

**Constantino, Mike**

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**From:** Moon, Shawn K [skmoon@uhlaw.com]  
**Sent:** Wednesday, July 20, 2011 4:32 PM  
**To:** Constantino, Mike; Roate, George  
**Cc:** Clancy, Edward  
**Subject:** Supplemental Information for U.S. Renal Care Bolingbrook Dialysis, U.S. Renal Care Oak Brook Dialysis and U.S. Renal Care Streamwood Dialysis  
**Attachments:** U.S. Renal Care Streamwood Dialysis Supplemental Information.pdf; U.S. Renal Care Bolingbrook Dialysis Supplemental Information.pdf; U.S. Renal Care Oak Brook Dialysis Supplemental Information.pdf

Good Afternoon Mike and George,

As requested, please find the attached scanned copies of the supplemental information submitted for the U.S. Renal Care Bolingbrook Dialysis (project number 11-025), U.S. Renal Care Oak Brook Dialysis (project number 11-024) and U.S. Renal Care Streamwood Dialysis (project number 11-026) certificate of need applications. The originals of each document have been sent via Federal Express and you should expect to receive those documents tomorrow. Please feel free to contact me with any questions or comments.

Thanks,  
Shawn

**Shawn Kenneth Moon**  
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July 20, 2011

Dale Galassie, Chairman  
Illinois Health Facilities and Services Review Board  
525 W. Jefferson Street, Second Floor  
Springfield, Illinois 62761

**Re: Letter of Clarification in Response to Holland & Knight Assertions**

Dear Mr. Galassie:

U.S. Renal Care, Inc., by virtue of its association with three limited liability companies as applicants for certificates of need to establish three dialysis facilities ("U.S. Renal Care"), received the enclosed "cease and desist" letter dated June 24, 2011 (the "Cease and Desist Letter") that Holland & Knight ("H&K") on behalf of Fresenius Medical Care of Illinois LLC and related entities ("Fresenius") sent to Ungaretti & Harris ("U&H"), regarding the dialysis certificate of need applications ("CON Applications"). The CON Applications demonstrate the need for the proposed facilities, due to lack of patient choice in dialysis providers and the changing population demographics in the proposed Health Service Areas ("HSAs"). The Cease and Desist Letter, however, misconstrues several statements made in the CON Applications and threatens the applicants with litigation, unless they withdraw these statements.

As you know, the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*, and the regulations thereunder require an applicant to provide information about various review criteria and reasons for the issuance of a CON. The applications U.S. Renal Care submitted provide information to demonstrate the need for additional facilities. Section 6 requires that an applicant's officers verify an application. Our client takes these laws and regulations seriously.

To address the claims raised in Fresenius's Cease and Desist Letter, we provide further clarifying details. First, U.S. Renal Care is seeking to expand the number of dialysis facilities available in the subject HSA to help alleviate issues related to delayed discharges from area hospitals. Currently, patients awaiting discharge from a hospital may wait extra days for an available dialysis facility. However, the Cease and Desist Letter claims that the CON Applications are inaccurate in stating that Fresenius's "current system of admissions is increasing hospital costs" by causing longer lengths of stay and greater costs. Cease and Desist Letter at 2. U.S. Renal Care has placed in its CON Applications information it has received from service area providers, including a letter from Anis Rauf, D.O., that quotes from an email they received from a social worker at a hospital in HSA 7. U.S. Renal Care Oak Brook Dialysis

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Dale Galassie

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Application at 61. The email describes a hospital's series of failed efforts to schedule patients for dialysis treatment at Fresenius centers, which resulted in the hospital discharging patients later than would otherwise be required. If the Board authorizes additional U.S. Renal Care facilities and their services, there will be greater access and less delay in patient placement.

Second, U.S. Renal Care proposes to address dialysis service needs through expanding patient access and allowing patients greater choice in the provider of their dialysis services. However, the Cease and Desist Letter questions U.S. Renal Care's statement that "market dominance" leads to "severe" access issues for patients due to admissions policies of "existing providers." Cease and Desist Letter at 2. U.S. Renal Care has provided a letter from Mohammed S. Ahmed, D.O., detailing the medical history of three patients denied admission for dialysis treatment on multiple occasions at a Fresenius location, because they did not have an AVF<sup>1</sup>. U.S. Renal Care Bolingbrook Dialysis Application at 72. When a dialysis facility refuses care to a non-AVF patient, several results may occur. One, difficult transportation problems may so inconvenience patients that they inappropriately delay their dialysis treatment and require hospitalization. Naturally, such a hospitalization event has a greater cost than outpatient dialysis. Two, a non-AVF patient may be hospitalized at a facility where his physician does not practice, creating the medical risks associated with breaking continuity of care. Three, patients requiring dialysis often have multiple diagnostic problems. Re-hospitalization for dialysis problems can intensify these underlying medical conditions. In any event, the lack of access for outpatient dialysis for non-AVF patients is a "severe" problem for those patients and for a health care system required to hospitalize patients who could be maintained with outpatient dialysis. U.S. Renal Care will expand patient access for all dialysis patients.

Third, U.S. Renal Care presented information demonstrating patients' lack of choice in their dialysis provider. However, the Cease and Desist Letter challenges the CON Applications' claim that Fresenius enjoys a "monopoly" on dialysis services. Cease and Desist Letter at 2. Monopoly power, as described by Judge Richard Posner, "connotes a degree of control over price and output that far exceeds the minimal market power possessed by most sellers of nonfungible goods and services. Such power is ordinarily inferred from possession of a dominant share (some courts set the threshold at 50 percent or occasionally even lower, others at 67 or even 70 percent) in a market sufficiently broadly defined to include all close substitutes of the defendant's products." RICHARD A. POSNER, ANTITRUST LAW at 196-197 (The University of Chicago Press 2 ed. 2001) (1976). See also *U.S. v. Paramount Pictures Inc.*, 334 U.S. 131 (1948); *Greyhound Computer Corp. v. I.B.M.*, 559 F.2d 488 (9<sup>th</sup> Cir. 1977); *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480 (5<sup>th</sup> Cir. 1984); *Colorado Interstate Gas Co. v. Natural Gas Pipeline Company of America*, 885 F.2d 683 (10<sup>th</sup> Cir. 1989). U.S. Renal Care

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<sup>1</sup> An AVF is a semi-permanent implanted device accessing a vein for circulation of blood for toxin removal in dialysis. A temporary catheter can substitute for an AVF. For various medical reasons, some patients are unable or may at least temporarily be unable to sustain the implant of an AVF.

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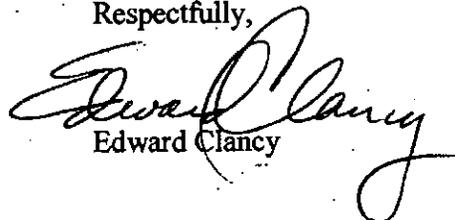
Dale Galassie  
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relied on counsel to calculate Fresenius's percentage of dialysis stations in HSA 7. On May 24, 2011, the date U.S. Renal Care submitted its CON Applications, that percentage was approximately 70% according to the "12-31-2010 ESRD UTILIZATION" file the Illinois Health Facilities and Services Review Board maintains. Thus, in a HSA encompassing 27% of the population of Illinois, Fresenius holds a dominant share in the market of in-center hemodialysis. In addition, Bolingbrook sits at the northern border of HSA 9, adjacent to HSA 7. Many Bolingbrook patients who are in HSA 9 use dialysis facilities in HSA 7. Consequently, Fresenius's market concentration in HSA 7 affects adjacent communities in HSA 9. Fresenius, with a Bolingbrook facility—which has denied admission to non-AVF patients—dominates the market in HSAs 7 and 9. This market dominance is what U.S. Renal Care was pointing out, for purposes of showing that adding service providers will open up market competition and provide needed facilities and services to expedite dialysis. Due to the high frequency of required treatment (3 treatments per week) and the length of dialysis treatment, patients must be able to access conveniently located and effective facilities. To address these access problems, especially those patients without an AVF encounter, U.S. Renal Care intends to provide much needed access to dialysis services and reduce patients' hardship in obtaining such services.

U.S. Renal Care included the information from local providers, because they provided this information to U.S. Renal Care in its examination of reasons for expanding into the HSAs relative to the CON Applications. This information further explains that there is a need for additional services, by an additional provider with legitimate but different admission policies, that will meet HSA and patient needs and will result in lower patient costs.

Again, U.S. Renal Care submits this letter to add clarification. We assume the Illinois Health Facilities and Services Review Board will note that our attempt to provide it with information directly related to its mission and purpose has been met with a threat of potential litigation. Please accept this letter in support of the CON Applications.

Respectfully,



Edward Clancy

Enclosure

# Holland & Knight

131 South Dearborn Street | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666  
Holland & Knight LLP | www.hklaw.com

Clare Connor Ranalli  
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June 24, 2011

*Via E-mail (eclancy@uhlalaw.com)*  
*Via First Class Mail*

Edward Clancy  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
70 West Madison  
Chicago, IL 60602

**Re: Improper Statements Re: Fresenius Medical Care in U.S. Renal Care Permit Applications**

Dear Ed:

This firm represents Fresenius Medical Care of Illinois, LLC and related entities ("Fresenius") in relation to healthcare regulatory matters in Illinois. We have reviewed three Applications for Permits, numbers 11-024, 11-025, and 11-026 (the "Applications"), filed by U.S. Renal Care ("U.S. Renal") on May 24, 2011 with the Illinois Facilities and Services Review Board (the "Board"). In each of the three Applications, U.S. Renal seeks to support its request for permits to build dialysis centers in Downers Grove, Bolingbrook, and Streamwood, respectively, by making material misrepresentations about Fresenius and its business practices, disparaging Fresenius Illinois' facilities and the services offered by them, and generally painting Fresenius in a potentially false light. We demand that U.S. Renal cease and desist in making defamatory and/or disparaging statements about Fresenius, modify the Applications to remove untrue statements about Fresenius, and refrain from making or publishing further defamatory statements to the Board, whether by application, written or oral communication, at public hearing, or otherwise.

The Illinois Uniform Deceptive Trade Practice Act makes it a deceptive trade practice to "disparage[] the goods, services, or business of another by false or misleading representation of fact." 815 ILCS 510/2(a)(9); *M. & R Printing Equip., Inc. v. Anatol Equip. Mfg. Co.*, 321 F.Supp.2d 949, 952 (N.D.Ill. 2004) (recognizing that the broad statutory language includes "statements that impugn a business' integrity [or services]"). Such disparagement and misrepresentations constitute an independent violation of the Illinois Consumer Fraud and

Deceptive Business Practices Act, 815 ILCS 505/2, and may be further actionable under a variety of common law theories. *See, e.g.*, 815 ILCS 510/2(c); *Fedders Corp. v. Elite Classics*, 268 F.Supp.2d 1051, 1064 (S.D.Ill. 2003) (although the UDTPA codifies the common law tort of commercial disparagement, it does not necessary preempt claims for false light, tortuous interference with a business expectancy, tortuous interference with a prospective economic advantage, and other similar claims); *Intern. Union of Op. Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill.2d 456, 870 N.E.2d 303, 308, 311 (2007) (recognizing the appropriateness of compensatory and punitive damages awards to a company, whose union wrongly alleged that the company did not pay prevailing wages, upon trade libel and tortuous interference with a prospective economic advantage theories, amongst others"). Throughout the Applications, U.S. Renal asserts that Fresenius has acted to restrict trade, limit patient access to care, increase healthcare costs, and impede patient outcomes. The foregoing misrepresentations threaten to irreparably damage Fresenius' reputation with the Board, with the public and may result in lost business opportunities to Fresenius in Illinois and elsewhere.

For avoidance of doubt, all, but not necessarily limited to all, of the following statements in the Applications are passed off as fact, and yet are untrue, and either directly disparage Fresenius or otherwise cast it in a false light:

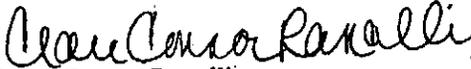
1. The Applications claim that Fresenius' "current system of admissions is increasing Hospital costs" by causing prolonged lengths of stay. As you well know, in the healthcare world this is a very damaging statement to make about another provider. It claims that federal and state government payer systems, as well as private insurers such as Blue Cross/Blue Shield, are paying more for care than is necessary as a direct result of Fresenius policies. No statement in the Applications may constitute a more clear violation of the Illinois Uniform Deceptive Trade Practice Act than this one, which is both a material misrepresentation and defamation. One of the Board's charges is to decrease health care costs. Thus, misrepresentations like this one may seriously and irreparably harm Fresenius' credibility before the Board. Despite the damaging nature of the statement, U.S. Renal offers nothing to support it.
2. U.S. Renal states that Fresenius "market dominance" leads to "severe" access issues for patients due to admissions policies of "existing providers." The only "existing provider" referenced in any of the Applications is Fresenius. Moreover, U.S. Renal claims that it is establishing the proposed facilities to give patients "choice," because Fresenius controls 70% of the market share and there are patients who either cannot or will not go to Fresenius.
  - a. The statements imply, if not openly express, that Fresenius employs restrictive admissions, turns patients away and limits access to care. Such claims are false. Fresenius Illinois' facilities are generally open to all patients regardless of their ability to pay, citizenship/documentation or dialysis access situation (e.g., whether the patient has a catheter).

- b. The statements further indicate to the Board that, due to the alleged admissions practices of Fresenius, there are patients who will not or cannot go to Fresenius. Again, such claims - particularly when couched as blanket generalizations - disparage Fresenius' services.
  - c. U.S. Renal is obligated under the Board's rules regarding the need to establish facilities in the face of maldistribution of services to explain why other dialysis providers are not an option. It is required to identify with specificity the alleged number of patients who will not or cannot go to Fresenius facilities and the reason why. The Applications fail to provide any specific information regarding patients who cannot or will not go to Fresenius, and simply disparage Fresenius.
3. The Applications claim that Fresenius enjoys a "monopoly" on dialysis services, and claims that physicians are therefore, "at their mercy" without referencing what the latter means. Again, both claims misrepresent material facts in a fashion which not only disparages Fresenius, but seeks Board reliance thereon for U.S. Renal's benefit.

We reiterate that Fresenius hereby demands that U.S. Renal cease and desist in making defamatory and/or disparaging statements about Fresenius, modify its Applications to remove any such untrue statements about Fresenius, and cease in making or publishing further defamatory and/or disparaging statements to the Board, whether by application, written communication, at public hearing, or otherwise. If U.S. Renal does not modify its Applications, utilizing the process in the Board's rules for doing so, Fresenius will take all necessary actions to remedy U.S. Renal's unlawful conduct before the Board, and as may otherwise be appropriate in alternate venues/jurisdictions. Fresenius intends to vigorously defend its reputation, but also prefers to avoid a prolonged dispute with U.S. Renal, which can be accomplished if U.S. Renal simply modifies the Applications and refrains from making further blanket untrue statements about Fresenius. If you have any questions, please do not hesitate to contact me directly.

Sincerely yours,

HOLLAND & KNIGHT LLP

  
Clare Connor Ranalli

CCR:mjy

cc: Steffanie Garrett  
Daniel Farris  
Michelle Wiest  
Jessica Stewart  
Julie Hawkins

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VIA FEDERAL EXPRESS

July 20, 2011

Illinois Health Facilities and Services Review Board  
525 West Jefferson Street, 2nd Floor  
Springfield, Illinois 62761  
Attn: Mike Constantino

**Re: U.S. Renal Care Oak Brook Dialysis Certificate of Need Application  
Supplemental Materials**

Dear Mr. Constantino:

As requested, please find the enclosed supplemental materials associated with the U.S. Renal Care Oak Brook Dialysis Certificate of Need Application, application number 11-024. Attached to this cover letter are the following documents:

- Revised Patient Referral Attestation;
- Safety Net Information; and
- Letter of Clarification in Response to Holland & Knight Assertions.

If you have any questions regarding this correspondence, please contact me.

Respectfully,



Shawn Moon

cc: George Roate (w/encl.)(via email)

Enclosures

Mr. Dale Galassie  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

Dear Mr. Galassie:

We are writing in support of the certificate of need application for the proposed U.S. Renal Care Oak Brook Dialysis clinic.

We currently refer patients to several facilities depending on the location and availability of the dialysis facility, included as Appendix A is a list of those facilities. Based on our records, in the past three years, we have referred for dialysis 80 patients in 2010, 86 patients in 2009 and 55 patients in 2008. These referrals are a component of the dialysis volumes as reported to the Renal Network by the dialysis facilities. Included as Appendix B is the patient origin information organized by physician and facility for the years 2008, 2009 and 2010.

With regard to new patients referred for dialysis, in the year 2010, we have referred 66 new patients for hemodialysis. These referrals are a component of the dialysis volumes as reported to the Renal Network by the dialysis facilities. On a national level, the 5 year mortality for all dialysis patients is 65% with a 17% rate of incident dialysis patients receiving a kidney transplant within 3 years, which indicates that these patients will remain on dialysis through completion of the proposed project. Included as Appendix C is a patient count by facility and zip code of newly referred patients.

In the last three years our practice has experienced explosive growth in patient volume. From a first year patient volume of 322 patients seen in the last seven months of 2007 we have grown to a patient volume of 2,179 patients in 2010. The 2010 patient volume represents a growth of nearly 577% from our 2007 patient volume. We expect this growth in patient volume to continue and to address this growth we have recently hired an additional physician, Dr. Suneel Udani, whose Curriculum Vitae is attached as Appendix D and intend to recruit another physician in the near future. As such, we believe that we will continue to maintain growth in patient volume necessitating the establishment of additional dialysis facilities to provide them with essential dialysis services.

The proposed U.S. Renal Care Oak Brook Dialysis facility will provide much needed access to dialysis services to our patient base that reside in the area of the facility. As detailed in map included as Appendix E, we had 858 patients in the zip codes contained within a seven mile radius surrounding the U.S. Renal Care Oak Brook Dialysis facility in 2010. As our patient volume continues to grow, we expect corresponding growth in these zip codes. While these patients do not represent an immediate referral source for the proposed facility, it demonstrates the large volume of patients we maintain in the area that may require dialysis care.

The establishment of the U.S. Renal Care Oak Brook Dialysis facility will also provide greater choice for patients residing in the seven mile radius surrounding the proposed facility. As indicated in the map included as Appendix F, 100% of the facilities in the

area are owned by one dialysis provider. As such, the establishment of a US Renal Care facility will provide greater patient choice in the provision of dialysis services. Furthermore, the establishment of the proposed facility will also provide greater patient access for dialysis services. As indicated in the map included as Appendix F, five of the six facilities currently operating in the seven mile radius are operating near or above the 80% utilization target set by the Illinois Health Facilities and Services Review Board ("Board"). It is important to note that dialysis centers typically operate three shifts a day, six days a week, therefore facilities operating at utilization levels above 66% are likely scheduling patients to the highly desirable first and second dialysis shifts. As a result, only the remaining undesirable night and weekend shifts are available for new dialysis patients. These night and weekend shifts are especially inconvenient for patients as they require dialyzing late into the evening and arranging for transportation at night. If a patient is unable to dialyze at night, they may be forced to travel great distances to obtain a day shift at another dialysis facility. Therefore, the establishment of an additional provider in this area will make more dialysis shifts available for patients seeking morning or afternoon dialysis shifts.

Based upon a review of our 1,057 ESRD and Pre-ESRD patients that currently are in Chronic Kidney Disease (CKD) Stage 3, 4, and 5, we anticipate referring 26.7% of those patients for dialysis within 2 years as demonstrated in Appendix G. Of those patients, we anticipate referring 147 ESRD patients, who live in Suburban Cook or DuPage Counties, to U.S. Renal Care Oak Brook Dialysis for dialysis within 2 years after completion of the facility. Based upon the service area and our patient base in those zip codes, we anticipate these referrals will be consistent with the table provided in Appendix G.

We respectfully ask the Board to approve the U.S. Renal Care Oak Brook Dialysis CON application to provide in center hemodialysis services for this growing ESRD population in Suburban Cook and DuPage Counties. Thank you for your consideration.

We attest to the fact that to the best of our knowledge, all the information contained in this letter is true and correct and that the projected referrals in this document were not used to support any other CON application.

Respectfully,

Signature: [Handwritten Signature]  
Name: ANIS ALKUTUBI  
Title: Advanced Rental Corp

Signature: [Handwritten Signature]  
Name: Mohammed Anni  
Title: Advanced Rental Corp

SUBSCRIBED and SWORN TO before me  
this 17 day of July, 2011

[Handwritten Signature]  
Notary Public



## APPENDIX A - REFERRAL FACILITIES

Dialysis Center
Advanced Home Dialysis
Advanced Home Therapies
Affiliated Dialysis, Westmont
Community Nursing Home Naperville
DaVita Alton
Fairview Baptist Nursing Home Dialysis
FMC Bartlet
FMC Berwyn
FMC Blue Island
FMC Bolingbrook
FMC Bridgeport
FMC Burbank
FMC Crestwood
FMC Downers Grove Dialysis Center
FMC Elk Grove
FMC Evergreen Park
FMC Glendale Heights Dialysis
FMC Mokena
FMC Naperville Dialysis Center
FMC Naperville North Dialysis Center
FMC Neomedica West
FMC Orland Park
FMC Oswego
FMC Palos
FMC Plainfield
FMC Roseland
FMC South Suburban
FMC Tinley Park
FMC University Program
FMC Villa Park Dialysis
FMC Westchester
FMC Willowbrook Dialysis Center
Fox Valley Dialysis
Good Samaritan Inpatient Hospital
Gotleib Hospital Dialysis
Hinsdale Inpatient Hospital
Loyola Dialysis Maywood
Maple Avenue Kidney Center
Meadowbrook Bolingbrook Nursing Home
Meadowbrook LaGrange Nursing Home
Meadowbrook Naperville Nursing Home
Mt Sinai Hosp Med Ctr Renal Unit
Neph Inc. Mishawaka
Ottawa Dialysis Center

Dialysis Center
RML Specialty Hospital Dialysis
Silver Cross Hospital Dialysis Unit
Tri Cities Dialysis
UIC Downtown

**APPENDIX B – REFERRAL FACILITIES PATIENT ORIGIN**

Referral Year	Treating Physician	Dialysis Center	Zip Code	Patients	
2008	Ahmed, Mohammed	Advanced Home Dialysis	60440	1	
		Community Nursing Home Naperville	60532	1	
			60563	1	
		FMC Berwyn	60402	2	
		FMC Blue Island	60406	1	
		FMC Bolingbrook Boughton Road	60439	1	
			60440	2	
			60644	1	
		FMC Bolingbrook Remington Blvd	60625	1	
		FMC Bridgeport	60616	1	
		FMC Naperville Dialysis Center	60565	1	
		FMC Naperville North Dialysis Center	60440	1	
			60544	1	
		FMC Palos	60415	1	
		FMC Villa Park Dialysis	60148	1	
		FMC Westchester	60546	1	
		FMC Willowbrook Dialysis Center	60527	2	
	Meadowbrook Bolingbrook Nursing Home	60435	1		
		60440	1		
		60445	1		
	<b>Ahmed, Mohammed Total</b>				<b>23</b>
	Rauf, Anis	FMC Berwyn	60501	1	
		FMC Bolingbrook Boughton Road	60440	2	
			60586	1	
		FMC Burbank	60501	1	
		FMC Downers Grove Dialysis Center	60137	1	
			60148	1	
			60544	1	
			60559	1	
60563			1		
FMC Evergreen Park		60805	1		
FMC Glendale Heights Dialysis		60108	1		
		60139	1		
FMC Mokena		60491	1		
FMC Naperville Dialysis Center		83301	1		
FMC Villa Park Dialysis		60148	1		
FMC Westchester		60525	1		
FMC Willowbrook Dialysis Center		60458	1		
		60527	2		
Good Samaritan Inpatient Hospital		60644	1		
Loyola Dialysis Maywood		60521	1		
Maple Avenue Kidney Center		60526	1		
Meadowbrook Bolingbrook Nursing Home	60046	1			
	60151	1			
	60440	1			
	60451	1			
	60478	1			
60482	1				
Ottawa Dialysis Center	60428	1			

Referral Year	Treating Physician	Dialysis Center	Zip Code	Patients
		RML Specialty Hospital Dialysis	60108	1
		Silver Cross Hospital Dialysis Unit	60433	1
	<b>Rauf, Anis Total</b>			<b>32</b>
<b>2008 Total</b>				<b>55</b>
2009	Ahmed, Mohammed	Advanced Home Therapies	60517	1
			60559	1
		Community Nursing Home Naperville	60563	1
		FMC Blue Island	60472	1
		FMC Bolingbrook Boughton Road	60439	1
			60440	1
			60517	1
		FMC Bolingbrook Remington Blvd	60440	2
			60446	1
			60544	1
			60586	1
			60901	1
		FMC Burbank	60455	1
			60458	1
		FMC Crestwood	60445	2
		FMC Glendale Heights Dialysis	60139	2
		FMC Naperville Dialysis Center	60440	1
			60521	1
		FMC Naperville North Dialysis Center	60446	1
		FMC Roseland	60628	1
		FMC University Program	60440	1
		FMC Westchester	60525	1
			60526	2
		FMC Willowbrook Dialysis Center	(blank)	1
		Loyola Dialysis Maywood	60162	1
		Maple Avenue Kidney Center	60638	1
		Meadowbrook Bolingbrook Nursing Home	53168	1
			60431	1
			60435	1
			60440	2
			60446	1
		Meadowbrook LaGrange Nursing Home	60636	1
		Meadowbrook Naperville Nursing Home	60440	1
		Neph Inc. Mishawaka	46628	1
		Silver Cross Hospital Dialysis Unit	60431	1
			60446	1
	<b>Ahmed, Mohammed Total</b>			<b>41</b>
	Rauf, Anis	Advanced Home Therapies	60521	1
		DaVita Alton	62002	1
		Fairview Baptist Nursing Home Dialysis	60516	1
			60525	1
		FMC Blue Island	60827	1
		FMC Burbank	60457	1
			60458	3
			60629	1
		FMC Downers Grove Dialysis Center	60148	3
			60164	1

Referral Year	Treating Physician	Dialysis Center	Zip Code	Patients	
			60181	1	
			60193	1	
			60515	1	
			60516	2	
			60517	1	
			60644	1	
			FMC Naperville Dialysis Center	60490	1
				60643	1
			FMC Neomedica West	60625	1
			FMC Oswego	60543	1
			FMC South Suburban	60475	1
			FMC Tinley Park	60452	1
			FMC Villa Park Dialysis	60101	1
			FMC Westchester	60482	1
				60526	1
				60534	1
				60638	1
			FMC Willowbrook Dialysis Center	58784	1
				60446	1
				60459	1
				60514	1
				60527	2
			Fox Valley Dialysis	60506	2
			Loyola Dialysis Maywood	60130	1
	Maple Avenue Kidney Center	60513	1		
	Meadowbrook LaGrange Nursing Home	60608	1		
	RML Specialty Hospital Dialysis	60617	1		
	Silver Cross Hospital Dialysis Unit	60403	1		
	Rauf, Anis Total			45	
2009 Total				86	
2010	Ahmed, Mohammed	Advanced Home Therapies	60527	1	
		Affiliated Dialysis, Westmont	60542	1	
		Fairview Baptist Nursing Home Dialysis	60148	1	
		FMC Berwyn	60402	1	
			60629	1	
		FMC Bolingbrook Boughton Road	60440	2	
		FMC Bolingbrook Remington Blvd	60403	2	
			60440	4	
			60441	1	
			60442	1	
			60506	1	
		FMC Glendale Heights Dialysis	60101	1	
			60103	1	
			60108	3	
			60191	1	
			60613	1	
		FMC Orland Park	60491	1	
		FMC Plainfield	60544	1	
FMC Westchester	60513	1			
FMC Willowbrook Dialysis Center	60513	1			
	60516	1			

Referral Year	Treating Physician	Dialysis Center	Zip Code	Patients	
			60517	1	
			60561	1	
		Meadowbrook Bolingbrook Nursing Home	54981	1	
			60126	1	
			60645	1	
		Mt Sinai Hosp Med Ctr Renal Unit	60623	1	
		RML Specialty Hospital Dialysis	60628	1	
	UIC Downtown	60440	1		
	Ahmed, Mohammed Total				36
	Rauf, Anis	Advanced Home Therapies	60137	1	
			60148	1	
		Community Nursing Home Naperville	60505	1	
		FMC Bartlet	60107	1	
		FMC Bolingbrook Boughton Road	60101	1	
			60585	1	
		FMC Bolingbrook Remington Blvd	60440	1	
		FMC Burbank	60453	1	
			60458	1	
		FMC Downers Grove Dialysis Center	60148	1	
			60515	1	
		FMC Elk Grove	60143	1	
			60191	1	
		FMC Glendale Heights Dialysis	60108	6	
		FMC Orland Park	60462	1	
		FMC Villa Park Dialysis	60126	4	
			60148	1	
			60523	1	
FMC Westchester		60137	1		
		60402	1		
		60525	2		
		60526	1		
FMC Willowbrook Dialysis Center		60513	1		
	60521	1			
	60559	1			
Gotleib Hospital Dialysis	60131	1			
Hinsdale Inpatient Hospital	60173	1			
Meadowbrook LaGrange Nursing Home	60463	1			
	60525	1			
	60651	1			
RML Specialty Hospital Dialysis	60901	1			
Silver Cross Hospital Dialysis Unit	60432	1			
	60435	2			
Tri Cities Dialysis	60174	1			
Rauf, Anis Total				44	
2010 Total				80	
Grand Total				221	

**IQ 2011 Dialysis Referral Data**

Provider	DialysisCenter	Zip	Total
Ahmed, Mohammed	FMC Glendale Heights Dialysis	60108	1

	Glen Oaks Inpatient Hospital	60103	1
	Hinsdale Inpatient Hospital	60165	1
	Meadowbrook Bolingbrook Nursing Home	60644	1
	Office Lombard Advanced Renal Care	60101	1
Ahmed, Mohammed Total			5
Rauf, Anis A	BOLINGBROOK INPT ADVENTIST HOSPITAL	60440	1
		60446	1
	Elmhurst Memorial Hospital	60615	1
	Glen Oaks Inpatient Hospital	60108	2
		60130	1
		60133	1
	Good Samaritan Inpatient Hospital	60101	1
		60155	1
		60446	1
		60538	1
	Hinsdale Inpatient Hospital	60543	1
	LaGrange Inpt Memorial Hospital	60525	1
	Manor Care Health Services	60133	1
	Meadowbrook LaGrange Nursing Home	60463	1
	Office Hinsdale Advanced Renal Care	60521	1
60559		1	
Office Lombard Advanced Renal Care	60108	1	
Rauf DO, Anis A Total			18
Grand Total			23

APPENDIX C - NEW REFERRALS

Treating Physician	Dialysis Center	Zip Code	Patients
Ahmed, Mohammed	FMC Berwyn	60402	1
		60629	1
	FMC Bolingbrook Boughton Road	60440	1
	FMC Bolingbrook Remington Blvd	60403	2
		60440	4
		60441	1
		60442	1
		60506	1
	FMC Glendale Heights Dialysis	60101	1
		60103	1
		60108	3
		60191	1
		60613	1
	FMC Orland Park	60491	1
	FMC Willowbrook Dialysis Center	60513	1
		60516	1
		60517	1
		60561	1
	Meadowbrook Bolingbrook Nursing Home	54981	1
	60126	1	
	60645	1	
Mt Sinai Hosp Med Ctr Renal Unit	60623	1	
RML Specialty Hospital Dialysis	60628	1	
UIC Downtown	60440	1	
<b>Ahmed, Mohammed Total</b>			<b>30</b>
Rauf, Anis	Advanced Home Therapies	60137	1
	Community Nursing Home Naperville	60505	1
	FMC Bartlet	60107	1
	FMC Bolingbrook Remington Blvd	60440	1
	FMC Burbank	60453	1
		60458	1
	FMC Downers Grove Dialysis Center	60515	1
	FMC Elk Grove	60143	1
		60191	1
	FMC Glendale Heights Dialysis	60108	5
	FMC Orland Park	60462	1
	FMC Villa Park Dialysis	60126	4
		60148	1
		60523	1
	FMC Westchester	60137	1
		60525	1
		60526	1
	FMC Willowbrook Dialysis Center	60513	1
		60559	1
Gotleib Hospital Dialysis	60131	1	
Hinsdale Inpatient Hospital	60173	1	
Meadowbrook LaGrange Nursing Home	60463	1	
	60525	1	

	60651	1
RML Specialty Hospital Dialysis	60901	1
Silver Cross Hospital Dialysis Unit	60432	1
	60435	2
Tri Cities Dialysis	60174	1
<b>Rauf, Anis Total</b>		<b>36</b>
<b>2010 Total</b>		<b>66</b>

APPENDIX D – DR. UDANI C.V.

Suneel M. Udani MD, MPH

1151 W 15th Street, Unit 333

Chicago, IL 60608

suneel.udani@gmail.com

**Medical Training**

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Fellowship

Nephrology--University of Chicago Medical Center, July 2008-Current

Chief Residency

Internal Medicine--John H. Stroger Hospital of Cook County, July 2007-June 2008

Residency

Internal Medicine--University of Chicago Medical Center, July 2005-June 2006

Internal Medicine--University of Pittsburgh Medical Center, July 2006-June 2007

Internship

Internal Medicine--University of Chicago Medical Center, July 2004-June 2005

**Education**

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Medical MD

Northwestern University Feinberg School of Medicine

Chicago, IL, May 2004

Clinical Honors--Pediatrics, Internal Medicine, Primary Care, Neurology

Graduate MPH

Emphasis in Biostatistics and Epidemiology

Northwestern University, Chicago, IL May 2004

GPA 3.78

Undergraduate B.S. in Medicine

Northwestern University, Evanston, IL June 2001

Exchange Student, University of Sussex at Brighton, United Kingdom Sep 1999-May 2000

#### **Certifications and Licensures**

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Board Certification--American Board of Internal Medicine 2008

Licensed Physician and Surgeon--State of Illinois--License #036118486

#### **Teaching Experience**

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##### **University of Chicago Medical Center**

2010--Expert discussant for Internal Medicine resident "Morning Report"

2010--Developed and taught Nephrology section of Internal Medicine Residency Board Review

2010--Instructor for University of Chicago Pritzker School of Medicine Renal Physiology Workshops for 1<sup>st</sup> year medical students

2010--Instructor for University of Chicago Pritzker School of Medicine Clinical Pathophysiology and Therapeutics course--Renal section for 2<sup>nd</sup> year medical students

2009--Designed and organized Renal, Electrolyte and Acid-Base lecture series for "Emergencies in Internal Medicine" course for Internal Medicine Housestaff; served as instructor for "Interpretation of Acid-Base disorders" lecture.

##### **Rush University School of Medicine**

2007-2008--Instructor, Division of General Internal Medicine, Department of Medicine--preceptor for 3<sup>rd</sup> and 4<sup>th</sup> year medical students during their internal medicine rotations, served as an instructor for 1<sup>st</sup> year *Introduction to the Patient* and the 2<sup>nd</sup> year *Introduction to Clinical Skills* courses

##### **University of Chicago Pritzker School of Medicine**

2005--Resident Instructor for *Physical Diagnosis* course for 2<sup>nd</sup> year medical students as part of introduction clinical medicine curriculum

##### **Northwestern University Feinberg School of Medicine**

2004--Student Instructor for *Physical Diagnosis* course for 2<sup>nd</sup> year medical students as part of introduction to clinical medicine curriculum

##### **Northwestern University**

1999-2000—Instructor for Northwestern's Minority Engineering Opportunity Program team leadership and decision-making course.

1999—Teacher's Assistant for Paradigms and Strategies of Leadership course in School of Communication Undergraduate Leadership Program

#### **Chicago Public Schools**

1998—Teacher's Assistant for Gale Public School, 6th grade science course

#### **Research Experience**

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##### **2009-Current**

- Investigating the epidemiology of acute kidney injury in critically ill patients as part of a multi-center trial
- Investigating the diagnostic and prognostic utility of conventional urinary indices and novel urinary biomarkers in critically ill patients with acute kidney injury
- Investigating the comparative clearance of small and middle-sized molecules in continuous venovenous hemodialysis versus continuous venovenous hemofiltration.

##### **2004**

- With Northwestern University Department of Preventive Medicine and Department of Hematology/Oncology investigated the execution of phase I clinical oncology trials regarding adherence to outlined statistical methodology and implications for results.

##### **2003**

- With Northwestern University Internal Medicine investigated at what rates do patients recall preventive health counseling received during General Internal Medicine encounter and what factor of the patient-physician relationship and/or topic predict better rates of recall?

##### **2001**

- With Northwestern University Institute for Health Services Research and Policy faculty conducted quality assessment of general pediatric clinic affiliated with academic hospital and drafted proposal with recommendations according to gathered data

##### **2000**

- With University of Sussex at Brighton Department of Development Studies models of community organization and community leadership and their effectiveness in addressing health care challenges in the developing world.

#### **Awards and honors**

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2004

- Senior speaker Northwestern University Feinberg School of Medicine commencement

2007

- Outstanding Teaching Resident, University of Pittsburgh Medical Center Internal Medicine Residency

2008

- Student Education Award—for Excellence in Clinical Education in Medical Student Education, John H. Stroger Hospital of Cook County

2009

- "Favorite" Fellow—awarded by Internal Medicine Housestaff at University of Chicago Medical Center to best Internal Medicine subspecialty fellow

#### Presentations and Publications

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Borko D, Jovanovic, Suneel M. Udani, Thomas M. McKibben II, Alfred W. Rademaker, Raymond C. Bergan: On Study Design and Adherence to Study Design in Phase I Dose Escalation Oncology Trials. Proceedings of the 2005 Hawaii International Conference on Statistics, Mathematics and Related Fields, Honolulu, January 9-11, 2005. (CD-ROM) [www.hicstatistics.org](http://www.hicstatistics.org).

Udani SM, Dieter RS. Inflammation in Renal Atherosclerotic Disease. *Expert Rev Cardiovasc Ther* 2008; 6: 873-881.

Garg PK, Udani SM, Rupani A, Moncher K, Dieter RS. Gender Differences in the Epidemiology and Management of Vascular Disease. In Dieter RS, ed. *Peripheral Artery Disease*. China: McGraw Hill; 2009: 27-39.

Udani SM, Murray PT. The use of renal replacement therapy in acute decompensated heart failure. *Semin Dial* 2009; 22(2): 173-179.

Udani SM, Koynert JL. Effect of blood pressure lowering on markers of kidney disease progression. *Curr Hypertens Rep* 2009; 11(5): 368-374

Udani SM, West B, Kadambi P, Chon WJ, Thistlethwaite JR, Harland R, Josephson MA. A 10-year Comparison of Influenza Vaccine Practice Patterns in Kidney and Kidney-Pancreas Transplant Programs. Poster presented as part of the American Society Nephrology Renal Week, San Diego, CA, 28-1, October-November 2009.

Suneel M Udani and Richard Quigg: Faculty of 1000 Medicine, 16 Feb 2010  
<http://f1000medicine.com/article/id/1907956/evaluation>

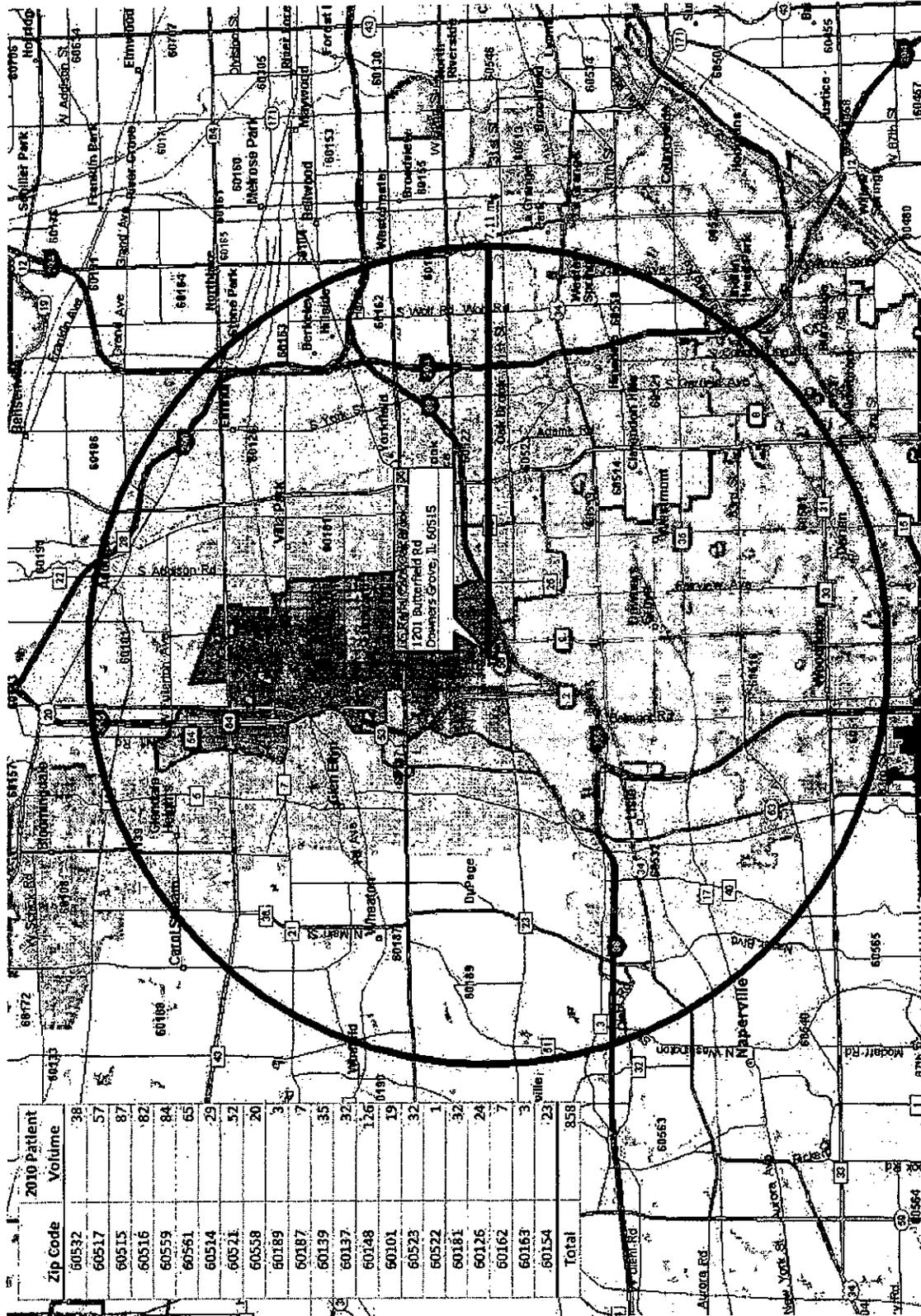
Suneel M Udani and Richard Quigg: Faculty of 1000 Medicine, 4 Mar 2010  
<http://f1000medicine.com/article/id/2274966/evaluation>

Suneel M Udani and Richard Quigg: Faculty of 1000 Medicine, 2 Jul 2010  
<http://f1000medicine.com/article/id/3740956/evaluation>

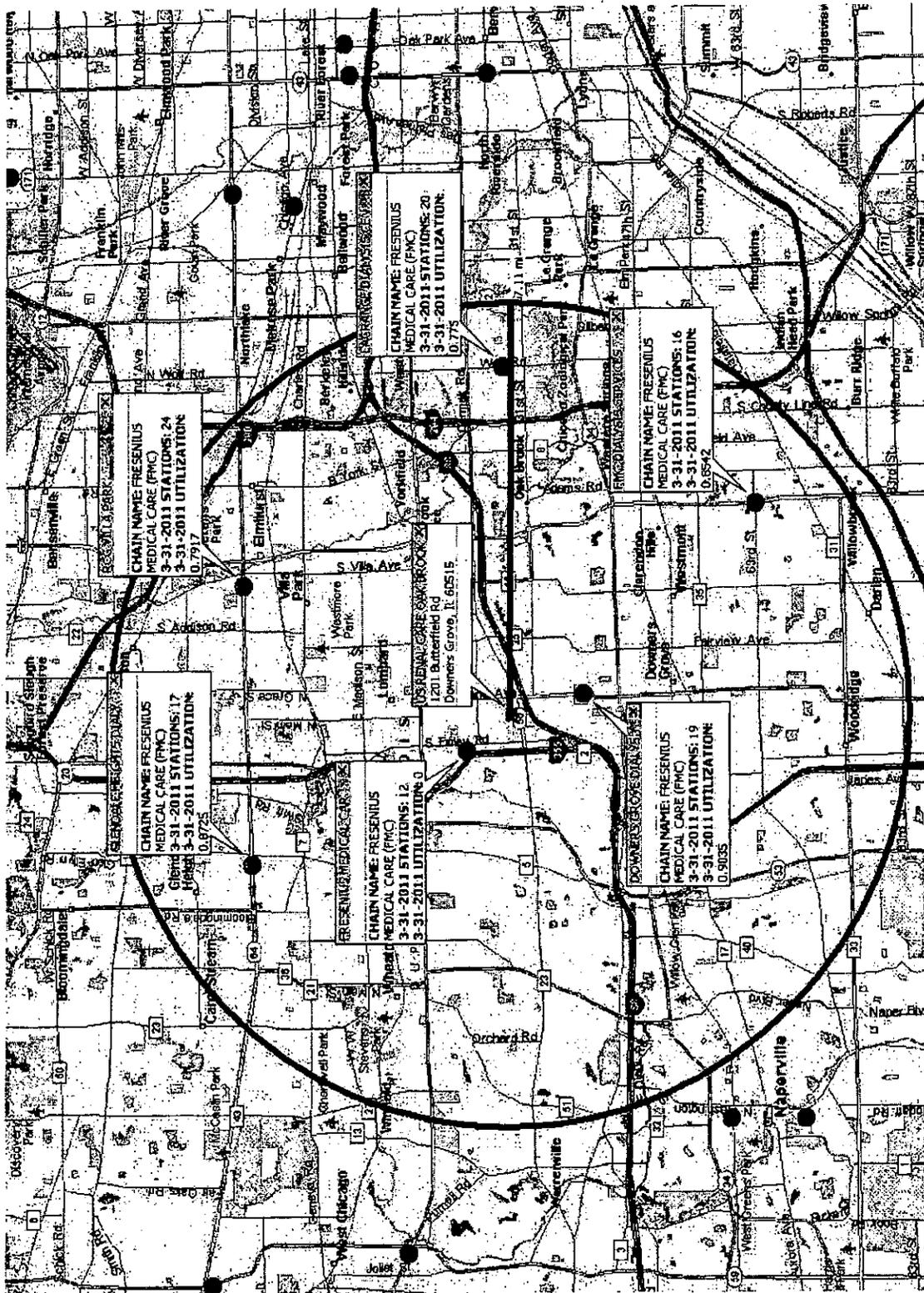
Chon WJ, Kadambi PV, Harland RC, Thistlethwaite JR, West BL, Udani S, Poduval R, Josephson MA. Changing Attitudes Toward Influenza Vaccination in U.S. Kidney Transplant Programs Over the Past Decade. *Clin J Am Soc Nephrol* 2010 Jul 1 (in press).

Udani SM, Koyner JL. The Effects of Heart Failure on Renal Function. *Cardiol Clinics* 2010 Jun 4 (in press).

APPENDIX E - PATIENTS RESIDING IN SEVEN MILE RADIUS



APPENDIX F - FACILITIES WITHIN A SEVEN MILE RADIUS



APPENDIX G

CURRENT PATIENTS BY PHYSICIAN AND STAGE

Count of Patient_ID		
Treating Physician	Stage	Total
Ahmed, Mohammed	CKD3	295
	CKD4	88
	CKD5	7
	ESRD	39
Ahmed, Mohammed Total		429
Rauf DO, Anis A	CKD3	439
	CKD4	131
	CKD5	13
	ESRD	45
Rauf DO, Anis A Total		628
Grand Total		1,057

ANTICIPATED REFERRALS

Zip Code	Dr. Mohammed Ahmed	Dr. Anis Rauf
60532	2	3
60517	3	5
60515	5	8
60516	5	8
60559	5	8
60561	3	6
60514	2	3
60521	3	5
60558	2	3
60189	1	1
60187	1	1
60139	3	4
60137	2	4
60148	8	11
60101	2	2
60523	3	3
60522	1	1
60181	2	4
60126	2	3
60162	1	1
60163	1	1
60154	2	3
Total	59	88

## ATTACHMENT 43

### SAFETY NET IMPACT

This project will result in a positive impact on the ability of other providers and health care systems to cross-subsidize safety net services. The capacity of hospitals and health systems to provide safety net and charity care services is impacted by their efficiency in discharging inpatients and transitioning their care from an inpatient setting to an outpatient setting. As the availability of outpatient dialysis services becomes more scarce, hospitals are sometimes forced to delay patient discharges while attempting to procure necessary dialysis services in the community. This delayed discharge and resulting increase in length of stay may unnecessarily consume hospital resources that could otherwise be directed to a patient in need of such resources. As the proposed project seeks to make additional outpatient dialysis services available it will help facilitate more timely hospital discharges and will result in greater opportunities for hospitals to provide additional safety net and charity care services.

With respect to the direct provision of safety net services, the physician applicants, through their nephrology practices, currently maintain a relationship with Access DuPage. Access DuPage represents a unique partnership of hospitals, physicians, local government, human services agencies, and community groups working together to address access to medical services to the county's low-income, medically uninsured residents. In the past three years, the physician applicants have provided care at their nephrology practices to Access DuPage patients in the range of .3% to .5% of their total patient volume. Furthermore, the Applicants will also facilitate access for under privileged patients by facilitating the enrollment of children into the AllKids program thus promoting access to patients in need of medical care.

With respect to the provision of dialysis services for Charity Care and Medicaid purposes, the Applicants do not operate facilities within Illinois and, as such, have provided Charity Care and Medicaid information at the corporate level for U.S. Renal Care Inc. As such information is most accurately reported at the treatment level, due to the fact that patients receive multiple dialysis treatments which may qualify them as one or more patient types depending on their status at the time of treatment, this information is reported at the treatment level.

<b>CHARITY CARE</b>			
Charity (# of treatments)	2008	2009	2010
Inpatient	N/A	N/A	N/A
Outpatient	1,075	1,056	1,922
Total	1,075	1,056	1,922
Charity (cost in dollars)			
Inpatient	N/A	N/A	N/A
Outpatient	\$280,941	\$281,536	\$521,535
Total	\$280,941	\$281,536	\$521,535

<b>MEDICAID</b>			
Medicaid (# of treatments)	2008	2009	2010
Inpatient	N/A	N/A	N/A
Outpatient	14,761	17,967	29,744
Total	14,761	17,967	29,744
Medicaid (revenue)			
Inpatient	N/A	N/A	N/A
Outpatient	\$3,221,097	\$3,956,318	\$6,740,875
Total	\$3,221,097	\$3,956,318	\$6,740,875

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EDWARD CLANCY  
312.977.4487  
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July 20, 2011

Dale Galassie, Chairman  
Illinois Health Facilities and Services Review Board  
525 W. Jefferson Street, Second Floor  
Springfield, Illinois 62761

**Re: Letter of Clarification in Response to Holland & Knight Assertions**

Dear Mr. Galassie:

U.S. Renal Care, Inc., by virtue of its association with three limited liability companies as applicants for certificates of need to establish three dialysis facilities ("U.S. Renal Care"), received the enclosed "cease and desist" letter dated June 24, 2011 (the "Cease and Desist Letter") that Holland & Knight ("H&K") on behalf of Fresenius Medical Care of Illinois LLC and related entities ("Fresenius") sent to Ungaretti & Harris ("U&H"), regarding the dialysis certificate of need applications ("CON Applications"). The CON Applications demonstrate the need for the proposed facilities, due to lack of patient choice in dialysis providers and the changing population demographics in the proposed Health Service Areas ("HSAs"). The Cease and Desist Letter, however, misconstrues several statements made in the CON Applications and threatens the applicants with litigation, unless they withdraw these statements.

As you know, the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*, and the regulations thereunder require an applicant to provide information about various review criteria and reasons for the issuance of a CON. The applications U.S. Renal Care submitted provide information to demonstrate the need for additional facilities. Section 6 requires that an applicant's officers verify an application. Our client takes these laws and regulations seriously.

To address the claims raised in Fresenius's Cease and Desist Letter, we provide further clarifying details. First, U.S. Renal Care is seeking to expand the number of dialysis facilities available in the subject HSA to help alleviate issues related to delayed discharges from area hospitals. Currently, patients awaiting discharge from a hospital may wait extra days for an available dialysis facility. However, the Cease and Desist Letter claims that the CON Applications are inaccurate in stating that Fresenius's "current system of admissions is increasing hospital costs" by causing longer lengths of stay and greater costs. Cease and Desist Letter at 2. U.S. Renal Care has placed in its CON Applications information it has received from service area providers, including a letter from Anis Rauf, D.O., that quotes from an email they received from a social worker at a hospital in HSA 7. U.S. Renal Care Oak Brook Dialysis

UNGARETTI  
& HARRIS

Dale Galassie

July 20, 2011

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Application at 61. The email describes a hospital's series of failed efforts to schedule patients for dialysis treatment at Fresenius centers, which resulted in the hospital discharging patients later than would otherwise be required. If the Board authorizes additional U.S. Renal Care facilities and their services, there will be greater access and less delay in patient placement.

Second, U.S. Renal Care proposes to address dialysis service needs through expanding patient access and allowing patients greater choice in the provider of their dialysis services. However, the Cease and Desist Letter questions U.S. Renal Care's statement that "market dominance" leads to "severe" access issues for patients due to admissions policies of "existing providers." Cease and Desist Letter at 2. U.S. Renal Care has provided a letter from Mohammed S. Ahmed, D.O., detailing the medical history of three patients denied admission for dialysis treatment on multiple occasions at a Fresenius location, because they did not have an AVF<sup>1</sup>. U.S. Renal Care Bolingbrook Dialysis Application at 72. When a dialysis facility refuses care to a non-AVF patient, several results may occur. One, difficult transportation problems may so inconvenience patients that they inappropriately delay their dialysis treatment and require hospitalization. Naturally, such a hospitalization event has a greater cost than outpatient dialysis. Two, a non-AVF patient may be hospitalized at a facility where his physician does not practice, creating the medical risks associated with breaking continuity of care. Three, patients requiring dialysis often have multiple diagnostic problems. Re-hospitalization for dialysis problems can intensify these underlying medical conditions. In any event, the lack of access for outpatient dialysis for non-AVF patients is a "severe" problem for those patients and for a health care system required to hospitalize patients who could be maintained with outpatient dialysis. U.S. Renal Care will expand patient access for all dialysis patients.

Third, U.S. Renal Care presented information demonstrating patients' lack of choice in their dialysis provider. However, the Cease and Desist Letter challenges the CON Applications' claim that Fresenius enjoys a "monopoly" on dialysis services. Cease and Desist Letter at 2. Monopoly power, as described by Judge Richard Posner, "connotes a degree of control over price and output that far exceeds the minimal market power possessed by most sellers of nonfungible goods and services. Such power is ordinarily inferred from possession of a dominant share (some courts set the threshold at 50 percent or occasionally even lower, others at 67 or even 70 percent) in a market sufficiently broadly defined to include all close substitutes of the defendant's products." RICHARD A. POSNER, *ANTITRUST LAW* at 196-197 (The University of Chicago Press 2 ed. 2001) (1976). See also *U.S. v. Paramount Pictures Inc.*, 334 U.S. 131 (1948); *Greyhound Computer Corp. v. I.B.M.*, 559 F.2d 488 (9<sup>th</sup> Cir. 1977); *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480 (5<sup>th</sup> Cir. 1984); *Colorado Interstate Gas Co. v. Natural Gas Pipeline Company of America*, 885 F.2d 683 (10<sup>th</sup> Cir. 1989). U.S. Renal Care

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<sup>1</sup> An AVF is a semi-permanent implanted device accessing a vein for circulation of blood for toxin removal in dialysis. A temporary catheter can substitute for an AVF. For various medical reasons, some patients are unable or may at least temporarily be unable to sustain the implant of an AVF.

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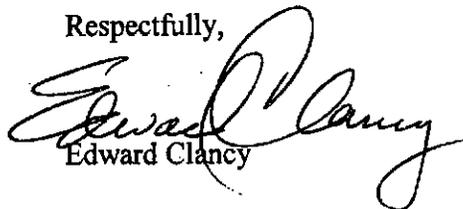
Dale Galassie  
July 20, 2011  
Page 3

relied on counsel to calculate Fresenius's percentage of dialysis stations in HSA 7. On May 24, 2011, the date U.S. Renal Care submitted its CON Applications, that percentage was approximately 70% according to the "12-31-2010 ESRD UTILIZATION" file the Illinois Health Facilities and Services Review Board maintains. Thus, in a HSA encompassing 27% of the population of Illinois, Fresenius holds a dominant share in the market of in-center hemodialysis. In addition, Bolingbrook sits at the northern border of HSA 9, adjacent to HSA 7. Many Bolingbrook patients who are in HSA 9 use dialysis facilities in HSA 7. Consequently, Fresenius's market concentration in HSA 7 affects adjacent communities in HSA 9. Fresenius, with a Bolingbrook facility—which has denied admission to non-AVF patients—dominates the market in HSAs 7 and 9. This market dominance is what U.S. Renal Care was pointing out, for purposes of showing that adding service providers will open up market competition and provide needed facilities and services to expedite dialysis. Due to the high frequency of required treatment (3 treatments per week) and the length of dialysis treatment, patients must be able to access conveniently located and effective facilities. To address these access problems, especially those patients without an AVF encounter, U.S. Renal Care intends to provide much needed access to dialysis services and reduce patients' hardship in obtaining such services.

U.S. Renal Care included the information from local providers, because they provided this information to U.S. Renal Care in its examination of reasons for expanding into the HSAs relative to the CON Applications. This information further explains that there is a need for additional services, by an additional provider with legitimate but different admission policies, that will meet HSA and patient needs and will result in lower patient costs.

Again, U.S. Renal Care submits this letter to add clarification. We assume the Illinois Health Facilities and Services Review Board will note that our attempt to provide it with information directly related to its mission and purpose has been met with a threat of potential litigation. Please accept this letter in support of the CON Applications.

Respectfully,



Edward Clancy

Enclosure

# Holland & Knight

131 South Dearborn Street | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666  
Holland & Knight LLP | www.hklaw.com

Clare Connor Ranalli  
(312) 578-6567  
clare.ranalli@hklaw.com

June 24, 2011

*Via E-mail (eclancy@uhlaw.com)*  
*Via First Class Mail*

Edward Clancy  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
70 West Madison  
Chicago, IL 60602

**Re: Improper Statements Re: Fresenius Medical Care in U.S. Renal Care Permit Applications**

Dear Ed:

This firm represents Fresenius Medical Care of Illinois, LLC and related entities ("Fresenius") in relation to healthcare regulatory matters in Illinois. We have reviewed three Applications for Permits, numbers 11-024, 11-025, and 11-026 (the "Applications"), filed by U.S. Renal Care ("U.S. Renal") on May 24, 2011 with the Illinois Facilities and Services Review Board (the "Board"). In each of the three Applications, U.S. Renal seeks to support its request for permits to build dialysis centers in Downers Grove, Bolingbrook, and Streamwood, respectively, by making material misrepresentations about Fresenius and its business practices, disparaging Fresenius Illinois' facilities and the services offered by them, and generally painting Fresenius in a potentially false light. We demand that U.S. Renal cease and desist in making defamatory and/or disparaging statements about Fresenius, modify the Applications to remove untrue statements about Fresenius, and refrain from making or publishing further defamatory statements to the Board, whether by application, written or oral communication, at public hearing, or otherwise.

The Illinois Uniform Deceptive Trade Practice Act makes it a deceptive trade practice to "disparage[] the goods, services, or business of another by false or misleading representation of fact." 815 ILCS 510/2(a)(9); *M & R Printing Equip., Inc. v. Anatol Equip. Mfg. Co.*, 321 F.Supp.2d 949, 952 (N.D.Ill. 2004) (recognizing that the broad statutory language includes "statements that impugn a business' integrity [or services]"). Such disparagement and misrepresentations constitute an independent violation of the Illinois Consumer Fraud and

Deceptive Business Practices Act, 815 ILCS 505/2, and may be further actionable under a variety of common law theories. *See, e.g.*, 815 ILCS 510/2(c); *Fedders Corp. v. Elite Classics*, 268 F.Supp.2d 1051, 1064 (S.D.Ill. 2003) (although the UDTPA codifies the common law tort of commercial disparagement, it does not necessary preempt claims for false light, tortuous interference with a business expectancy, tortuous interference with a prospective economic advantage, and other similar claims); *Intern. Union of Op. Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill.2d 456, 870 N.E.2d 303, 308, 311 (2007) (recognizing the appropriateness of compensatory and punitive damages awards to a company, whose union wrongly alleged that the company did not pay prevailing wages, upon trade libel and tortuous interference with a prospective economic advantage theories, amongst others"). Throughout the Applications, U.S. Renal asserts that Fresenius has acted to restrict trade, limit patient access to care, increase healthcare costs, and impede patient outcomes. The foregoing misrepresentations threaten to irreparably damage Fresenius' reputation with the Board, with the public and may result in lost business opportunities to Fresenius in Illinois and elsewhere.

For avoidance of doubt, all, but not necessarily limited to all, of the following statements in the Applications are passed off as fact, and yet are untrue, and either directly disparage Fresenius or otherwise cast it in a false light:

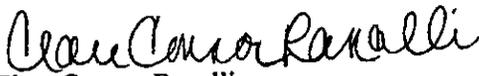
1. The Applications claim that Fresenius' "current system of admissions is increasing Hospital costs" by causing prolonged lengths of stay. As you well know, in the healthcare world this is a very damaging statement to make about another provider. It claims that federal and state government payer systems, as well as private insurers such as Blue Cross/Blue Shield, are paying more for care than is necessary as a direct result of Fresenius policies. No statement in the Applications may constitute a more clear violation of the Illinois Uniform Deceptive Trade Practice Act than this one, which is both a material misrepresentation and defamation. One of the Board's charges is to decrease health care costs. Thus, misrepresentations like this one may seriously and irreparably harm Fresenius' credibility before the Board. Despite the damaging nature of the statement, U.S. Renal offers nothing to support it.
2. U.S. Renal states that Fresenius "market dominance" leads to "severe" access issues for patients due to admissions policies of "existing providers." The only "existing provider" referenced in any of the Applications is Fresenius. Moreover, U.S. Renal claims that it is establishing the proposed facilities to give patients "choice," because Fresenius controls 70% of the market share and there are patients who either cannot or will not go to Fresenius.
  - a. The statements imply, if not openly express, that Fresenius employs restrictive admissions, turns patients away and limits access to care. Such claims are false. Fresenius Illinois' facilities are generally open to all patients regardless of their ability to pay, citizenship/documentation or dialysis access situation (e.g., whether the patient has a catheter).

- b. The statements further indicate to the Board that, due to the alleged admissions practices of Fresenius, there are patients who will not or cannot go to Fresenius. Again, such claims - particularly when couched as blanket generalizations - disparage Fresenius' services.
  - c. U.S. Renal is obligated under the Board's rules regarding the need to establish facilities in the face of maldistribution of services to explain why other dialysis providers are not an option. It is required to identify with specificity the alleged number of patients who will not or cannot go to Fresenius facilities and the reason why. The Applications fail to provide any specific information regarding patients who cannot or will not go to Fresenius, and simply disparage Fresenius.
3. The Applications claim that Fresenius enjoys a "monopoly" on dialysis services, and claims that physicians are therefore, "at their mercy" without referencing what the latter means. Again, both claims misrepresent material facts in a fashion which not only disparages Fresenius, but seeks Board reliance thereon for U.S. Renal's benefit.

We reiterate that Fresenius hereby demands that U.S. Renal cease and desist in making defamatory and/or disparaging statements about Fresenius, modify its Applications to remove any such untrue statements about Fresenius, and cease in making or publishing further defamatory and/or disparaging statements to the Board, whether by application, written communication, at public hearing, or otherwise. If U.S. Renal does not modify its Applications, utilizing the process in the Board's rules for doing so, Fresenius will take all necessary actions to remedy U.S. Renal's unlawful conduct before the Board, and as may otherwise be appropriate in alternate venues/jurisdictions. Fresenius intends to vigorously defend its reputation, but also prefers to avoid a prolonged dispute with U.S. Renal, which can be accomplished if U.S. Renal simply modifies the Applications and refrains from making further blanket untrue statements about Fresenius. If you have any questions, please do not hesitate to contact me directly.

Sincerely yours,

HOLLAND & KNIGHT LLP

  
Clare Connor Ranalli

CCR:mjy

cc: Steffanie Garrett  
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