## Constantino, Mike

**From:** Prousis, Danae [DProusis@nmff.org]
**Sent:** Friday, March 01, 2013 3:33 PM
**To:** Avery, Courtney
**Cc:** Constantino, Mike
**Subject:** Letter in Opposition to Project #12-093
**Attachments:** FMC Opposition Letter 130301.pdf

Dear Ms. Avery,

Attached is a letter in opposition to Project #12-093, the Fresenius Medical Corporation application to establish a 12-station ESRD facility in the Streeterville neighborhood of Chicago. The letter is submitted by Eric G. Neilson, M.D., on behalf of the Northwestern Medical Faculty Foundation and the members of the Division of Nephrology and Hypertension at Northwestern University's Feinberg School of Medicine. .You should receive the hard copy of this letter on Monday. Thank you for the opportunity to comment.

Sincerely yours,

Danae K. Prousis
Vice President & General Counsel
Northwestern Medical Faculty Foundation
680 N. Lake Shore Drive, Suite 1118
Chicago, IL 60611
312-695-6609
dprousis@nmff.org

FEINBERG SCHOOL OF MEDICINE

Northwestern University
Feinberg School of Medicine
420 East Superior Street
Rubloff Building 12th Floor
Chicago, IL 60611

feinberg.northwestern.edu

Eric G. Neilson, MD
Vice President for Medical Affairs
Lewis Landsberg Dean

egneilson@northwestern.edu
Phone 312-503-0340
Fax 312-503-7757

NORTHWESTERN UNIVERSITY

**Via FedEx and Electronic Mail**

March 1, 2013

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson
Springfield, IL 62761

RE: PUBLIC COMMENT IN OPPOSITION TO PROJECT # 12-093
FMC-STREETERVILLE

Dear Ms. Avery:

Please accept this letter in opposition to the above-referenced Fresenius Medical Corporation ("FMC") application to establish a 12-station ESRD facility in the Streeterville neighborhood of Chicago.

This letter of opposition is being submitted on behalf of the Northwestern Medical Faculty Foundation ("NMFF"), and the members of the Division of Nephrology and Hypertension at Northwestern's University's Feinberg School of Medicine.

Northwestern Medical Faculty Foundation Dialysis Center, LLC is a recently formed entity, with NMFF holding an 80% ownership interest in the LLC. NMFF is comprised of the full-time faculty members of Northwestern University's Feinberg School of Medicine.

We believe that FMC's project offers little to the service area ESRD population, and is little more than an attempt to thwart the LLC's efforts to establish a physician-driven ESRD facility in the Streeterville neighborhood, as proposed by project 12-099, filed with the Illinois Health Facilities and Services Review Board on December 3, 2012, and scheduled to be heard at the IHFSRB's March 2013 meeting.

When evaluating the FMC project, we ask the Board to consider the following:

- FMC currently owns and operates the state's largest ESRD facility, "FMC-Northwestern" located in Streeterville just three blocks to the east of the proposed project's location. The proposed project will be programmatically duplicative of FMC's existing Streeterville facility.

- FMC-Northwestern provides 44 ESRD stations, and the most recent utilization data available indicates that it is operating at approximately 70% of capacity.

- The nephrology members of NMFF have traditionally referred the overwhelming portion of the patients treated at FMC-Northwestern.

- FMC was made aware of the NMFF's intent to file a CON application for the establishment of an ESRD facility with the receipt of a letter, dated October 11, 2012 (attached), requesting historical utilization information. This letter, which requested information that could not be retrieved through The Renal Network, was requested following consultation with IHFSRB staff. The information requested of FMC was never provided.

- It is anticipated that the proposed FMC 12-station facility will operate in the same corporate-driven manner as the other FMC facilities and, as such, will not offer the differentiation from the model that is being sought by the NMFF nephrologists. The NMFF model includes: increased independence on the part of physicians in the development of patient-specific treatment programs and protocols; expanded clinical research opportunities; the ability for the ESRD facility to serve as a routine site for Northwestern's Feinberg School of Medicine medical education programs; increased interface with Northwestern Memorial Hospital's kidney transplant program; and the ability to dialyze non-ESRD patients in the facility.

- Of the 51 dialysis facilities operated in the City of Chicago, 27 are operated by FMC and another 15 are operated by the other major provider of ESRD services in the U.S., DaVita Healthcare Partners, Inc., resulting in 82.3% of the city's ESRD facilities (and 86.7% of the stations) being operated by these two providers. We believe that ESRD patients should have an accessible alternative to corporate-driven treatment models. The LLC's proposed project provides that alternative, while the FMC project will provide a programmatic duplication of the existing FMC facilities.

- The NMFF nephrologists intend to offer to their patients the LLC as an alternative to FMC-Northwestern and, for the reasons stated above, they believe that model will be preferred by their patients and substantially reduce the number of patient choosing to receive their care at FMC-Northwestern, therein "freeing up" additional treatment slots for other nephrologists' patients. It is our understanding that as of December 31, 2012 all of the patients being treated at FMC-Northwestern are under the care of NMFF nephrologists. We note that FMC's justification for its second Streeterville facility appears to assume that the NMFF nephrologists will continue to refer patients to the existing FMC Streeterville facility (FMC-Northwestern), and at similar levels to past referrals. That clearly is not the intent of the NMFF nephrologists, nor has any documentation been requested or provided by our nephrologists to support that critical assumption. NMFF nephrologists do not expect that patients will choose an FMC facility at the same level as before.

Thank you for the opportunity to provide this information. This project is clearly duplicative of the applicant's existing Streeterville ESRD facility, and we believe that application 12-093 was simply filed in anticipation of the filing of our application.

Sincerely,

Eric G. Neilson, M.D.
EGN/ssa

Attachment

cc: Mike Constantino

**Axel & Associates, Inc.**

MANAGEMENT CONSULTANTS

**by Certified Mail**

October 11, 2012

Ms. Coleen Muldoon
Regional Vice President
Fresenius Medical Care
One Westbrook Corporate Center
Tower One, Suite 1000
Westchester, IL 60154

Dear Ms. Muldoon:

I am preparing a Certificate of Need application for filing with the Illinois Health Facilities and Services Review Board, and herein request your assistance in identifying the 2009 and 2010 utilization of FMC's facility located on the Northwestern Memorial Hospital campus, for the following referring physicians:

- Shubhada Ahya
- James Paparello
- William Schlueter
- Robert Rosa
- Jennifer Tuazon
- Daniel Batlle.

Specifically, I would appreciate a list of patients receiving hemodialysis in that facility in 2009 and a list of patients receiving hemodialysis in that facility in 2010, with each patient identified by their initials, ZIP Code of residence, and referring physician, as reported to The Renal Network.

Thank you in advance for your assistance, and kindly provide this information by October 25, 2012 via email to me at jacobmaxel@msn.com.

Sincerely,

Jacob M. Axel

675 North Court, Suite 210
Palatine, Illinois 60067

Phone (847) 776-7101
Fax (847) 776-7004