

Constantino, Mike

From: Kara Friedman [KFriedman@Polsinelli.com]
Sent: Wednesday, January 30, 2013 10:23 AM
To: Constantino, Mike; Avery, Courtney
Subject: Follow-up Letter regarding DaVita Litigation (Discussed at 12/10 Hearing)
Attachments: Vainer letter.Galassie 1.30.13.pdf

See attached FYI.

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January 30, 2013

Mr. Dale Galassie, Chair
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: *United States ex rel Vainer v DaVita, Inc.*

Dear Chair Galassie:

I am writing on behalf of DaVita Inc. ("DaVita") in follow-up to my presentation at the last HFSRB meeting relating to DaVita's planned facility in the Lawndale neighborhood of Chicago. In public comments relating to this project, a recent CNN story covering a pending lawsuit brought against DaVita alleging Medicare fraud was mentioned. I provided the Board some information during my presentation but I wanted to provide some more detailed information for your consideration.

As a preliminary matter, I would like to bring to your attention the fact that this pending lawsuit was disclosed to the HFSRB prior to the December 10, 2012 meeting and has been a matter of public record for some time. The matter was first disclosed in DaVita's 2008 10K Statement. Our annual 10K is a disclosure statement we file each year based on our status as a public company. All material pending litigation and government investigations are disclosed in DaVita's 10K Statements, which are a matter of public record and provided to the HFSRB each year and incorporated by reference in each of DaVita's CON applications.

The lawsuit specifically referenced in the CNN story concerns a civil complaint brought by Dr. Alon Vainer and Daniel Barbir pursuant to certain provisions of the Federal False Claims Act ("Vainer *Qui Tam* Action). That lawsuit is still pending and, as of this date, no liability has been assessed against DaVita. By way of background, in December 2008, DaVita received a subpoena from the Office of Inspector General, U.S. Department of Health and Human Services ("OIG") relating to certain products. The subpoena covered the period from January 2003 through December 2008. DaVita has fully cooperated with the OIG regarding this matter. After a thorough review, the government decided not to pursue this case and did not require DaVita to change its dosing practices. Further, the government has declined to intervene or pursue the relators' allegations in litigation.

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The subject of the litigation is a technical billing issue. DaVita is committed to strict adherence to Medicare billing regulations. The CNN report contained inaccurate information regarding DaVita's use and billing of medications. Moreover, the issues presented were taken out of context and ignored important information. DaVita is vigorously defending this matter. We would like to point out that DaVita's CON applications extensively detail how DaVita's qualifications, background and character place it in an excellent position to provide a proper standard of health care services to the communities we serve. All of our recent applications have been fully compliant with the Background of Applicant criterion of the CON permit requirements (Section 1110.230(a) of the HFSRB rules).

DaVita continues to be committed to providing quality dialysis services to those that need it in a cost effective manner and effect positive change on the U.S. healthcare system. Over the past several years, DaVita has implemented initiatives that have saved U.S taxpayers over \$1 billion in health care costs. Despite critics and challenges, DaVita remains focused on pursuing its mission to be the provider, partner and employer of choice; living its values of service excellence, integrity, team, continuous improvement, accountability, fulfillment, and fun; and improving patients' quality of life.

If you have any questions or would like additional information regarding the Vainer *Qui Tam* Action, please feel free to contact me.

Sincerely,



Penny Davis, RN, FACHE
Division Vice President - Skyline
DaVita HealthCare Partners Inc.

cc: Courtney Avery
Marcie Damisch