayes' 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.

Exhibit F, pp. 112-13.

At a subsequent meeting, on July 24, 2012, the Board denied Fresenius' application for a North Pekin facility. The reasons cited included not only lack of need in the area and the existence of excess capacity, but also the lack of choice of providers. At least one Board Member stated that he voted no "because of competition and choice issues." See Transcript of July 24, 2012 Board hearing, attached as Exhibit G, p. 116.

Meanwhile, Dr. Usman and DaVita did file their own CON application for a proposed facility located two miles away. The Tazewell County application is identical to Fresenius's North Pekin application in all relevant respects. DaVita's application also exceeds the established need for stations and does not address the excess capacity in the area.

The Board is now tasked with considering DaVita's application to establish an 8-station facility three months after rejecting Fresenius's 9-station facility two miles away. The applications are identical in all substantive aspects. Thus, there would be no basis for the Board to approve DaVita's Tazewell County application so soon after denying Fresenius' North Pekin application on the basis of established need and excess capacity. The only difference is that the Board might perceive Fresenius as having a "monopoly" due to its market share among dialysis providers in the area, and has expressed a preference for expanding the market share of other providers in order to encourage competition. As described in more detail herein, if the Board approves the DaVita Tazewell application on the basis of market considerations, the decision would exceed the Board's statutory and regulatory authority and would be contrary to the manifest weight of the evidence.

Fresenius notes that it has filed an application to relocate its Pekin facility and to add two stations (the stated need per the Board's formula).

II. The Board's Reliance On An Applicant's Market Share Or Desire To Increase Competition Exceeds Its Statutory Authority Under The Planning Act.

The Board's authority to enact regulations or render decisions with respect to the CON process is limited to its creating statute: the Illinois Health Facilities Planning Act (the "Planning Act"). Indeed, an administrative agency is "a creature of statute and has no general or common law powers." *People v. Brown*, 203 Ill. App. 3d 957, 961 (5th Dist. 1990) (citation omitted).

It is clear from the plain language and history of the Planning Act that it was not enacted to protect an applicant's market share or encourage competition. See *Cathedral Rock of Granite City, Inc. v. Illinois Health Facilities Planning Board*, 308 Ill. App. 3d 529, 540 (4th Dist. 1999) ("The purpose of the Planning Act and the public hearing is not to provide protection to

competitors from an imposition on their market shares”); *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 48 (1st Dist. 2008) (citation omitted) (CON applicants have no protected right or constitutional interest to maintain their market share or be shielded from competition). The Illinois legislature enacted the Illinois Antitrust Act precisely for that purpose. *See* 740 ILCS 10/1 *et seq.*

Instead, the stated purpose of the Planning Act and the CON Board is to establish a procedure to control health care costs and avoid unnecessary duplication of health care services in the State of Illinois. 20 ILCS 3960/2 (2004). The Board must approve and authorize a permit if the Board determines that: (1) the applicant is fit, willing and able to provide a proper standard of care of health for the community; (2) the project is economically feasible; (3) the project is in the public interest; and (4) the project is consistent with the orderly and economic development of such facilities and equipment and is in accord with standards, criteria, or plans of need adopted and approved pursuant to the provisions of Section 12 of the Act. 20 ILCS 3960/6(d) (2004).

In considering development of health care facilities, the Planning Act also requires that the Board consider the following factors:

- (a) size, composition and growth of the population area to be served;
- (b) number of existing and planned facilities offering similar programs;
- (c) extent of utilization of existing facilities;
- (d) availability of existing facilities which may serve as alternatives or substitutes;
- (e) availability of personnel necessary to operate the facility,
- (f) multi-institutional planning and the establishment of multi-institutional systems where feasible;
- (g) financial and economic feasibility of proposed construction of modification; and
- (h) in the case of health care facilities established by a religious body or denomination, the needs of the members of such religious body or denomination may be considered to be public need.

20 ILCS 3690/12(4)(a)-(h) (2004).

The legislature also specifically repealed provisions in the statute that would have allowed for “comparative review” among applicants, sending a clear signal that the Board cannot prefer one applicant/provider over another when considering CON applications. *See Access Center for Health, Ltd. v. Health Facilities Planning Board*, 283 Ill. App. 3d 227, 240 (2d Dist. 1996); *Provena Health*, 382 Ill. App. 3d at 48. As the Illinois Appellate Court noted, the legislature specifically repealed the section of the Planning Act that formerly allowed comparative review. *Id.* The Board therefore cannot compare two applications submitted by different providers that propose to establish similar facilities. *Id.* Perhaps this is why the Deputy

Director of the Department of Health correctly noted during the Board's July 24, 2012 public meeting, "The statute almost demands an indifference to who the provider is." See Exhibit G, p. 112. Accordingly, any action by the Board to help DaVita or Davita obtain a larger market share or to deny Fresenius' application constitutes inappropriate comparative review.

To the extent the Board approves or denies a CON application based on factors that exceed its statutory authority under the Planning Act, the Board's decision would be deemed arbitrary and capricious and cannot be justified by Illinois law.² See *General Services Employees Union, Local 73 v. Illinois Educational Labor Relations Board*, 285 Ill. App. 3d 507, 517 (1st Dist. 1996) (IELRB's decision to apply a new test to analyze violations of the Illinois Educational Labor Relations Act was arbitrary and capricious); *Coleman v. Illinois Racing Board*, 124 Ill. 2d at 221-26 (where evidence did not support conclusion that groom was unqualified to perform his duties, Board acted outside its authority in permanently suspending groom's license); *Southern Illinois Asphalt v. Pollution Control Board*, 60 Ill. 2d at 216-17 (where evidence did not support Board's decision to impose civil penalties, Board's decision to impose penalties was an arbitrary abuse of discretion).

III. The Board Has Not Promulgated Rules and Regulations To Consider An Applicant's Market Share.

Even if the Planning Act empowers the Board to consider an applicant's relative market share or to foster competition, the Board could not do so without promulgating rules and regulations setting forth clear guidelines and expectations. *Springwood Associates v. Health Facilities Planning Board*, 269 Ill. App. 3d 944, 948 (4th Dist. 1995) ("Generally, administrative agencies must follow their own rules as written, without making *ad hoc* exceptions or departures therefrom in adjudicating") (citation omitted); *CBS Outdoor*, 970 N.E. 2d at 514. The Planning Act specifically requires that the Board "adopt procedures for public notice and hearing on all proposed rules, regulations, standards, criteria, and plans" required to carry out the provisions of the Act. 20 ILCS 3960/12(2).

None of the Board's current regulations address market share, competition or patient choice. See 77 Ill. Adm. Code §§ 1110, 1120. Nor has the Board invited public comment or hearing on proposed regulations. As a result, the Board has not established guidance for how to define market share or competition (e.g., by stations or clinics, by HSA or through the state) or by which an applicant may prove or disprove the nexus between its market share and the statutory criteria. The Board also has not established how it might develop regulations without the expertise necessary to render decisions relating to market share and competition without treading on the exclusive jurisdiction of the Illinois Attorney General and/or creating a bifurcated system whereby healthcare providers are regulated on market share by two different Illinois agencies.

² In determining whether an administrative agency's decision is arbitrary and capricious, one must consider the following guidelines: (1) does the agency rely on factors which the legislature did not intend for the agency to consider, (2) does the agency entirely fail to consider an important aspect of the problem, or (3) does the agency offer an explanation for its decision that runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 505-06 (1988). "While an agency is not required to adhere to a certain policy or practice forever, sudden and unexplained changes have often been considered arbitrary. *Id.* at 506.

The Board recognized this duty to promulgate regulations when it adopted criteria to assess unnecessary duplication and maldistribution of services for health care facilities. 770 Ill. Adm. Code § 1110. The regulations specified that applicants proposing to establish an in-center hemodialysis project must document that the project will not result in an unnecessary duplication by providing: (1) a list of all zip code areas that are located, in total or in part, within 30 minutes normal travel time of the project's site; (2) the total population of the identified zip code areas; and (3) the names and location of all existing or approved health care facilities within 30 minutes normal travel time from the project site that provide the categories of station service that are proposed by the project. 770 Ill. Adm. 1110.1430(c)(1).

By way of example, in *Kaufman Grain Co. v. Director of the Dep't of Agriculture*, 179 Ill. App. 3d 1040 (4th Dist. 1988), a grain producer challenged a ruling by the Department of Agriculture that intervened to settle a dispute between the grain producer and grain dealer regarding the quality of grain. The grain producer argued that the Department had never promulgated any applicable regulations and, therefore, the Department exceeded its authority in adjudicating the dispute. *Id.* at 1044-45. The court agreed, finding that because the Department failed to comply with the relevant provisions of the Administrative Procedures Act in promulgating rules (*i.e.*, public notice and comments requirements), the Department's basis for adjudicating the dispute was invalid. *Id.* at 1047.

Similar to the Department of Agriculture in *Kaufman Grain*, the Board has not established regulations to guide applicants on the connection between the statutory criteria and market share, competition and patient choice. Thus, the Board's reliance on those factors while granting denying Fresenius's CON applications or granting its competitors' applications would require the Board to operate outside its regulatory authority. *Kaufman Grain*, 179 Ill. App. 3d at 1047.

IV. The Board's Concerns About Market Share Are Not Supported By the Evidence in the Record.

Fresenius's competitors have suggested to the Board that Fresenius's market share impedes access to dialysis services by limiting patient choice, hindering the quality of care it provides to patients and/or increasing the cost of dialysis. The Board's comments also suggest an assumption that Fresenius's competitors are incited to and may provide greater quality and cost savings due to their comparatively smaller market share.

However, even if the Planning Act and applicable regulations permitted the Board to rely on market share criteria when evaluating applications, there is no credible evidence in the record that Fresenius's breadth in Illinois detracts from its fitness as a CON applicant. The evidence indicates the contrary. Fresenius has been providing dialysis care in Illinois for approximately thirty years. It strives to ensure access to dialysis and has treated thousands of patients in Illinois and employs over a thousand Illinois residents as nurses and patient care technicians. Its mission has been to place dialysis facilities in areas that it and the Board have identified an unmet need for services, including urban and rural areas that other smaller providers choose not to pursue (possibly because the profit margin is not as high in these communities).

Fresenius also consistently meets all of the Board's review criteria pertaining to quality. Indeed, Fresenius's Illinois clinics meet or exceed benchmarks above the state and national

norms, as determined by Pro Publica. There simply is no credible evidence that Fresenius is less equipped than DaVita or other dialysis providers to provide consistent high quality care due to its market share.

Nor is there any evidence that Fresenius's larger market share increases the cost of providing dialysis, or that another provider's market share decreases cost. Fresenius, DaVita, U.S. Renal Care and other dialysis providers are owned by for-profit national corporations, and presumably have the same financial motivation to improve efficiency and provide quality dialysis service at an appropriate cost. These providers receive the same standard rates set by the government for providing dialysis treatment to Medicare and Medicaid recipients, who constitute the vast majority of all dialysis patients. However, perhaps as a result of its size and the economies of scale, Fresenius is able to serve a great number of Medicaid patients and it is logical to infer that Fresenius is able to negotiate favorable terms with landlords, equipment suppliers and so on.

There also is no evidence that Fresenius's market share – whether defined by HSA or across the state – actually inhibits competition or choice. There is a robust market of for-profit dialysis providers in Illinois, as evidenced by the numerous CON applications filed by DaVita and other competitors (which Fresenius rarely opposes). For example, based on the aggregate number of stations, Fresenius has greater market share in only 6 of the 11 Health Service Areas.

Conclusion

In sum, neither the Planning Act nor the Board's own regulations allow the Board to consider an applicant's market share when considering a CON application, nor do they allow the Board to prefer one applicant over another in order to promote competition. To the contrary, the Board is prohibited from engaging in comparative review among providers. While Fresenius appreciates that the Board's focus on expanding high-quality and cost-effective dialysis care in Illinois, the Board's factual assumptions about the impact of market share are not supported by the evidence. Accordingly, Fresenius requests that the Board deny the DaVita Tazewell application for the stated reasons that it denied the Fresenius's identical application (need and excess capacity).

Very truly yours,

HOLLAND & KNIGHT LLP


Clare Connor Ranalli

CCR/mjy
Enclosures

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

EXHIBIT A



MIDWEST
LITIGATION
SERVICES

COURT REPORTING
& VIDEO

DRAFT



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

OPEN SESSION

APRIL 17, 2012

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES

MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau
KANSAS Overland Park ILLINOIS Springfield Champaign

HEADQUARTERS: 711 North Eleventh Street, ST. Louis, Missouri 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

OPEN SESSION
APRIL 17, 2012

Open session of the meeting of the State of Illinois Health Facilities and Services Review Board was held on April 17, 2012, at Illinois Department of Natural Resources Building, One Natural Resources Way, Springfield, Illinois.

DRAFT

1 PRESENT:

2 Dale Galassie - Chairman
John Hayes - Vice Chairman
3 James J. Burden, M.D.
Ronald S. Eaker
4 Justice Alan Greiman
Robert J. Hilgenbrink
5 Kathryn J. Olson
David Penn
6 Richard Sewell

7 ALSO PRESENT:

Courtney Avery - Board Administrator
8 Cathy Clarke - Assistant
Frank Urso - General Counsel
9 Juan Morado - Assistant Counsel
Alexis Kendrick - HFSRB Staff
10 Michael Constantino - IDPH Staff
George Roate - IDPH Staff
11 Bonnie Hills - IDPH Staff
12 Bill Dart - IDPH Staff
13 David Carvalho - IDPH Staff
14 Michael C. Jones - IDHFS
15 Michael Pelletier - IDHS

16

17 COURT REPORTER:

18 Ms. Dorothy J. Hart, CSR, RPR
19 Illinois CSR No. 084-001390
20 Midwest Litigation Services
21 15 South Old State Capitol Plaza
22 Springfield, Illinois 62701
23 (217) 522-2211
24 1-800-280-3376

1 START TIME: 10:00 a.m.

2

3 CHAIRMAN GALASSIE: Good morning, ladies
4 and gentlemen. Welcome, this morning. It's a
5 beautiful day. We're going to see if we can outspoke
6 the geese outside to get a little cool air in the
7 room. If we get interrupted, you'll know they're
8 talking to Board Members and not that they're
9 commenting on your comments.

10 If you have not signed up for public
11 comment, that period is now closed. And if you have,
12 we will be calling you up at the appropriate agenda
13 item to make your comments.

14 For the Board Members, your mikes are
15 turned off. Just so you know that. You'll need to
16 turn them on when you intend to utilize them.

17 I'd like to call the meeting to order and
18 ask for a roll call. George.

19 MR. ROATE: Dr. Burden?

20 DR. BURDEN: Here.

21 MR. ROATE: Mr. Eaker?

22 MR. EAKER: Here.

23 MR. ROATE: Justice Greiman?

24 (No response)

1 MR. ROATE: Absent.

2 Mr. Hayes.

3 VICE CHAIRMAN HAYES: Here.

4 MR. ROATE: Mr. Hilgenbrink?

5 MR. HILGENBRINK: Here.

6 MR. ROATE: Ms. Olson?

7 MS. OLSON: Here.

8 MR. ROATE: Mr. Penn?

9 MR. PENN: Here.

10 MR. ROATE: Mr. Sewell?

11 MR. SEWELL: Here.

12 MR. ROATE: Chairman Galassie?

13 CHAIRMAN GALASSIE: Here.

14 Thank you very much.

15 Can I call for a motion to approve the --

16 of the agenda?

17 VICE CHAIRMAN HAYES: So moved.

18 DR. BURDEN: Second.

19 CHAIRMAN GALASSIE: Moved and second. All

20 in favor?

21 (A voice vote was taken.)

22 CHAIRMAN GALASSIE: Motion passes. Thank

23 you very much.

24 And a motion for approval of the minutes?

1 My concern and experience regarding this
2 issue is very personal, as both my parents have had or
3 have had diabetes. Unfortunately, my dad died at 42
4 of heart disease. My uncle received dialysis and
5 eventually passed away from kidney failure. The one
6 thing that was constant throughout his years of
7 treatment was his continuity of care. As a family, we
8 were able to rest more easily knowing that we were
9 able -- that we were comfortable and in a stable
10 environment as his treatment progressed. It is this
11 same environment that I ask that you consider for
12 potential patients of the Cicero facility today.

13 Thank you for the opportunity to speak
14 before you.

15 CHAIRMAN GALASSIE: Thank you very much
16 for your comments. Have a good day.

17 Representatives for Project 11-096, FMC
18 Cicero in Cicero, Illinois. Good afternoon. Those of
19 you that have not been sworn in, if you would give
20 your names to our recorder, spell your name, and then
21 we'll collectively swear you in.

22 MS. MORRISON: Abbie Morrison, A-b-b-i-e
23 M-o-r-r-i-s-o-n.

24 DR. ANDERSON: Dr. Matthew Andersen,

DRAFT

1 A-n-d-e-r-s-e-n.

2 MS. MULDOON: Colleen Muldoon, Regional
3 Vice President of Fresenius Medical Care,
4 M-u-l-d-o-o-n.

5 (Oath given.)

6 CHAIRMAN GALASSIE: Thank you.

7 Staff Report.

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

9 The applicants are proposing the
10 establishment of a 16-station ESRD facility located in
11 8,000 gross square feet of leased space in Cicero,
12 Illinois. The cost of the project is approximately \$4
13 million.

14 The applicants received an Intent to Deny
15 at the January 10th, 2012, State Board meeting.
16 Additional information was provided to the State Board
17 Staff by the applicants on February 10th, 2012.

18 No public hearing was requested and no
19 opposition letters were received.

20 Thank you, Mr. Chairman.

21 CHAIRMAN GALASSIE: Thank you, sir.

22 Comments for the Board?

23 MS. MORRISON: Hello. My name is Abbie
24 Morrison, and I'm the Director of Operations for

1 necessarily have to use MapQuest, but you'd have to
2 have a study where you were driving if we were going
3 to negate the 30-minute travel time standard. Okay.

4 MR. CONSTANTINO: We had the December 31st
5 data this time.

6 CHAIRMAN GALASSIE: Judge Greiman.

7 MR. GREIMAN: Yeah. Can we put in the
8 Greiman amendment that you'll talk to your doctors and
9 tell them you accept charity cases?

10 DR. ANDERSEN: Yeah. I mean we were just
11 speaking about this earlier. To be frank, I'm not
12 even sure what insurance that most of my patients
13 have. Maybe I'm naive or just too young at this.
14 But, yeah, we treat who comes to us.

15 MR. GREIMAN: Well, there may be other
16 doctors besides you down the line.

17 DR. ANDERSEN: Well, true. My partner,
18 Dr. Lohmann, he holds the same stance. He actually
19 prides himself on that. So I don't think that that
20 would be a problem at all for us to take on --

21 MR. GREIMAN: All right.

22 DR. ANDERSEN: -- underserved.

23 MR. GREIMAN: So it's a condition of our
24 approval that you will advise your doctors that you

1 take charity cases.

2 I have another question too for you. Out
3 of this number, you at FMC -- there's 53 of them and
4 you own 31 -- 58 of them and you own 31 -- 32 of them.
5 So when there comes a time in the future when you own
6 them all, are you going to just let them put them all
7 together in one big place or what will you do?

8 MS. RANALLI: Is there a particular aspect
9 of that you want me to address?

10 MR. GREIMAN: No. I guess I'm just
11 raising the fact that there comes a time when somebody
12 in your accounting says, you know, we have 52 -- we
13 own all 52 within this huge range. Why don't we cut
14 it down and have 20 and just have bigger --

15 CHAIRMAN GALASSIE: They're like
16 McDonald's, Judge.

17 MR. GREIMAN: Huh?

18 CHAIRMAN GALASSIE: They're like
19 McDonald's.

20 MR. GREIMAN: Yeah.

21 CHAIRMAN GALASSIE: They want to be
22 ubiquitous. They don't want to be in a central
23 facility. They want to be ubiquitous.

24 MR. GREIMAN: All right. That may be so.

1 CHAIRMAN GALASSIE: And if we think
2 there's a lot now, look at five years.

3 MS. RANALLI: Yeah. I mean it's -- I mean
4 we do care about access and the best way to provide
5 access is to do just what we're doing here, which is
6 go right in the community where there are a large
7 number of patients who require the care.

8 MR. GREIMAN: All right.

9 MS. RANALLI: And, you know, I don't think
10 as a company the model would be such that we would
11 disavow that community commitment. We recognize it
12 kind of rubs sometimes against what you all do, but in
13 this particular situation, coming back to what I said,
14 I think this is a unique project that does -- does
15 have merit.

16 CHAIRMAN GALASSIE: I'm going to entertain
17 a motion --

18 MR. MORADO: Chairman Galassie, I'm sorry,
19 I have one question and maybe a comment.

20 I didn't realize where the location of
21 this was going to be on 30th and Cicero, and that's
22 directly across from probably Chicago's second largest
23 Latino neighborhood, Little Village. I don't see from
24 the Table Four that DaVita has a Little Village

EXHIBIT B



MIDWEST
LITIGATION
SERVICES

COURT REPORTING
& VIDEO



RECEIVED

JAN 20 2012

HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

OPEN SESSION

JANUARY 10, 2012

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau ■ KANSAS Overland Park ■ ILLINOIS Springfield

HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 West Jefferson Street, 2nd Floor

Springfield, Illinois 62761

217-782-3516

OPEN SESSION

JANUARY 10, 2012

Open session of the meeting of the State of Illinois Health Facilities and Services Review Board was held on January 10, 2012, at the Bolingbrook Golf Club, 2001 Rodeo Drive, Bolingbrook, Illinois.

1 PRESENT:

John Hayes - Vice-Chairman

2 Ronald Eaker

Alan Greiman

3 Kathy Olson

Richard Sewell

4 Robert Hilgenbrink

David Penn

5

6 ALSO PRESENT:

7 Courtney Avery - Board Administrator

8 Cathy Clarke - Assistant

9 Frank Urso - General Counsel

10 Juan Morado - Assistant Counsel

11 Alexis Kendrick -- HFSRB Staff

12 Michael Constantino - IDPH Staff

13 George Roate - IDPH Staff

14 Bill Dart - IDPH Staff

15 David Carvalho - IDPH Staff

16 Michael C. Jones - IDHFS

17 Michael Pelletier - IDHS

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

1 START TIME: 10:06 a.m.

2

3 VICE-CHAIRMAN HAYES: Welcome to the board
4 meeting of the Health -- Illinois Health Facilities and
5 Services Review Board, and I'd like to mention that we do
6 have outside, with Cathy, a sign-up sheet for public
7 comment, and if anyone needs -- wants to be able to present
8 or have a public comment before on any of the projects
9 today, please go out and talk to Cathy. She's back in the
10 outer room there, and she'll sign you up for that, and we
11 certainly appreciate that.

12 And what I'd like to do is we have a new
13 member of our staff, Alexis Kendrick, and we welcome her,
14 and she will be working on our Legislative Affairs area,
15 and we welcome her to our staff.

16 So, I'd like to call this meeting to order,
17 and the first item on the agenda is a roll call.

18 MR. ROATE: Chairman Galassie is absent. So
19 is Dr. James Burden.

20 John Hayes?

21 VICE-CHAIRMAN HAYES: Here.

22 MR. ROATE: Ronald Eaker?

23 MR. EAKER: Present.

24 MR. ROATE: Justice Alan Greiman?

1 MR. GREIMAN: Here.

2 MR. ROATE: Mr. Robert Hilgenbrink?

3 MR. HILGENBRINK: Here.

4 MR. ROATE: Ms. Kathy Olson?

5 MS. OLSON: Here.

6 MR. ROATE: Mr. David Penn?

7 MR. PENN: Here.

8 MR. ROATE: Mr. Richard Sewell?

9 MR. SEWELL: Here.

10 MR. ROATE: That is 7.

11 VICE-CHAIRMAN HAYES: Now, the Chairman,
12 Chairman Dale Galassie, is under the weather today, so
13 Vice-Chairman John Hayes, myself, will be chairing this
14 meeting, and then also he hopes to be back in February, and
15 I'm sure he will be. So, I'm just holding the fort down
16 here.

17 Approval of the agenda is the next item on our
18 calendar here. And, Mike, are there any changes to the
19 agenda?

20 MR. CONSTANTINO: No, Mr. Chairman.

21 VICE-CHAIRMAN HAYES: Thank you. So, I'd
22 like to have a roll call for the approval of the agenda of
23 the meeting of January 12, 2012 of the Illinois Health
24 Facilities and Services Review Board.

1 MR. ROATE: Mr. Penn?

2 MR. PENN: Yes.

3 MR. ROATE: Mr. Sewell?

4 MR. SEWELL: Yes.

5 MR. ROATE: That's 7 votes in the affirmative,
6 sir.

7 VICE-CHAIRMAN HAYES: Approved.

8 Now, with our agenda here, what I would like
9 to propose is that we take a 10-minute break, and we'll go
10 from there then. So, we're recessed until 11:30.

11 (Recess)

12 VICE-CHAIRMAN HAYES: I'd like to be able to
13 get our meeting back to order here. The next item on our
14 agenda is H-22, and that's No. 11-091, FMC Duquoin, and
15 that's been moved or deferred. So, it's off our agenda
16 now.

17 The next item on our agenda is H-23, 11-092,
18 RAI North Main, and, again, we'll be looking at these
19 projects -- Agenda No. H-23 to H-25, we'll be looking at
20 them as one project. We'll be taking a motion for these
21 three projects together, to approve or disapprove. Now, if
22 anyone has -- wants to be able to, we can certainly take
23 these three projects separately and have separate votes on
24 that, but our idea is to be able to go forward this way.

1 State Board.

2 Thank you, Mr. Chairman.

3 VICE-CHAIRMAN HAYES: Thank you, Mike.

4 The applicant?

5 MS. JOHNSON: Sarrah Johnson with Liberty

6 Dialysis.

7 VICE-CHAIRMAN HAYES: If you could identify
8 yourselves?

9 MS. WIEST: Michelle Wiest from Fresenius
10 Medical Care, Vice-President and the buyer.

11 MS. RANALLI: Clare Ranalli, legal counsel to
12 Fresenius.

13 VICE-CHAIRMAN HAYES: You may proceed.

14 MS. WIEST: Since the State Agency Report has
15 no deficiencies, we would certainly be open to any
16 questions you would have relative to this.

17 VICE-CHAIRMAN HAYES: I'd like to open it up
18 to questions from the State Board.

19 MR. GREIMAN: Let's see if I can make trouble
20 again.

21 MS. OLSON: We're never going to get lunch.

22 (Laughter)

23 MR. GREIMAN: So, I sit here sort of month
24 after month, and every single month you guys are taking

1 over an agency, and I don't know how many agencies are left
2 that you don't own in Illinois. And my question really is,
3 my concern is what happens when one company owns all of the
4 facilities in the state of Illinois or Cook County? Is
5 that a good thing or is that a bad thing? Because it's
6 pretty clear to me that you must own a hell of a lot of
7 them now.

8 MS. RANALLI: I am very, very glad that on the
9 way in, Ms. Wright, who is our CON Specialist, gave me some
10 information, because otherwise I wouldn't have been able to
11 address this as specifically.

12 Fresenius apparently treats, patient-wise,
13 just under 50 percent of the patients who are on in-center
14 hemodialysis in Illinois, from a clinic standpoint, not a
15 station standpoint. Because you had mentioned "stations"
16 in the previous applications, I want to make clear from a
17 clinic standpoint, we own just under, again, 50 percent of
18 the clinics in Illinois. So, we certainly are a
19 predominant player in the market, and as you said, you see
20 us every month, but we don't own all of the clinics in
21 Illinois. We own just under 50 percent, and we treat just
22 under 50 percent of the dialysis patients in Illinois.

23 As far as speaking to the reason for
24 acquisition of facilities, I think Ms. Wiest can address

1 that.

2 MS. WIEST: Well, I think that -- and perhaps
3 my colleague from Liberty can speak a little bit more to
4 why they decided to sell their business to Fresenius, but
5 as the State Agency reports, these three small facilities
6 in Illinois were part of a much larger acquisition across
7 the country. These are three facilities, smaller
8 facilities that fall into some of the rural areas
9 predominantly, where we don't really have a presence at
10 all. So, this is really quite new to us and Fresenius and
11 these specific markets.

12 MR. GREIMAN: So you don't have a big
13 downstate presence?

14 MS. WIEST: We have some facilities but not
15 certainly to the presence that we probably have for the
16 north here.

17 I'll let you maybe speak to that.

18 MS. JOHNSON: Yes. Fresenius and Liberty have
19 similar operating philosophies, from a physician-driven
20 care perspective. So, because of that perspective, we went
21 with Fresenius.

22 MS. OLSON: Mr. Chairman?

23 The acquisition nationwide, was that subject
24 to FTC approval?

1 MS. WIEST: Yes, it was.

2 MS. OLSON: And that's done?

3 MS. WIEST: It's just being completed at this
4 time.

5 MS. OLSON: So, you do believe you're going to
6 get that approval?

7 MS. WIEST: We do believe we will for these
8 three facilities.

9 MS. OLSON: For these three?

10 MS. WIEST: For all of them. I think always
11 when you acquire a large book of business, with FTC
12 scrutiny certainly you may see some divestitures as a
13 result of that, because of the FTC scrutiny. We do not
14 believe that these three will fall to that.

15 MS. OLSON: Thank you.

16 MR. HILGENBRINK: Mr. Chair, I move approval
17 of Projects H-23, 24 and 25.

18 MR. SEWELL: Second.

19 MR. ROATE: Motion made by Mr. Hilgenbrink,
20 seconded by Mr. Sewell.

21 Mr. Eaker?

22 MR. EAKER: Yes.

23 MR. ROATE: Justice Greiman?

24 MR. GREIMAN: I'm going to vote yes now, but

1 when you get over 50 percent, I'm going to think about
2 voting no.

3 MR. ROATE: Mr. Hayes?

4 VICE-CHAIRMAN HAYES: I'm going to vote no.

5 Basically, this is a nationwide acquisition. They will
6 have some discretion with the FTC and the federal laws, and
7 I'm just -- basically, I'm going to vote no, even though I
8 don't think this has anything to do with this -- we'll be
9 able to stop this transaction.

10 MR. ROATE: Mr. Hilgenbrink?

11 MR. HILGENBRINK: Yes.

12 MR. ROATE: Ms. Olson?

13 MS. OLSON: Yes.

14 MR. ROATE: Mr. Penn?

15 MR. PENN: Yes.

16 MR. ROATE: Mr. Sewell?

17 MR. SEWELL: Yes.

18 MR. ROATE: That's six votes in the positive,
19 one vote in the negative.

20 VICE-CHAIRMAN HAYES: Motion passes. Thank
21 you.

22 Now, the next item on our agenda is H-26, and
23 the number is 11-096, FMC Cicero. Now, we have testimony
24 or public comment, and I'd like to call the three public

EXHIBIT C



RECEIVED

MAR 09 2012

HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

OPEN SESSION

FEBRUARY 28, 2012

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES

MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau
KANSAS Overland Park ILLINOIS Springfield Champaign

HEADQUARTERS: 711 North Eleventh Street, ST. Louis, Missouri 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 WEST JEFFERSON STREET, 2ND FLOOR
SPRINGFIELD, ILLINOIS 62761
217-782-3516

OPEN SESSION

FEBRUARY 28, 2012

Open session of the meeting of the State
of Illinois Health Facilities and Services Review
Board was held on February 28, 2012 at the
Bolingbrook Golf Club, 2001 Rodeo Drive,
Bolingbrook, Illinois.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PRESENT:

- Dale Galassie - Chairman
- Ronald Eaker
- John Hayes
- John Burden
- Alan Greiman
- Kathy Olson
- Richard Sewell
- Robert Hilgenbrink

ALSO PRESENT:

- Michael Constantino - IDPH staff
- Cathy Clarke - Assistant
- Frank Urso - General Counsel
- Juan Morado - Assistant Counsel
- George Roate - Staff
- Bill Dart - IDPH Staff
- Claire Burman - IDPH Staff
- Michael C. Jones - IDHFS

REPORTED BY:

- Linda DeBisschop, CSR-MO, CSR-IL
- Midwest Litigation Services
- 401 N. Michigan Avenue
- Chicago, IL 60611

1 START TIME: 10:02

2

3 CHAIRMAN GALASSIE: I would like to call the
4 meeting to order. Good morning. Welcome board
5 members. Welcome visitors to a beautiful spring day
6 here in Chicago. I have friends who have just moved
7 here from LA. It's their first time living in the
8 Midwest and they are actually convinced this is a
9 Chicago winter and it's not that bad. Keep hoping.

10 Can we have a roll call, please, George.

11 MR. ROATE: Dr. Burden?

12 DR. BURDEN: Here.

13 MR. ROATE: Mr. Eaker?

14 MR. EAKER: Present.

15 MR. ROATE: Justice Greiman?

16 MR. GREIMAN: Here.

17 MR. ROATE: Mr. Hayes?

18 MR. HAYES: Here.

19 MR. ROATE: Mr. Hilgenbrink?

20 MR. HILGENBRINK: Here.

21 MR. ROATE: Ms. Olson?

22 MS. OLSON: Present.

23 MR. ROATE: Mr. Penn's absent. Mr. Sewell?

24 MR. SEWELL: Here.

1 MR. ROATE: Chairman Galassie?
2 CHAIRMAN GALASSIE: Present.
3 MR. ROATE: Seven present.
4 CHAIRMAN GALASSIE: Thank you very much.
5 Can I have motion to approve the agenda?
6 MS. OLSON: So moved.
7 MR. SEWELL: Second.
8 CHAIRMAN GALASSIE: Moved and seconded.
9 MR. ROATE: Motion made by Ms. Olson,
10 seconded by Mr. Sewell. Dr. Burden?
11 DR. BURDEN: Yes.
12 MR. ROATE: Mr. Eaker?
13 MR. EAKER: Yes.
14 MR. ROATE: Judge Greiman?
15 MR. GREIMAN: Yes.
16 MR. ROATE: Mr. Hayes?
17 MR. HAYES: Yes.
18 MR. ROATE: Mr. Hilgenbrink?
19 MR. HILGENBRINK: Yes.
20 MR. ROATE: Ms. Olson?
21 MS. OLSON: Yes.
22 MR. ROATE: Mr. Sewell?
23 MR. SEWELL: Yes.
24 MR. ROATE: Chairman Galassie?

1 to rural clinics not operating six shifts and newly
2 approved clinics outside of 30 minutes travel time.
3 Some well over an hour away.

4 As evidenced by the utilization of
5 facilities within the 30 minutes travel time, there
6 is a pocket of need in the Aurora area. The only
7 other facility serving Aurora is Fox Valley which is
8 not a Fresenius clinic and is at 92 percent
9 utilization.

10 Aside from the needs seen by high area
11 utilization, this project has garnered enormous
12 support from the City of Aurora, Aurora alderman,
13 Aurora township, State Representative, Visiting
14 Nurse Association, Hesid House Homeless Shelter and
15 over 40 letters of support from patients and
16 community members. I'd like to hand this over to
17 Clare Ranalli for additional comments.

18 CHAIRMAN GALASSIE: Thank you.

19 MS. RANALLI: I will be extremely brief.
20 I just wanted to comment quickly on the opposition
21 to the project. The physician who spoke with the
22 Fox Valley Clinic in the area, it is within 30
23 minutes, but as Ms. Muldoon said, it's substantially
24 over the target utilization rate.

1 The other issue that was raised was
2 concerning Dr. Dodia's practice and his practice has
3 seen enormous growth over the years. In fact, at
4 the Aurora Clinic where he also admits, we have
5 added ten stations over the last few years and it
6 is, despite adding stations again and again and
7 coming to you for approval for same, it is well over
8 your utilization target rate which is why we see an
9 extreme need for the East Aurora Clinic.

10 Also, there were clinics that the doctor
11 mentioned, but they were outside of the 30 minute
12 radius and, as a state agency report or state board
13 report correctly points out, within a 30 minute
14 radius. All of the facilities are operating well
15 above the target utilization rate.

16 And, lastly, just to address an important
17 point that Justice Greiman raises, our market share
18 at HSA8 is 42 percent. Other dialysis providers
19 have 59 percent or 58, unless I am working on a 101
20 percent number, but in other words, we are not the
21 primary provider in this HSA.

22 CHAIRMAN GALASSIE: And how far is this
23 proposed facility from the Aurora facility?

24 MS. RANALLI: Approximately 2 miles.

1 CHAIRMAN GALASSIE: Questions by the Board
2 members?

3 MR. GREIMAN: I just want to comment that I
4 did check it after we had our conversation last time
5 and found that you have 49 percent of the stations,
6 of the units and 53 percent of the beds so you are
7 almost over the 50 percent mark.

8 MS. RANALLI: For the state, right.

9 MR. GREIMAN: So this may be the last time.

10 CHAIRMAN GALASSIE: Other questions by board
11 members? Member Sewell.

12 MR. SEWELL: So, essentially, your argument
13 is that within the planning area that the state uses
14 where, you know, who determines that there is no
15 need, you are saying that there is a targeted
16 smaller area within that where there is a great
17 need. Does that essentially hit it or am I putting
18 words in your mouth?

19 MS. MULDOON: We actually have a map. If
20 you looked at the map you could see on the HSA8 how
21 Aurora is. We highlight it towards green as far as
22 the patient population and it is very, very dark
23 green right in that Aurora area and then you span it
24 out over the HSA8 and the patients just start to go

1 DR. BURDEN: How is it if you re-drew map
2 like gerrymandering, do we call it?

3 MR. CONSTANTINO: Projected population.
4 Generally, most of it is on the projected
5 population.

6 CHAIRMAN GALASSIE: Any further questions?

7 (NO RESPONSE)

8 CHAIRMAN GALASSIE: Hearing none, may I have
9 a motion to approve Project 11-120 for the
10 establishment of a 12 station ESRD facility in East
11 Aurora, Illinois.

12 MR. HILGENBRINK: So moved.

13 MR. GREIMAN: Second.

14 CHAIRMAN GALASSIE: Moved and seconded.

15 Roll call, please.

16 MR. ROATE: Motion made by Mr. Hilgenbrink,
17 seconded by Justice Greiman. Dr. Burden?

18 DR. BURDEN: I will say no. Again, the
19 calculations are based on math and, I think, when we
20 get to a point where we need Fresenius, we will be
21 here.

22 MR. ROATE: Mr. Eaker?

23 MR. EAKER: Yes.

24 MR. ROATE: Justice Greiman?

1 MR. GREIMAN: Yes. My last vote for you.

2 MR. ROATE: Mr. Hayes?

3 MR. HAYES: No, because of the excess 16
4 stations in the planning area.

5 MR. ROATE: Mr. Hilgenbrink?

6 MR. HILGENBRINK: Yes.

7 MR. ROATE: Ms. Olson?

8 MS. OLSON: No, based on excess capacity.

9 MR. ROATE: Mr. Sewell?

10 MR. SEWELL: No, excess capacity.

11 MR. ROATE: Chairman Galassie?

12 CHAIRMAN GALASSIE: No, same reasons.

13 MR. ROATE: That's five votes in the
14 negative, two votes in the affirmative.

15 CHAIRMAN GALASSIE: Good luck. Motion does
16 not pass.

17 MR. URSO: So you will be receiving an ITD.

18 CHAIRMAN GALASSIE: Moving on to item H13,
19 Project 11-103 Lawndale Dialysis. One public
20 comment.

21 MR. MORADO: Mr. David Frankel.

22 CHAIRMAN GALASSIE: Thank you. Good
23 afternoon.

24 MR. FRANKEL: Good afternoon,

EXHIBIT D

DRAFT



MIDWEST
LITIGATION
SERVICES

COURT REPORTING
& VIDEO

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

OPEN SESSION

OCTOBER 12, 2011

DAY 1

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau **■ KANSAS** Overland Park **■ ILLINOIS** Springfield

HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

OPEN SESSION
DAY 1 -- OCTOBER 12, 2011

Regular session of the meeting of the State of
Illinois Health Facilities and Services Review Board was
held on October 12 & 13, 2011, at the Bolingbrook Golf
Club, 2001 Rodeo Drive, Bolingbrook, Illinois.

1 PRESENT:

2 Dale Galassie - Chairman
3 Ronald Eaker
4 John Hayes
5 John Burden
6 Alan Greiman
7 Kathy Olson
8 Richard Sewell
9 Rob Hilgenbrink

10

ALSO PRESENT:

11 Courtney Avery - Administrator
12 Cathy Clarke - Assistant
13 Frank Urso - General Counsel
14 Juan Morado - Assistant Counsel
15
16 Michael Constantino - IDPH Staff
17
18 Bill Dart - IDPH Staff
19
20 Claire Berman - IDPH Staff
21
22 David Carvalho - Deputy Director, IDPH
23
24 Michael C. Jones - IDFS

19

20

21

Reported by:

22 Karen K. Keim
23 CRR, RPR, CSR-IL, CRR-MO
24 Midwest Litigation Services
401 N. Michigan Avenue
Chicago, IL 60611

1 START TIME: 10:06 a.m.

2

3 CHAIRMAN GALASSIE: Good morning, ladies and
4 gentlemen, and welcome. We hope you'll be comfortable here
5 this morning. It's a beautiful day.

6 Let me start out by welcoming a class we have
7 here -- I'm not sure if it's undergraduate or graduate --
8 from Governor State University, a planning class. If
9 anyone is here, would you rise, any students, please.

10 (Applause)

11 CHAIRMAN GALASSIE: Welcome here. You'll see
12 government in action today, hopefully. That's our plan.

13 Okay. I will ask to call the meeting to order and ask
14 for a roll call by Staff, please.

15 MR. DART: Chairman Galassie?

16 CHAIRMAN GALASSIE: Here.

17 MR. DART: Member Hayes?

18 MR. HAYES: Here.

19 MR. DART: Dr. Burden?

20 MR. BURDEN: Here.

21 MR. DART: Mr. Eaker?

22 MR. EAKER: Present.

23 MR. DART: Justice Greiman?

24 MR. GREIMAN: Here.

1 MR. DART: Mr. Hilgenbrink?
2 MR. HILGENBRINK: Here.
3 MR. DART: Ms. Olson?
4 MS. OLSON: Here.
5 MR. DART: Mr. Penn?
6 (No response)
7 MR. DART: Mr. Sewell?
8 MR. SEWELL: Here.
9 CHAIRMAN GALASSIE: For the record, Mr. Penn
10 advised us he would not be present today.
11 MR. DART: That's eight answering.
12 CHAIRMAN GALASSIE: Thank you.
13 Can I have a motion to approve the agenda,
14 with a subsequent roll call vote, please?
15 MS. OLSON: So moved.
16 MR. SEWELL: Second.
17 CHAIRMAN GALASSIE: Moved and seconded. Roll
18 call.
19 MR. DART: Chairman Galassie?
20 CHAIRMAN GALASSIE: Here -- yes. Sorry.
21 MR. DART: Member Hayes?
22 MR. HAYES: Yes.
23 MR. DART: Dr. Burden?
24 MR. BURDEN: Yes.

1 have to talk about the physicians. When I sold to
2 Fresenius, Fresenius signed a Medical Director Agreement
3 with our 26 physicians, and it was a fairly lucrative
4 Medical Director Agreement. I can't remember what the pay
5 was, but it was substantial.

6 I was also partially involved in creating this
7 growth for Fresenius in the area, because the people from
8 Everest, which was the competing group from Neomedica,
9 after we sold to Fresenius said, "Gee, can you make an
10 introduction of us to Fresenius? We want to sell." So, I
11 did, and you can see that ultimately Fresenius controls a
12 large part of the market here. But that's private
13 enterprise. I'm not finding any fault with that
14 whatsoever.

15 The other thing is they also have -- I think
16 there's 60 or 50 physicians in that group. So, you've got
17 somewhere -- besides the dialysis -- with all the dialysis
18 units, you have all of the physicians tied in, and I can
19 tell you one of the discharge planners at the hospital
20 joked with me. She said, "You know, Dr. Lang, there's more
21 competition among the nephrologists for patients than there
22 are for cardiologists." I said, "I didn't know that." She
23 said, "You know, the cardiologist won't give the patient
24 back if they've seen the patient before. I've never seen a

1 nephrologist do that."

2 One other point is that some of the units that
3 are not filled are related to the fact that some of the
4 medical directors cover a wide range of hospitals and are
5 seldom in the unit. A personal thing that happened to me
6 personally is that a physician wanted to transfer his care
7 to me in one of the units. I said, "No, I won't do that
8 unless your nephrologist approved it." He came back to me
9 a week later and said he approved it. The next thing I
10 knew, my privileges were denied at this facility. I had to
11 hire a lawyer. It cost me \$5,000.00 to get my privileges
12 reinstated, and my patient was force removed.

13 So, the point is, we need a different
14 approach. I think part of my problem with Fresenius now is
15 it just got too big. They've been very successful. I want
16 to commend them and all of the people I knew in Fresenius
17 and I still know them. They did a good job. But I think
18 there also has to be a place for a smaller group, where the
19 physicians are involved and they can talk to the people who
20 run the company, and I think that in this situation,
21 myself, Dr. Rauf and Dr. Ahmed, we have loud enough voices
22 that we will be heard.

23 I want to thank the Board for listening to
24 my a little bit longer than three minutes, but I thought it

1 was important.

2 CHAIRMAN GALASSIE: Thank you, Dr. Lang.

3 Questions? Judge?

4 MR. GREIMAN: I want to tell you about the
5 problems of this Board and maybe you can solve these
6 problems. About half of what we do is the acquisition of a
7 medical facility by a larger company, and as time goes on,
8 eventually medical -- from what I can see, medical units in
9 our state at least, I imagine in the country at large, will
10 be owned by a few big companies. That's what happens.
11 Half of what we do is a change of ownership. So, my
12 question to Dr. Lindenfeld or Dr. Lang is, will medical
13 treatment be better served if you have national -- large,
14 national corporations owning them and running it and caring
15 about making a profit? Is that where we're going? Because
16 that is where we're going, there is no question.

17 MR. LANG: I can't answer that, Judge. I'm
18 not sure what's the best way to go. All I can say is that
19 if I look at what I'm paid now from what I was paid when
20 Medicare first came in, it's certainly different. I'm not
21 complaining about it. It's what has to happen, because
22 there's more people on Medicare, and the government and
23 we -- saying that we're the government, really, because
24 we're paying the taxes -- we're going to have to look at a

1 way to solve this, and the point is, is it better for a
2 large company? I don't know that answer. All I can say is
3 stock at Fresenius is like \$72. It's probably higher than
4 a lot of other ones, and DaVita is up there, too. So,
5 they're making money, and that's not a problem. Insurance
6 companies make money.

7 MR. GREIMAN: I wasn't worried about them.
8 I'm concerned about the patients.

9 MR. LANG: That's why I think if we have some
10 smaller companies that are more responsive, it's easier. I
11 mean, part of the joke in the nephrology community is that
12 DaVita buys somebody, Fresenius is going to buy somebody,
13 and they just turned around and made an effort.

14 MR. GREIMAN: Exactly.

15 MR. LANG: DaVita bought DSI, which is here in
16 the neighborhood, and Fresenius to buy Liberty. So, the
17 point is, I'm not -- my own personal feeling, I don't think
18 big necessarily is good. I don't think big banks are good.
19 I used to have a mortgage at Lemont. I could talk to the
20 people at Lemont. Now I talk to somebody in the
21 Philippines or India when I have a problem with the Bank of
22 America.

23 MR. GREIMAN: That's the fear I have about
24 what we do on this Board, and we do -- it's what we do, and

1 we find ourselves locked in with larger operations, which
2 eventually that's where we're going to end up in the United
3 States.

4 MR. LANG: I'm trying to fight that. I'm
5 saying let's keep them at a certain level, you know. If
6 U.S. Renal wants to go public, that's fine, but let's keep
7 it in perspective. You don't have to have 250,000
8 patients, you know, and the point is --

9 MR. GREIMAN: Okay. Dr. Lindenfeld, do you
10 agree with that?

11 MR. LINDENFELD: Yes. I think it's important
12 to recognize that what is necessarily currently viewed as
13 the most cost effective is not necessarily the most
14 clinically effective, and that's a concern, and I think one
15 of the things that U.S. Renal Care, at least by entering
16 into the community, offers a different way of viewing the
17 practice of care, and I think that is a positive force.
18 But how long that's going to be able to be maintained, I
19 will tell you, Judge, that my concerns are very much along
20 yours, that we are heading towards basically ESRD being
21 under the care of two major corporations.

22 MR. GREIMAN: Okay. Thank you.

23 Dr. Lang, next time you need a lawyer,
24 Mr. Vinson is a little cheaper.

1 (Laughter)

2 MR. VINSON: I wasn't sure if I should address
3 you as Justice or majority leader. I'm not sure which
4 title is actually higher.

5 MR. GREIMAN: Majority leader for you, Sam.

6 MR. VINSON: I'd like to break our order of
7 presentation, if I might, for just a second and show you,
8 Mr. Chairman --

9 CHAIRMAN GALASSIE: Are you intending more
10 presentation, because I'm getting ready to move this issue.

11 MR. VINSON: No, I'm -- I'd like to just show
12 you some numbers that relate to --

13 CHAIRMAN GALASSIE: I think you've given
14 adequate information for the Board to move on this issue,
15 but thank you.

16 And, Judge, there's an analogy discussion to
17 have in terms of the home health business to what we're
18 talking about here and what happened in the 80's with
19 Medicare. This isn't the place for it, but it's very
20 analogous of what took place.

21 Any other questions on the part of Board
22 members on this issue?

23 (Pause)

24 MR. URSO: Is it -- you are the same

1 applicants on the next three projects; is that correct?

2 MR. VINSON: Yes, sir.

3 MR. URSO: And your desire was to give one
4 presentation on all three projects?

5 MR. VINSON: Yes, sir.

6 MR. URSO: I just want to remind the Board
7 that we do not do comparative reviews. We don't do
8 batching. Each of these projects has to be looked at on
9 its own merits and an individual vote will be taken on each
10 one separate. So, I just wanted to remind Board members of
11 that.

12 CHAIRMAN GALASSIE: And if you gentlemen will
13 stay at the table for each of the three, we will appreciate
14 that.

15 MR. CONSTANTINO: Mr. Chairman?

16 CHAIRMAN GALASSIE: Michael.

17 MR. CONSTANTINO: I didn't get an opportunity
18 to introduce this project.

19 CHAIRMAN GALASSIE: I'm sorry.

20 MR. CONSTANTINO: Would you like me to do
21 that?

22 CHAIRMAN GALASSIE: Yes.

23 MR. CONSTANTINO: The applicants are proposing
24 the establishment of a 13-station ESRD facility in

1 approximately 6,500 gross square feet of leased space in
2 Downers Grove, Illinois. The anticipated cost of the
3 project is \$1.9 million. The anticipated project
4 completion date is August 1st, 2012. This project was
5 modified to add a co-applicant, and there was a public
6 hearing held. We did receive a number of support and
7 opposition comments regarding this project.

8 Thank you, Mr. Chairman -- one other thing.
9 The current station need in HSA 7 is now 5. That has been
10 currently updated from the information I gave you in your
11 material. So, instead of 8, it should be 5 stations, need
12 of 5 in HSA 7. And the second thing is the same applicant
13 has another facility within the same planning area. That's
14 project 11-026.

15 CHAIRMAN GALASSIE: Mike, I'm sorry. I was
16 actually going to ask you to go ahead and give your Staff
17 report on 11-025 and 11-026 subsequently.

18 (Discussion held off the record.)

19 CHAIRMAN GALASSIE: Mike, I'm going to stop.
20 I'm going to change gears. Let's stay on 11-024 for Staff
21 report.

22 Any other questions by Board members?

23 (Pause)

24 CHAIRMAN GALASSIE: I will entertain a motion

1 to approve project 11-204.

2 MS. OLSON: So moved.

3 MR. BURDEN: Second.

4 CHAIRMAN GALASSIE: Moved and seconded. Roll
5 call please, Bill.

6 MR. DART: Motion made by Ms. Olson, seconded
7 by Dr. Burden.

8 Dr. Burden?

9 MR. BURDEN: We have to separate these three
10 applications?

11 CHAIRMAN GALASSIE: Yes.

12 MR. BURDEN: I personally, of course, am
13 confident Dr. Lang has been up-front, describing his
14 opportunity to provide some competition to the huge,
15 megalopolis, Fresenius and DaVita, which comprise 70
16 percent in the Oak Brook area. So, I would vote
17 independently now -- are we -- can I vote for all three
18 applications?

19 CHAIRMAN GALASSIE: This is an independent
20 vote strictly on 11-024.

21 MR. BURDEN: I'm going to vote for 204 (sic),
22 Oak Brook Dialysis.

23 CHAIRMAN GALASSIE: That's a yes.

24 MR. DART: Mr. Eaker?

EXHIBIT E



**MIDWEST
LITIGATION
SERVICES**

COURT REPORTING
& VIDEO

DRAFT



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

OPEN SESSION

OCTOBER 13, 2011

DAY 2

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau ■ KANSAS Overland Park ■ ILLINOIS Springfield

HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

OPEN SESSION

DAY 2 -- OCTOBER 13, 2011

Regular session of the meeting of the State of
Illinois Health Facilities and Services Review Board was
held on October 12 & 13, 2011, at the Bolingbrook Golf
Club, 2001 Rodeo Drive, Bolingbrook, Illinois.

1 PRESENT:

2 Dale Galassie - Chairman
3 Ronald Eaker
4 John Hayes
5 John Burden
6 Alan Greiman
7 Kathy Olson
8 Richard Sewell
9 Rob Hilgenbrink

10

ALSO PRESENT:

11 Courtney Avery - Administrator
12 Cathy Clarke - Assistant
13 Frank Urso - General Counsel
14 Juan Morado - Assistant Counsel
15
16 Michael Constantino - IDPH Staff
17
18 Bill Dart - IDPH Staff
19
20 Claire Berman - IDPH Staff
21
22 David Carvalho - Deputy Director, IDPH
23
24 Michael C. Jones - IDFS

19
20
21

Reported by:

22 Karen K. Keim
23 CRR, RPR, CSR-IL, CRR-MO
24 Midwest Litigation Services
401 N. Michigan Avenue
Chicago, IL 60611

1 START TIME: 10:06 A.M.

2

3 CHAIRMAN GALASSIE: Good morning, ladies and
4 gentlemen. Welcome. The meeting is called to order -- or
5 reorder -- from our recess of yesterday, and we will be
6 starting with Item No. 11-038, Fresenius Medical Care of
7 Naperbrook. If representatives from there would please
8 come up to the front table, introduce yourselves, spell
9 your names for our Recorder, and we will have you sworn in.

10 While you're doing that, we will do roll call.
11 Bill, if you wouldn't mind.

12 MR. DART: Certainly.

13 Dr. Burden?

14 MR. BURDEN: Yes.

15 MR. DART: Mr. Eaker?

16 MR. EAKER: Here.

17 MR. DART: Justice Greiman?

18 MR. GREIMAN: Here.

19 MR. DART: Mr. Hayes?

20 MR. HAYES: Here.

21 MR. DART: Mr. Hilgenbrink?

22 MR. HILGENBRINK: Here.

23 MR. DART: Ms. Olson?

24 MS. OLSON: Here.

1 MR. DART: Mr. Penn?

2 (No response)

3 MR. DART: Mr. Sewell?

4 MR. SEWELL: Here.

5 MR. DART: Chairman Galassie?

6 CHAIRMAN GALASSIE: Here.

7 Thank you very much. If you folks would
8 introduce yourselves.

9 MS. RANALLI: Certainly. Good morning. Thank
10 you. My name is Clare Ranalli (spells name). To my left
11 is Lori Wright (spells name). To her left is Coleen
12 Muldoon (spells name), and to her left is Terri Gurchiek
13 (spells name).

14 CHAIRMAN GALASSIE: Michael, can we have a
15 State Agency Report, please?

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

17 The applicants are proposing the establishment
18 of a 16-station ESRD facility, located in approximately
19 10,000 gross square feet of leased space in Naperville,
20 Illinois. The cost of the project is approximately \$5
21 million.

22 The State Board Staff would like to note that
23 the applicants are requesting shell space as part of this
24 application, in the words of the applicants, to accommodate

1 here for quite some time, but there is certainly the same
2 principle as the freestanding dialysis units, is the
3 majority. When I was in Germany, certainly that was the
4 predominant way to deliver dialysis.

5 CHAIRMAN GALASSIE: John, if I may, it's --

6 MR. HAYES: Freestanding.

7 CHAIRMAN GALASSIE: It's twenty to one, and
8 this clearly is extremely helpful and informative and is
9 screaming for us to have our dialysis retreat, which I am
10 sure after these two days we will be scheduling soon. I
11 think we are at a point where we can move this to a vote.

12 If I may, I would propose a motion to approve
13 Project 11-061 for the establishment of a 16-station ESRD
14 facility in Glenview, Illinois.

15 MR. HILGENBRINK: So moved.

16 MS. OLSON: Second.

17 CHAIRMAN GALASSIE: Moved and seconded. Roll
18 call, please.

19 MR. DART: Motion made by Mr. Hilgenbrink,
20 seconded by Ms. Olson.

21 Dr. Burden?

22 MR. BURDEN: This is a very interesting
23 application. I'm looking at -- you are, unfortunately,
24 batting 4th, which is the clean-up spot. You're expected

1 to hit a home run and, indeed, you know full well by now
2 that we've already passed several prior applicants. So, we
3 now have a significant excess of beds in HSA 7. Everybody
4 who comes in front of us with an application feels they are
5 unique and remarkably unique and we can't turn you down,
6 you know, that kind of attitude, which I suspect is part of
7 marketing salesmanship and preparation. But I'm buying
8 into it, even though I'm against the thought that I might
9 be criticized for voting pro for something where we already
10 have significant -- according to our HSA finders we have
11 areas for people to get dialysis. I got to vote for you.
12 I would hope when we see the results that you bring to the
13 table that you apparently can compete successfully with the
14 huge monopolies that occur in our town and I have made the
15 right choice.

16 I vote yes.

17 MR. DART: Mr. Eaker?

18 MR. EAKER: I also have conflicting feelings
19 about the vote and the difference between need and what
20 you're offering. I side on the side of better access to
21 care for the patients. I'll vote yes.

22 MR. DART: Justice Greiman?

23 MR. GREIMAN: I'll vote yes also.

24 MR. DART: Mr. Hayes?

1 MR. HAYES: I vote yes, because I feel that
2 this does offer alternatives, and that's very important.

3 MR. DART: Mr. Hilgenbrink?

4 MR. HILGENBRINK: I, too, am a strong
5 proponent of choice and access, and I vote yes.

6 MR. DART: Ms. Olson?

7 MS. OLSON: I vote yes for patient access and
8 patient choice.

9 MR. DART: Mr. Sewell?

10 MR. SEWELL: Yes.

11 MR. DART: Chairman Galassie?

12 CHAIRMAN GALASSIE: Chair votes yes.

13 MR. DART: Eight votes.

14 CHAIRMAN GALASSIE: Motion passes.

15 Congratulations. Thank you very much.

16 We are at a quarter 'til one, and we are going
17 to be recessing for lunch. We will try to be back here --
18 the plan will be to be back here at 1:30. We have six or
19 seven applications remaining:

20 (Lunch recess)

21 CHAIRMAN GALASSIE: I will call us back in
22 session from recess. Thank you for being timely.

23 And just a comment for the Board members. I
24 think we got a little out of sync earlier, and I take

EXHIBIT F



RECEIVED

JUN 14 2012

HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

**PROCEEDINGS HELD IN OPEN SESSION
MEETING**

JUNE 5, 2012

NATIONWIDE SCHEDULING

OFFICES

MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau
KANSAS Overland Park ILLINOIS Springfield Champaign

HEADQUARTERS: 711 North Eleventh Street, ST. Louis, Missouri 63101

800.280.3376

www.midwestlitigation.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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 START TIME: 10:02 a.m.

2

3 CHAIRMAN GALASSIE: Good morning, ladies and
4 gentlemen. Welcome here on a beautiful day. We should be
5 outside, rather than in here, but that's how it goes
6 sometimes.

7 I would call the meeting to order. We do have
8 a quorum. We have two members as of now missing, to our
9 knowledge. Member Hilgenbrink will not be here. And can I
10 have a roll call for those present, please?

11 MR. ROATE: Dr. Burden?

12 (No response)

13 MR. ROATE: Absent.

14 MR. ROATE: Mr. Eaker?

15 MR. EAKER: Present.

16 MR. ROATE: Justice Greiman?

17 MR. GREIMAN: Present.

18 MR. ROATE: Mr. Hayes?

19 MR. HAYES: Present.

20 MR. ROATE: Ms. Olson?

21 MS. OLSON: Present.

22 MR. ROATE: Mr. Penn?

23 MR. PENN: Present.

24 MR. ROATE: Mr. Sewell?

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 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

EXHIBIT G

RECEIVED

AUG 07 2012

HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

**PROCEEDINGS
OPEN SESSION**

JULY 24, 2012

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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.

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

1 START TIME: 10:45 a.m.

2

3 CHAIRMAN GALASSIE: Thank you very much. We
4 are out of executive session. We have a couple motions
5 subsequent to executive session, and then we will move into
6 the public comment portion of today's meeting.

7 Mr. Urso?

8 MR. URSO: Thank you, Mr. Chairman.

9 We request a motion to refer the following
10 matters to Legal Counsel for the review and filing of any
11 notices of non-compliance, which may include sanctions
12 detailed and specified in the Board's Act and Code. The
13 following matters are Project 09-048, Ottawa Pavilion
14 Ottawa; Project No. 08-022, Poplar Creek Surgery Center,
15 Oak Brook; Project No. 08-083, Greenfields of Geneva;
16 Project 08-099, Dialysis Access Center, LLC, Moline; and
17 the final referral is Project No. 09-063, Roseland
18 Community Hospital in Chicago. May we have some action on
19 the motion, please?

20 CHAIRMAN GALASSIE: Motion to approve?

21 MR. EAKER: So moved.

22 MR. SEWELL: Second.

23 CHAIRMAN GALASSIE: Moved and seconded. Roll
24 call.

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 teach
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

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

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

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.