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HEALTH FACILITIES &  
SERVICES REVIEW BOARD

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*Attorneys at Law*

June 17, 2011

**VIA FACSIMILE (217) 785-4111**  
**AND UPS OVERNIGHT DELIVERY**

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

**RE: FMC - EAST AURORA: PROJECT #10-086**  
**COMMENT TO STATE AGENCY REPORT**

Dear Mr. Galassie:

On behalf of Renaissance Management Company, LLC ("Renaissance") and its affiliates Fox Valley Dialysis, Ltd. ("Fox Valley Dialysis") and Fox Valley Medical Associates, Ltd. ("FVM," and together with Renaissance and Fox Valley Dialysis, are sometimes collectively referred to herein as "Renaissance & its Affiliates") we tender the following comments in response to the recently released State Agency Report regarding Fresenius Medical Care's ("FMC") East Aurora Certificate of Need (CON) application.

Foremost, we would like to commend the Health Facilities and Services Review Board (the "Board") for its findings, and agree, that FMC has not met its fundamental legal obligations to comply with:

(i) 77 IAC § 1110.234(c), Size of the Project, as the proposed facility size is in excess of the state standard by 11 GSF per station;

(ii) 77 IAC § 1110.1430(b), Planning Area Need, as there exists an excess of 35 stations in the HSA VIII ESRD service area; and

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(iii) 77 IAC § 1110.1430(c), Unnecessary Duplication/Maldistribution of Service, as 4 of the 8 facilities within 30 minutes of the proposed facility have not achieved target occupancy.

We also appreciate the Board correctly listing the new FMC West Batavia facility as being 20 minutes (adjusted) from the East Aurora project, despite FMC maintaining its belief that the West Batavia facility is still over 30 minutes travel from downtown Aurora, and thus, should not be considered viable to serve the needs of patients from Aurora. From our view, FMC West Batavia is not only a viable alternative, but significantly material to the analysis concerning the viability and need of the East Aurora project. We encourage the Board to withhold its approval of the East Aurora project until FMC West Batavia becomes operational and fully occupied, as we believe that there still remains unanswered questions regarding the reliability of the patient demand and patient referral data tendered in support of the project's CON application. Specifically:

- FMC's attempt to satisfy its obligation under 77 IAC § 1110.1430(b)(3), Service Demand, is predicated solely upon the referring physician's letter wherein he represents that his practice supports 5 facilities in the service area. (See, physician referral and practice information, pages 50-53, CON application, #10-086). However, the referring physician's data provided in this CON application indicates that his practice at FMC-Aurora in 2010 served mostly patients from outside the Aurora area. (See, Attachment 1 hereto, previously tendered as part of our March 1, 2011 supplemental testimony, summarizing the physician's practice data provided on Pages 50 - 53 of the CON application). As we previously raised to the Board's attention, the data indicates that the referring physician's entire practice in the Aurora zip codes 60505 and 60506 virtually evaporated last year (in 2010), falling from 64 patients to only 14 patients.

That begs that the physician be required to explain where did these 50 patients go. Furthermore, the data indicates the referring physician served only 2 patients from those two zip codes at FMC-Aurora (which is

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not 80% occupied.) Even with a plausible explanation, the physician data does not support the need for this project.

- In addition, we respectfully suggest the Board further analyze the physician's practice data as it raises more disturbing questions regarding the need for an additional facility in the area. Table One in the SAR states that FMC-Aurora is not 80% occupied. In looking at the referring physician's practice data, in 2010, 27 patients from West Chicago's zip code 60185 were treated at FMC-Aurora when the new FMC-West Chicago was open and grossly underutilized at 27%. In the interest of full transparency, the Board should require a clear and precise explanation of this data because without those 27 patients from West Chicago FMC-Aurora would be only 54% occupied.

Looking further at the physician's practice data, in 2010, 29 patients from North Aurora's zip code 60542 were suddenly treated at FMC-Aurora. The Board should assure itself that those are not the same 29 patients used to justify FMC-West Batavia, which is not yet operational. Without these 29 patients, FMC-Aurora would be only 53% utilized.

This data calls for the Board's attention as it implies that the FMC-East Aurora project will, directly or indirectly, materially adversely affect the utilization of the new FMC-West Batavia facility.

Further, we respectfully submit to the Board that notwithstanding the Board's position that each application is reviewed individually without taking into account any previous application by the applicant, in this particular instance, given the foregoing issues regarding the reliability and accuracy of the physician referral data, in order to get a complete picture and understanding of the physician referral data, the FMC - East Aurora CON application should not be analyzed solely on its own merits - it should be reviewed together with the representations made by the same referring physician in support of the FMC-West Batavia CON 09-067, approved March 2, 2010.

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For all of the foregoing reasons, the FMC-East Aurora CON application should be denied.

Respectfully Submitted,

Robbins, Salomon & Patt, Ltd.

*Andrés J. Gallegos*

Andrés J. Gallegos, Esq.

AJG/db

Enclosures

cc: Mr. Calvin Ganong

ATTACHMENT 1, Page 1

FMC - EAST AURORA CON APPLICATION - DR. DOODIA'S & FAHRUDDIN'S HISTORICAL CASELOAD

| Exhibitor Defendants - End of Year 2002 |            |              |            | Exhibitor Defendants - End of Year 2003 |            |              |            | Exhibitor Defendants - End of Year 2009 |            |              |            |            |            |              |            |
|---|------------|--------------|------------|---|------------|--------------|------------|---|------------|--------------|------------|------------|------------|--------------|------------|
| FMC Aurora                              | FMC Oswego | FMC Sandwich | Fox Valley | FMC Aurora                              | FMC Oswego | FMC Sandwich | Fox Valley | FMC Aurora                              | FMC Oswego | FMC Sandwich | Fox Valley | FMC Aurora | FMC Oswego | FMC Sandwich | Fox Valley |
| 60042                                   |            |              |            | 60042                                   |            |              |            | 60042                                   |            |              |            | 60042      |            |              |            |
| 60106                                   |            |              |            | 60106                                   |            |              |            | 60106                                   |            |              |            | 60106      |            |              |            |
| 60115                                   |            |              |            | 60115                                   |            |              |            | 60115                                   |            |              |            | 60115      |            |              |            |
| 60119                                   |            |              |            | 60119                                   |            |              |            | 60119                                   |            |              |            | 60119      |            |              |            |
| 60120                                   |            |              |            | 60120                                   |            |              |            | 60120                                   |            |              |            | 60120      |            |              |            |
| 60123                                   |            |              |            | 60123                                   |            |              |            | 60123                                   |            |              |            | 60123      |            |              |            |
| 60134                                   |            |              |            | 60134                                   |            |              |            | 60134                                   |            |              |            | 60134      |            |              |            |
| 60137                                   |            |              |            | 60137                                   |            |              |            | 60137                                   |            |              |            | 60137      |            |              |            |
| 60174                                   |            |              |            | 60174                                   |            |              |            | 60174                                   |            |              |            | 60174      |            |              |            |
| 60177                                   |            |              |            | 60177                                   |            |              |            | 60177                                   |            |              |            | 60177      |            |              |            |
| 60178                                   |            |              |            | 60178                                   |            |              |            | 60178                                   |            |              |            | 60178      |            |              |            |
| 60185                                   |            |              |            | 60185                                   |            |              |            | 60185                                   |            |              |            | 60185      |            |              |            |
| 60431                                   |            |              |            | 60431                                   |            |              |            | 60431                                   |            |              |            | 60431      |            |              |            |
| 60446                                   |            |              |            | 60446                                   |            |              |            | 60446                                   |            |              |            | 60446      |            |              |            |
| 60501                                   |            |              |            | 60501                                   |            |              |            | 60501                                   |            |              |            | 60501      |            |              |            |
| 60503                                   |            |              |            | 60503                                   |            |              |            | 60503                                   |            |              |            | 60503      |            |              |            |
| 60504                                   |            |              |            | 60504                                   |            |              |            | 60504                                   |            |              |            | 60504      |            |              |            |
| 60505                                   |            |              |            | 60505                                   |            |              |            | 60505                                   |            |              |            | 60505      |            |              |            |
| 60506                                   |            |              |            | 60506                                   |            |              |            | 60506                                   |            |              |            | 60506      |            |              |            |
| 60510                                   |            |              |            | 60510                                   |            |              |            | 60510                                   |            |              |            | 60510      |            |              |            |
| 60512                                   |            |              |            | 60512                                   |            |              |            | 60512                                   |            |              |            | 60512      |            |              |            |
| 60520                                   |            |              |            | 60520                                   |            |              |            | 60520                                   |            |              |            | 60520      |            |              |            |
| 60538                                   |            |              |            | 60538                                   |            |              |            | 60538                                   |            |              |            | 60538      |            |              |            |
| 60540                                   |            |              |            | 60540                                   |            |              |            | 60540                                   |            |              |            | 60540      |            |              |            |
| 60541                                   |            |              |            | 60541                                   |            |              |            | 60541                                   |            |              |            | 60541      |            |              |            |
| 60542                                   |            |              |            | 60542                                   |            |              |            | 60542                                   |            |              |            | 60542      |            |              |            |
| 60543                                   |            |              |            | 60543                                   |            |              |            | 60543                                   |            |              |            | 60543      |            |              |            |
| 60545                                   |            |              |            | 60545                                   |            |              |            | 60545                                   |            |              |            | 60545      |            |              |            |
| 60548                                   |            |              |            | 60548                                   |            |              |            | 60548                                   |            |              |            | 60548      |            |              |            |
| 60551                                   |            |              |            | 60551                                   |            |              |            | 60551                                   |            |              |            | 60551      |            |              |            |
| 60552                                   |            |              |            | 60552                                   |            |              |            | 60552                                   |            |              |            | 60552      |            |              |            |
| 60554                                   |            |              |            | 60554                                   |            |              |            | 60554                                   |            |              |            | 60554      |            |              |            |
| 60560                                   |            |              |            | 60560                                   |            |              |            | 60560                                   |            |              |            | 60560      |            |              |            |
| 60563                                   |            |              |            | 60563                                   |            |              |            | 60563                                   |            |              |            | 60563      |            |              |            |
| 60565                                   |            |              |            | 60565                                   |            |              |            | 60565                                   |            |              |            | 60565      |            |              |            |
| 60586                                   |            |              |            | 60586                                   |            |              |            | 60586                                   |            |              |            | 60586      |            |              |            |
| 60605                                   |            |              |            | 60605                                   |            |              |            | 60605                                   |            |              |            | 60605      |            |              |            |
| 61378                                   |            |              |            | 61378                                   |            |              |            | 61378                                   |            |              |            | 61378      |            |              |            |
| 60644                                   |            |              |            | 60644                                   |            |              |            | 60644                                   |            |              |            | 60644      |            |              |            |
| 62721                                   |            |              |            | 62721                                   |            |              |            | 62721                                   |            |              |            | 62721      |            |              |            |
| TOTALS                                  | 83         | 25           | 0          | 18                                      | 79         | 42           | 0          | 133                                     | 72         | 42           | 12         | 9          | 135        | 349          | 9          |

SOURCE FOR APPLICATION 610-085, Dr. Doodia's Internal Letter, Pages 50 - 53.

**NEW REFERRALS OF DR. DODHIA'S PRACTICE FOR TIME PERIOD  
10/01/09 THROUGH 09/30/2010**

| Fresenius Aurora |           | Fresenius Oswego |           | Fresenius Sandwich |           | Fox Valley Dialysis |          |
|------------------|-----------|------------------|-----------|--------------------|-----------|---------------------|----------|
| Zip Code         | Patients  | Zip Code         | Patients  | Zip Code           | Patients  | Zip Code            | Patients |
| 60181            | 1         | 60431            | 2         | 60115              | 1         | 60504               | 1        |
| 60185            | 1         | 60446            | 1         | 60520              | 1         | 60544               | 1        |
| 60504            | 2         | 60505            | 3         | 60538              | 1         | <b>Total</b>        | <b>2</b> |
| 60505            | 18        | 60506            | 1         | 60545              | 2         |                     |          |
| 60508            | 17        | 60538            | 1         | 60548              | 2         |                     |          |
| 60510            | 1         | 60543            | 2         | 60551              | 1         |                     |          |
| 60515            | 1         | 60545            | 1         | 60560              | 2         |                     |          |
| 60520            | 1         | 60552            | 1         | <b>Total</b>       | <b>10</b> |                     |          |
| 60542            | 11        | 60560            | 5         |                    |           |                     |          |
| 60554            | 1         | 60565            | 1         |                    |           |                     |          |
| 60560            | 1         | <b>Total</b>     | <b>18</b> |                    |           |                     |          |
| 60563            | 1         |                  |           |                    |           |                     |          |
| <b>Total</b>     | <b>54</b> |                  |           | <b>Total</b>       | <b>84</b> |                     |          |

**PATIENTS OF DR. DODHIA'S PRACTICE AT YEAR END 2007**

| FRESENIUS AURORA |           | FRESENIUS OSWEGO |           | FOX VALLEY |           |
|------------------|-----------|------------------|-----------|------------|-----------|
| Zip Code         | Patients  | Zip Code         | Patients  | Zip Code   | Patients  |
| 60508            | 31        | 60560            | 5         | 60543      | 3         |
| 60505            | 27        | 60543            | 5         | 60548      | 2         |
| 60542            | 6         | 60548            | 4         | 60505      | 1         |
| 60504            | 3         | 60538            | 4         | 60560      | 2         |
| 60538            | 3         | 60545            | 3         | 60504      | 3         |
| 60510            | 2         | 60508            | 3         | 60554      | 1         |
| 60543            | 2         | 60505            | 1         | 60506      | 1         |
| 60554            | 2         |                  | <b>25</b> |            | <b>13</b> |
| 60042            | 1         |                  |           |            |           |
| 60108            | 1         |                  |           |            |           |
| 60123            | 1         |                  |           |            |           |
| 60174            | 1         |                  |           |            |           |
| 60177            | 1         |                  |           |            |           |
| 60178            | 1         |                  |           |            |           |
| 60560            | 1         |                  |           |            |           |
|                  | <b>83</b> |                  |           |            |           |

**Total 2007 - 121**

**SOURCE: CON application FMC-East Aurora, #10-086, Page 50.**

**ADMISSIONS OF DR. DODHIA'S PRACTICE FOR THE PREVIOUS  
TWELVE MONTHS - 09/01/2008 THROUGH 08/31/2009**

| ZIP CODE     | FRESENIUS<br>AURORA | FRESENIUS<br>OSWEGO | FRESENIUS<br>SANDWICH | FOX VALLEY<br>DIALYSIS | TOTAL      |
|--------------|---------------------|---------------------|-----------------------|------------------------|------------|
| 60018        | 1                   |                     |                       |                        | 1          |
| 60076        |                     | 1                   |                       |                        | 1          |
| 60119        | 1                   |                     |                       |                        | 1          |
| 60120        | 1                   |                     |                       |                        | 1          |
| 60134        |                     | 1                   |                       |                        | 1          |
| 60174        | 1                   |                     |                       |                        | 1          |
| 60187        |                     | 1                   |                       |                        | 1          |
| 60404        |                     | 1                   | 1                     |                        | 2          |
| 60431        |                     | 1                   |                       |                        | 1          |
| 60435        |                     | 1                   |                       |                        | 1          |
| 60453        | 1                   |                     |                       |                        | 1          |
| 60503        |                     | 1                   |                       |                        | 1          |
| 60504        |                     | 3                   |                       | 2                      | 5          |
| 60505        | 15                  | 6                   |                       | 1                      | 21         |
| 60506        | 13                  | 4                   |                       | 1                      | 18         |
| 60516        | 1                   |                     |                       |                        | 1          |
| 60531        |                     | 1                   |                       |                        | 1          |
| 60538        | 2                   | 3                   |                       |                        | 5          |
| 60542        | 3                   | 4                   |                       |                        | 7          |
| 60543        | 1                   | 4                   |                       |                        | 5          |
| 60545        |                     | 3                   | 2                     |                        | 5          |
| 60548        | 1                   | 2                   | 7                     |                        | 10         |
| 60551        |                     |                     | 1                     |                        | 1          |
| 60552        |                     | 1                   | 1                     |                        | 2          |
| 60554        | 1                   |                     |                       | 1                      | 2          |
| 60560        |                     | 3                   |                       | 1                      | 4          |
| 60586        |                     | 2                   |                       |                        | 2          |
| 60644        |                     | 1                   |                       |                        | 1          |
| 61364        |                     | 1                   |                       |                        | 1          |
| 61378        |                     |                     | 1                     |                        | 1          |
| <b>TOTAL</b> | <b>42</b>           | <b>44</b>           | <b>13</b>             | <b>6</b>               | <b>105</b> |

SOURCE: CON application FMC-West Batavia, #09-067, Page 60.