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July 13, 2018

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Via Federal Express

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

**Re: Geneva Crossing Dialysis (Proj. No. 17-013)  
Response to State Board Report**

Dear Ms. Olson:

Polsinelli represents DaVita Inc. and Rockwood Dialysis, LLC (collectively, the “Applicants”). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board’s (“State Board”) findings on the Geneva Crossing Dialysis application for a permit to establish a 12 station dialysis clinic to be located in Carol Stream, Illinois (the “Proposed Clinic”). Pursuant to Section 6(c-5) of the Illinois Health Facilities Planning Act (the “Planning Act”), the Applicants submit the following in support of the State Board’s findings.

**1. State Board Findings**

By way of background, the application for the Proposed Clinic was first considered at the September 26, 2017 State Board meeting. Upon initial consideration, the Proposed Clinic fell short of five votes based largely on an excess of 2 stations in the relevant planning area. Since that time, the ESRD Inventory was updated based on more current population projections and use data. Currently, the State Board identifies a need for an additional 25 in-center dialysis stations in HSA 7. Further, as documented in the Geneva Crossing application materials, demand projections based on more current data shows that the 25 station need figure significantly understates the need for these services in the planning area. As stated in our June 15, 2018 submission, this need is understated by 68 stations and the population of the planning area will actually require an additional 93 dialysis stations by 2020. Projected growth in the number of dialysis patients in the planning area is approximately 28% from 2015 to 2020. As documented in the June submission, a significant amount of planning area growth is centered in

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Ms. Courtney Avery

July 13, 2018

Page 2

the Proposed Clinic's geographic service area (GSA), which is densely populated. The GSA is 12 times more densely populated than the State of Illinois as a whole.

Further and as noted in the report, the Applicants modified the application to correct an error made in the ratio of stations to population pursuant to Section 1130.650(b) of the State Board rules. The State Board verified the revised population data and recalculated the ratio of stations to population for both the GSA and State. The report now correctly reflects that the GSA ratio of population to stations was 1 station per every 6,347 residents compared to the State ratio of 1 station per every 2,735 residents. This significant difference in access to stations in the geographic service area compared to the Statewide average reflects that Carol Stream is an underserved location and that the needed stations in the planning area would be well-placed by developing the Proposed Clinic.

## **2. Opposition Comments**

On April 6, 2018, Fresenius Kidney Care submitted a letter to the State Board intending to block this project. Previously, Fresenius and its dialysis partner, NANI, populated the record with statements through testimony and in written comments. Despite the opponents' claims to the contrary and consistent with due process rights of an applicant to participate in the hearing process on at least an equal footing with a non-applicant, State Board Rules permit an applicant to provide additional information on a project pending before the State Board.

Section 1130.630(b), provides an opportunity to comment on projects pending before the State Board. All written comments must be received at least 20 days prior to consideration of an application for permit to allow the State Board staff time to transmit those comments to the members of the State Board prior to the scheduled State Board meeting. The purpose of the Section 1130.670 rules is to allow the State Board to docket projects and is not intended to preclude submission of additional information. It would be a perverse reading of the rules to imply an applicant can only submit additional information within 60 days of notice of an intent-to-deny, when opponents may submit material unverified/unsworn information just prior to consideration of an application.

The State Board rules further permit an applicant to submit additional information regarding a project either pursuant to a request from the State Board Staff, in response to an intent to deny, or as a modification of the project.<sup>1</sup> Further, the State Board's rules do not preclude an applicant from responding to comments on an application provided such comments

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<sup>1</sup> 77 Ill. Admin. Code § 1130.635(a)(2)

Ms. Courtney Avery  
July 13, 2018  
Page 3

are received during the prescribed written comment period. The Applicants' June 15, 2018 submission was consistent with the State Board's rules. It was a modification of the application to correct an error, a response to a request from the State Board for additional information, and a response to opposition comments. The June 15, 2018 submission was provided to the State Board well in advance of the deadline for written comment to allow members of the public ample opportunity to respond to the information submitted. This additional information was properly submitted, and we appreciate its consideration by the State Board.

### **3. Community Support**

The Applicants appreciate the enthusiastic support for the Proposed Clinic from area health providers, social service organizations, businesses, elected officials, residents and patients. The State Board Report noted that the Proposed Clinic received support from State Senator John Curran, State Senator Tom Cullerton, Dr. Mohamad Barakat, Dr. Yazan Alia, Dr. Doreen Ventura, Dr. Ankh Rawal, Dr. M. A. Samad, Dr. Shivani Shah, Dr. Ravi Nemivant, and patients Dominador Estrada and Janis Sladek. This under-reflects the documented support for this project, however, as an additional twenty-one letters were submitted in support of the Proposed Clinic. A total of 32 letters were submitted in support of the Proposed Clinic, including additional letters from the following community stakeholders:

- RML Specialty Hospital
- Wynscape Health and Rehabilitation
- VNA Health Care
- Access DuPage and DuPage Health Coalition
- Dr. Mazen Diab
- Howard Costello, patient
- US Rep. Raja Krishnamoorthi
- US Rep. Peter J. Roskam
- Carol Stream Mayor Frank Saverino, Sr.
- Choose DuPage



Ms. Courtney Avery  
July 13, 2018  
Page 4

- Daniel J. Cronin, Chairman, DuPage County Board
- James Zay, Vice Chairman, DuPage County Board
- Tim Elliot, DuPage County Board Member
- Grant Eckhoff, DuPage County Board Member
- Miriam Iwrey, CEO of Carol Stream Chamber of Commerce
- Shannon Bachara, Mathieson, Moyski, Austin & Co., LLP; Treasurer, Carol Stream Chamber of Commerce Board
- Robert McNees, McNees & Associates, LLC; Carol Stream Chamber of Commerce Board Member Outreach Community Ministries
- World Relief DuPage
- People's Resource Center
- James Tremmel, Community Member

Thank you for your consideration of the Applicants' response to the State Board's findings for the Rutgers Park Dialysis application for permit.

Sincerely,

A handwritten signature in black ink that reads 'Kara Friedman'.

Kara M. Friedman

cc: Gaurav Bhattacharyya