

# Sun Health

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Services  
Hemodialysis  
LDL Apheresis  
Dietary Counseling  
Social Services

SunNephrology

Services  
Chronic Kidney Disease Clinic  
Clinical Laboratory  
IV Infusion Therapy  
Medical Nutrition Therapy  
ADA Recognized-  
Diabetes Education Program

**VIA EMAIL**

October 10, 2012

Mr. Dale Galassie  
Chairman  
Illinois Health Facilities and Services Review Board  
525 West Jefferson, Second Floor  
Springfield, IL 62761

**Re: Opposition to Project No. 12-059 – US Renal Care  
Plainfield Dialysis**

Dear Chairman Galassie:

On behalf of Sun Health, Inc. ("Sun Health"), I submit this letter of opposition to the US Renal certificate of need ("CON") permit request and urge you and the other members of the Illinois Health Facilities and Services Review Board ("HFSRB") to reject Project Number 12-059.

## **HISTORICAL BACKGROUND:**

I am a board certified nephrologist, and have been practicing nephrology in Joliet since 1981, and as such am the senior-most nephrologist in the community. I am currently serving my 4<sup>th</sup> consecutive term as Secretary / Treasurer of the Medical Staff of Provena St. Joseph Medical Center (now part of Presence Health) in Joliet.

In October of 1989, I formed Sun Health to deliver outpatient dialysis to the west side of Joliet, after Silver Cross declined to do so. Sun Health submitted its CON application in October of 1989 (PN 89-116) and received Medicare certification on June 6, 1991 to become the first and thus oldest dialysis unit on the west side of Joliet. With the sale of Silver Cross Hospital's dialysis program to Davita, Sun Health is the **only remaining locally owned dialysis program in Joliet**, and likely belongs to a very small group of such facilities in HSA 9.



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Sun Health offers services frequently unavailable in many other dialysis facilities, including onsite laboratory, IV antibiotic therapy to dialysis patients, and LDL apheresis – a procedure to remove cholesterol from the blood available at less than 50 sites nationally. An Affiliate called SunAssociation offers a national prescription discount card program, and a medication assistance program for patients meeting federal poverty guidelines.

On September 12, 1990, Silver Cross Hospital – before Sun Health even opened - submitted its own CON application (PM 90-018) to develop Renal Center West 2.6 miles from Sun Health; Silver Cross failed to list Sun Health as an alternative to its project, and received an Intent to Deny. Inexplicably, this Intent to Deny was then reversed at the subsequent board meeting, without any discussion. At the time, there may have been a need in Kankakee, which was also in HSA 9 but was well over 30 minutes away. Silver Cross Renal Center West received Medicare certification on October 1991, effectively stunting the growth of Sun Health.

In 2010-11, history was repeated, when the Board issued an Intent to Deny to Project 10-066 (Fresenius Medical Care, Joliet) on December 14, 2010 by a near unanimous vote (by 6 out of 7 board members, with 1 member voting present). The physician who submitted the letter of support for that application actually submitted a false patient count, which was brought to the attention of the Board by both Silver Cross Hospital and Sun Health.

Fresenius proceeded to submit a number of boilerplate letters of support. For the record, State Senator Wilhellmi did talk to me and declined to write such a letter. The board then proceeded to reverse its position on March 12, 2011 with a unanimous vote by the 5 members in attendance, even though its own SAR stated that its initial findings remained unchanged, i.e. that the project failed to meet the criteria of need and of conformance with the unnecessary duplication and maldistribution of service. The SAR reported a calculated excess of 51 ESRD stations in this planning area, and the Board voted to approve an additional 16 stations, resulting in an oversupply of 67 ESRD stations at the time.

On December 1, 2009, Fresenius Lockport (Project # 09-037) was approved by the Board, but was subsequently abandoned, and Fresenius proceed to file replacement CON Applications, as listed below.)

On January 7, 2011, Davita filed a CON for Crest Hill Dialysis (Project # 11-004) in partnership with Silver Cross Hospital's own Dialysis Medical Directors. In my objection, I had **highlighted the anticipated duplication and maldistribution** that would result from approval of this project. I also pointed out how the applicant was using "nocturnal dialysis" as a Trojan Horse to seek approval, when it failed to offer this type of dialysis at most of its preexisting facilities in Illinois. I also invited the physicians involved in that project to work with Sun Health, but have not received a response.

On May 23, 2011, Fresenius filed another CON Application (Project 11-022) for Lockport to replace Project # 09-037. This was rejected in December of 2011 only to be re-filed in June of 2012 as Project # 12-055.

On December 14, 2011, Silver Cross filed 3 CON Applications (Project # 11-117, 118, and 119) to sell its 3 dialysis units to Davita, and completed the sale on July 31, 2012. **With the increasing risk of duplication and maldistribution** presented by the Board's approval of Fresenius Lockport and Fresenius Joliet, and the potential for Board approval of Davita Crest Hill, Silver Cross Hospital decided to terminate its 30+ year commitment to dialysis in the community and sell its dialysis program.

Sun Health meanwhile opposed Crest Hill Dialysis, which received an Intent to Deny on July 21, 2011 and a Denial Letter on October 13, 2011.

In 2012, 4 new Applications have been filed in our community:

Fresenius Plainfield North (#12-047) received an Intent to Deny in September by a vote of 6 to 2 with 1 absent; the Applicant has stated its Intent to Appear before the Board.

Fresenius Lockport (#12-055) – deferred by the Applicant

US Renal Lemont (#12-058) - pending

US Renal Lemont (12-059) - pending

Each Application attempts to discount preexisting capacity within 30 minutes in order to gain approval, so that it may redirect patients away from preexisting facilities.

### **CURRENT APPLICATION**

**Project # 12-059 US Renal Care Plainfield Dialysis now proposes to build a 13 station facility to be located in Plainfield, for the stated purpose of serving patients within a 5 mile radius.**

#### **The Applicant fails to demonstrate need**

The Applicant attempts to justify need on the basis of 54 pre-ESRD patients under the care of Dr. Naila Ahmed's group that it plans to serve. These patients are scattered far outside the 5-mile radius that the Applicant lists as its goal, as demonstrated by their zip codes of origin.

Dr. Naila Ahmed's letter of support states that in 2011 her group referred 86 patients for hemodialysis. She initially states that her group anticipates referring 54 patients to the US Renal Plainfield facility, and has subsequently increased that number to 65.

Her partner Dr. Nagarkatte has signed a similar letter of support for Fresenius Lemont in which she also states that her group referred 86 patients for hemodialysis in 2011, and anticipates referring 80 patients to the US Renal Lemont facility.

**Closer scrutiny suggests that perhaps some of the same patients may have been counted twice to support these two applications.**

Attachment 1 is a copy of the patient referral data table from both applications on the same page. The referral numbers from Zip codes 60403, 60432, and 60435 appear identical.

Subsequently, the Applicant seems to have updated this patient count to 65 for the Plainfield Application but not the Lemont Application.

The Applicant also claims to anticipate referrals from other unnamed physicians, yet almost all the other active nephrology practices in the area have objected to this project, namely Dr. Alausa's group of 5 nephrologists, and my practice of 2 nephrologists. That leaves only the active practice of a solo nephrologist that has remained silent.

The August 24, 2012 updated inventory of ESRD stations lists a short-term excess of 47 stations in 2013, and a long-term surplus of 85 stations in 2018 for HSA 9. Home dialysis and nursing home dialysis are unaccounted for in state inventory, and increasing use of these modalities could exacerbate the excess of stations.

**Statements Relative to Incidence and Prevalence Data presented needs to be viewed in context**

The Applicant attempts to use incidence and prevalence data in various demographic sub-populations to justify need. Incidence refers to the number of new patients with ESRD, and prevalence to the total number of patients with ESRD within a population.

In the context of need for new stations, actual growth rates should be the primary concern, ie. the number of new patients subtracted by the number of preexisting patients who no longer need dialysis due to renal recovery, transplant, death or relocation.

While it is true that the incidence of ESRD is higher in the elderly, the African-American and the Hispanic populations, the incidence needs to be considered in the context of the demographics of the actual population to be served. I would therefore present this information in the context of the population of Plainfield relative to the state of Illinois, based on the 2010 census – since this Applicant proposes to serve people living within 5 miles of the facility.

	Lemont	Illinois
Population	39,581	12,830,632
Age > 65	5.3%	12.5%
Black persons	5.6%	14.5%
Hispanic persons	10.7%	15.8%
White persons	81.7%	71.5%

Thus the population of Plainfield includes a lower percentage of persons at increased risk of ESRD, namely seniors, African-Americans and Hispanics. Thus **Plainfield's incidence of ESRD is likely to be significantly lower than the average presented**

below, though a blended number is difficult to calculate since race data is not broken down by age.

The reported incidence of ESRD in Illinois is 356.9 per million population (USRDS 2012), which would translate into 14.13 new patients per year for the entire village of Lemont. The following table presents the rate for the reported demographics of Lemont to get a better sense of potential incidence in Plainfield.

Incidence of ESRD	In Illinois	Expected in Plainfield
Overall	357 per million	14.13 patients per year
Age >65	1,368 per million	2.87 patients per year
Age >75	1,773 per million	Population N/A
Black persons	924 per million	2.05 patients per year
Hispanic persons	501 per million	2.12 patients per year
White persons (all ages)	276 per million	8.93 patients per year

**Preexisting Capacity can accommodate 210 New Patients**

The Applicant lists 11 facilities within a 30-minute drive time (Page 110). The Applicant then attempts to exclude 1 facility, Fresenius Joliet, by assigning it an adjusted drive time of over 30 minutes. This decision is totally unjustified based on the zip codes of origin of anticipated patients listed by the Applicant, many of whom would originate from around zip code 60432, where this facility is located. A number of patients from 60403 could also be served by this facility.

The average utilization in these listed facilities is 62.2%. Of these, 55% (6 out of 11) of these facilities are operating below 80% occupancy, and 3 have not even begun operation, and list an occupancy rate of 0%. These include US Renal Bolingbrook, Fresenius Joliet, and Fresenius Naperville. Preexisting facilities can actually accommodate 210 new patients before reaching 80% utilization

Additional patients can be served with home dialysis and nursing home dialysis. These two modalities are not accounted for in the State Inventory, and may factor into the States projection of a growing surplus of stations from 47 in 2013 to 85 in 2018 for HSA 9.

**Preexisting Access to Care Meets State Standards**

The Applicant attempts to flaunt the State's 30 minute rule by discussing access in the context of a 5 mile radius.

**Proposed Referrals can and should be served by other facilities and should not be diverted**

On page 254, the Applicant lists the Zip Code of origin of the patients identified for referral to this facility:

60403	Crest Hill	Initial 8 patients	Updated 9 patients
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60432	Joliet East	5 patients	6 patients
60435	Joliet West	24 patients	29 patients
60544	Plainfield	9 patients	9 patients
60585	Plainfield	0 patients	9 patients
60586	Plainfield	9 patients	11 patients

Only 18 of these patients even live in the zip code of the proposed facility. The rest would presumably be diverted from preexisting facilities within 30 minutes of their homes, effectively resulting in duplication and maldistribution with respect to those facilities.

Crest Hill (60403): 9 patients, who would be better served at Sun Health and Fresenius Joliet, and Davita (Silver Cross, New Lenox), all of which are listed as below 80% utilization.

Joliet, East (60432): 6 patients who would be better served at Davita (Silver Cross, New Lenox) and Fresenius Joliet.

Joliet West (60435): 29 patients who might be better served at Sun Health, and possibly Davita (Silver Cross West). Referral to Sun Health would increase utilization at this facility. Diversion of new patients from Davita (Silver Cross West) facility would have a drastic negative impact on that facility.

Plainfield (60585 and 60586): 20 patients might be better served at Fresenius Plainfield, US Renal Bolingbrook and Sun Health.

Sun Health has previously invited Dr. Ahmed's group to come on staff and work with Sun Health, and would like to extend another invitation to do so. Sun Health is also receptive to working with US Renal.

**Approval of this project will have an adverse impact on existing facilities, as it seems to be based on diverting new patients away from existing facilities, leaving the existing facilities to deal with a 15-20% annual attrition rate of preexisting patients, due to patient relocation, renal recovery, renal transplant, or death. The Applicant is incorrect in asserting otherwise (Page 112)**

Dr. Nagarkatte's group (Northeast Nephrology Consultants) is the primary referring group for three facilities acquired by Davita from Silver Cross Hospital. This group also has a long-term medical director agreement with Davita. Approval of this CON will result in diversion of new patients to US Renal, leaving Davita to deal with a 15-20% attrition rate of its preexisting patient base, with disastrous consequences. I previously presented details of this scenario in my objection to Davita Crest Hill. (Excerpt attached as Attachment 2)

**Alternatives: The best alternative would be to utilize area providers and to reject this Application. This would have no cost, could be implemented immediately, and would prevent duplication and maldistribution.**

**Issue of Competition**

Concerns have periodically been raised about the need for competition to Fresenius and Davita. Sun Health has actually provided this competition in our community, but is

constrained by the resistance of certain nephrologists to work with a facility owned by another nephrologist. Collaboration with Sun Health enhances competition in the community instantly and at no cost.

Certain patients testified at the public hearing that they were disappointed with certain operational changes that occurred at the Silver Cross facilities after the sale to Davita. The Board needs to understand that Dr. Nagarkatte remains the medical director of the facility and had the option to advocate for the patient, or as an alternative to refer the patient to Sun Health, rather than having her testify in support of US Renal against against Davita.

**In Conclusion: There is simply no need for the proposed US Renal Plainfield Facility. It will cause duplication and maldistribution without improving access.**

The Board has recently issued its Intent to Deny to Fresenius Plainfield North, and I would urge the Board to reject this Application also.

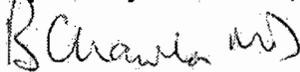
Sun Health has consistently voiced its opposition to various CON applications for dialysis that have failed to meet the state's own need criteria. According to a legal newsletter, **2010 was reportedly a "year to remember for ESRD companies that applied for a CON permit or exemption"**. The Board approved 100% of the 35 applications it considered in 2010.

Since then, the Board has however demonstrated its willingness to reject unnecessary projects, such as Fresenius Lockport, Fresenius Aurora, and Davita Crest Hill.

The Board can take a firm stand, and can help **prevent unnecessary duplication and maldistribution** by not approving new facilities and stations when current providers have existing station capacity to meet the needs of new dialysis patients.

Once again, Sun Health would therefore urge the Board to reject this CON permit application. Sun Health welcomes the opportunity to discuss this letter further, and I can be reached at (815) 744 9300.

Respectfully Submitted,



Bhuvan Chawla, M.D.  
Sun Health, Inc.

APPENDIX C  
 ANTICIPATED REFERRALS IN THE TWO YEARS FOLLOWING PROJECT COMPLETION

We anticipate a total of 54 patient referrals to ESRD to the U.S. Renal Care Plainfield Dialysis Facility in the two years following project completion. We attribute these referrals to the following zip codes and physicians.

	Dr. Ahmed	Dr. Gurfinchel	Dr. Kravets	Dr. Michta	Dr. Nagarkatte
60403	2	1	2	1	2
60432	1	1	1	1	1
60435	5	4	5	4	5
60544	2	1	2	2	2
60585	0	0	0	0	0
60586	2	1	2	2	2

APPENDIX C  
 ANTICIPATED REFERRALS IN THE TWO YEARS FOLLOWING PROJECT COMPLETION

We anticipate a total of 80 patient referrals to ESRD to the U.S. Renal Care Lemont Dialysis Facility in the two years following project completion. We attribute these referrals to the following zip codes and physicians.

	Dr. Ahmed	Dr. Gurfinchel	Dr. Kravets	Dr. Mehta	Dr. Nagarkatte
60403	2	1	2	1	2
60432	1	1	1	1	1
60435	5	4	5	4	5
60439	2	1	2	2	2
60440	0	0	0	0	0
60441	5	3	5	4	5
60446	2	1	2	2	2
60491	1	1	1	1	1

**Excerpt from objection to Davita Crest Hill (#11-004)****Section VI Service Specific Review Criteria****In-Center Hemodialysis****Criterion 1110.1430(c), Unnecessary Duplication / Maldistribution**

As previously stated, there is already an excess of 67 stations, not counting the 13 Nursing Home stations in the area.

Fresenius Joliet's 16 stations are not accounted for in this application.

Sun Health is operating below target utilization.

Silver Cross Renal Center will be below target utilization with the addition of its 5 newly approved stations

Silver Cross Renal Center West and Renal Center would be expected to drop below target utilization if this project is approved as described below.

**Proposed Referrals and Impact**

Dr. Naila Ahmed (Attachment 13A) states that her group is currently treating 130 pre-ESRD patients, lists a 35% attrition rate, and proposes to refer the remaining 84 patients to the proposed facility over the next 24 months, and by inference none to Silver Cross Renal Center and Renal Center West. These patients seem to originate from zip codes in Joliet and its surrounding towns. A number of these patients seem to originate from zip codes near Silver Cross Hospital itself.

In 2010, Dr. Naila Ahmed's group referred 43 patients to Silver Cross Renal Center West, and 22 patients to Silver Cross Renal Center (per her letter dated May 19, 2011).

She lists her group's anticipated referrals to the proposed Crest Hill Dialysis Facility, but fails to address the potential impact on Silver Cross Renal Center and Renal Center West of the loss of referrals from her group. The Applicant states that 152 patients are receiving dialysis at Renal Center West and 89 at Silver Cross Renal Center. Per the data listed in Dr. Naila Ahmed letter (attachment 12B), her group accounts for 110 or 72% of the patients at Renal Center West and 60 or 67% of the patients at Silver Cross Renal Center.

There are 4 nephrology practices in the Joliet area:

Dr Naila Ahmed's Group (Northeast Nephrology Consultants or NENC):

5 physicians

Medical directors of Silver Cross Hospitals three dialysis units

Renal Center, Renal Center West, and Morris.

Medical director of Deerbrook Nursing Home dialysis

Medical directors and equity in the proposed Crest Hill project

Dr. Tunji Alausa's Group (Germane Nephrology)

2 physicians

Medical directorship Fresenius Plainfield and Fresenius Joliet

Dr. David McFadden

1 physician  
Medical Director of Fresenius Morris  
My practice (Sun Nephrology)  
2 physicians  
Medical director and owner of Sun Health

**The patient census at the Silver Cross facilities can be expected to plummet with the effective cutoff of new patient referrals with the defection of its principal physician group to the proposed Crest Hill Facility 3.7 miles away. Referrals by Dr. Alausa's group would also likely drop based on its affiliation with Fresenius Plainfield and Fresenius Joliet. The only remaining physician continuing to refer to Silver Cross Renal Center and Renal Center West would be Dr. McFadden, a solo physician whose practice is Morris focused. This loss of new patient referrals would be coupled with the normal anticipated attrition of patients due to death, transplantation, relocation and renal recovery. The Applicant mentions an average patient survival of six years based on the 2007 USRDS Annual report – this translates into an annual mortality rate of 16.67%.**

If Silver Cross Renal West were to lose 20% of its patients per year in this fashion, its utilization could drop dramatically. If the patient census of the other physicians were to remain unchanged – an unlikely scenario based on the expected drop in Dr. Alausa's group's referrals also – the following table shows a **conservative** potential change in utilization at Renal Center West:

Year	Dr. Ahmed Patients	Other MD's Patients	Total Patients	Utilization %
0	110	42	152	87%
1	88	42	130	75%
2	70	42	112	64%
3	56	42	98	56%
4	45	42	87	50%

**Silver Cross Renal Center could well experience a similar catastrophic scenario.**