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June 27, 2018

Via Federal Express

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

Re: Opposition to Fresenius Kidney Care Madison County (Proj. No. 18-006)

Dear Ms. Avery:

Polsinelli PC represents DaVita Inc. ("DaVita") and, on behalf of DaVita, writes this letter to document DaVita's strong objection to the Fresenius Kidney Care ("FKC") Madison County clinic proposal. DaVita's objection is very specific and important. With Project No. 18-006, FKC and Dr. Cheema are corrupting one of the core tenets of the Illinois Health Facilities and Services Review Board ("HFSRB") to "***promote[] the orderly and economic development of health care facilities in the State of Illinois.***"¹ Using the same patient data for this impending proposal as Dr. Cheema provided to DaVita under no duress in connection with DaVita's development of another Granite City facility has resulted in a significant misapplication of the HFSRB's rules by the applicant as described below. Suffice it to say, Dr. Cheema would have this Board believe that it is a part of normal health planning to induce one company to build a facility in reliance on a promise of referrals only to reverse course more than a year after he provided a written commitment and seven months after a CON permit was issued for Foxpoint Dialysis by rescinding the referral letter so that he could attempt to support a competing company using the same patient data. ***The Foxpoint Dialysis clinic is complete, operational and Medicare certified.*** It is also important to note that DaVita was diligent in putting its Foxpoint Dialysis proposal forward to the HFSRB to demonstrate that the CKD patients which were the basis for the Foxpoint Dialysis clinic development were discrete patients compared to the patients who are anticipated to be cared for in other facilities outside of Granite City and, in fact, deferred its application to further document that fact.

¹ Ill. Comp. Stat. 2960/2

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Dr. Cheema's letter is willfully in disdain of this Board's processes. It is at best disingenuous and more likely contains a material misrepresentation. Permitting the use of the same referral letter and same patients for the FKC Madison County clinic would effectively sanction duplicitous conduct on the part of Dr. Cheema and FKC. It would endorse a gross procedural irregularity in the health planning process, which the HFSRB's rules are designed to avoid.

Section 1110.230(b)(3) of the HFSRB's rules requires all applicants to demonstrate the number of proposed stations is necessary to accommodate service demand based upon historical and projected referrals from area physicians. The physician referral letter must attest to (i) the physician's historical patient census at area clinics, (ii) new admissions for the most recent year, and (iii) projected referrals within the first two years after project completion. To ensure there is sufficient demand for additional stations, *the physician must verify "the patient referrals have not been used to support another pending or approved CON application for the subject services."*² In September 2016, DaVita submitted an application for the 12 station Foxpoint Dialysis clinic. As part of that application, Dr. Cheema submitted a physician referral letter and represented his intent to refer patients to the proposed Foxpoint Dialysis clinic. When Dr. Cheema submitted the referral letter, he was aware DaVita would rely on that letter in proceeding with its certificate of need application and subsequent construction of the Foxpoint Dialysis clinic. On October 17, 2017, after DaVita expended substantial time, effort and money to construct the dialysis clinic, Dr. Cheema withdrew his referral letter. To allow a physician to effectively "undo" a referral letter many months after the State Board issues a permit and use those referrals to support another project is in contravention of the State Board's rules, disruptive to the health planning process, and sets a very troubling precedent. Accordingly, the State Board should not consider Dr. Cheema's referrals for the proposed FKC Madison County Dialysis.

Furthermore, there is no need for the proposed dialysis clinic in the FKC Madison County geographic service area. There is currently an excess of 39 stations in HSA 11, *one of the largest station excesses in Illinois*. Accordingly, the addition of 9 stations would create an even greater excess (48 stations) in the HSA.

² 77 Ill. Admin. Code §1110.230(b)(3)(B)(vi).



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In sum, based on the foregoing DaVita opposes FKC's proposed project to establish a 9 station dialysis facility in Granite City, Illinois. Most importantly, approving this project would sanction this untoward conduct. The HFSRB must maintain the propriety of its rules and procedures and not consider Dr. Cheema's referral letter for this project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne Cooper'.

Anne Cooper