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Fax

To: Mr. Dale Galassie **From:** Calvin Ganong

Company: Health Facilities and Services Review **Date:** 2/3/2012
Board

Fax: (217) 785-4111 **Phone:** (217) 782-3516

CC: **Pages:** 12 (including cover sheet)

Re: Fresenius Medical Center East Aurora: Project #11-120
Comments in Opposition to Application for Permit

- Urgent For Review Please Comment Please Reply

Comments:

Enclosed herein please find the Fresenius Medical Center East Aurora: Project #11-120
Comments in Opposition to Application for Permit.

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Fox Valley DIALYSIS, LTD.

Via Fax (217) 785-4111 & Federal Express

February 3, 2012

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

**Re: Fresenius Medical Center East Aurora: Project #11-120
Comments in Opposition to Application for Permit**

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 opposition to the Fresenius Medical Center ("FMC") East Aurora, project #11-120 (the "Project"), certificate of need application (the "Application").

Renaissance & its Affiliates oppose the Application as it rehashes the same inflated justifications used to support FMC's certificate of need application for the identical project last year (Project #10-086). The Health Facilities and Services Review Board (the "Board") issued to FMC a final denial of that certificate of need application on August 16, 2011. In our view the flawed fundamental facts which we respectfully suggest to the Board should serve as the basis for the denial of the Application are:

1. the insufficiency and unreliability of the patient demand and pre-renal patient referral data tendered by the referring physician; and
2. the understated capacity of existing dialysis facilities in the service area.

Both of these issues are discussed below.

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The insufficiency and unreliability of the patient demand and pre-renal patient referral data tendered by the referring physician.

Dr. Dodhia's (and his partner, Dr. Fakhruddin's) practice has not shown a material increase in his total number of patients for in-center hemodialysis from 2010 to 2011 sufficient to sustain the projected referrals. In those years his practice only grew 2.6% or 4 patients, from 153 to 157 (see Application, pp. 83-84). Of greater concern has been the insufficiency of material growth of his hemodialysis patients over the past four years as indicated in Table 1 below.

Year	Total Number of Hemodialysis Patients ¹
2008	133
2009	135
2010	153
2011	157

Since 2008 through 2011, the percentage of growth in the number of Dr. Dodhia's hemodialysis patients, on average, has been 4.5% per year - only 24 patients in 4 years. Yet, during those years this patient base has been used by Dr. Dodhia and FMC to support the creation or addition of 30 hemodialysis stations in its dialysis facilities.² As 144 new patients are required to achieve the 80% minimum target utilization percentage required by the Board for those new or additional stations, and his new hemodialysis patient base has in 4 years grown only by 24 patients, it begs the question, for purposes of this Project, ... where is the need? It is overstated. It is clear that Dr. Dodhia does not have the patient referral base to support the 30 hemodialysis stations in FMC facilities created over the past four years, let alone the 12 new hemodialysis stations that it is asking the Board to approve in the Project.

Moreover, the referring physician's support letter identifies approximately 83 pre-renal patients (originating in zip codes 60502-60506) that he currently treats in his

¹ See FMC East Aurora Application #11-120, pgs. 81-84

² See FMC Sandwich Application #07-116, 8 Stations, Approved May 20, 2008; FMC Aurora Application #09-018, 6 Stations, Approved September 1, 2009; FMC Aurora Application #10-054, 4 Stations, Approved October 26, 2010; and FMC Batavia Application #09-067, 12 Stations, Approved March 2, 2010.

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practice and is likely to refer for admission to this proposed unit within two years (see Application, pp. 77-79). Due to the insignificant growth in his patient practice, it is more likely than not that those patients, assuming they all materialize, will thru attribution replace existing patients, but will not be "new patients". Thus, while purporting a dramatic increase in the patient demand for dialysis services, the referral of the average annual projected 41.5 pre-renal patients is only consistent with his historical referrals for the three immediately preceding years, and therefore does not reflect the dramatic increase in patient demand that the referring physician would like the Board to believe (see Table 2 below).

Reporting Period	No. of Patients
September 10, 2008 - August 31, 2009 ³	45
October 1, 2009 - September 30, 2010 ⁴	41
October 1, 2010 - September 30, 2011 ⁵	31

Furthermore, there are discrepancies between some of the practice and patient data that FMC and Dr. Dodhia use and what is maintained by the Renal Network, which raises further questions regarding the reliability of that data, and necessitates greater scrutiny. For instance, utilization data for the third quarter 2011 obtained from the Renal Network reveals discrepancies in the Application in the reporting of patient data for FMC Aurora. The Renal Network's data reflects that FMC Aurora has 109 hemodialysis patients and not the reported 113 hemodialysis patients (see Exhibit A hereto). Given that, FMC Aurora's occupancy is 75.7% and not the reported 78.47%. As another example, Dr. Dodhia identifies that he has currently 15 patients at the FMC Aurora facility from zip code 60542 (North Aurora). However, that zip code was prominently used by Dr. Dodhia to support the FMC West Batavia's certificate of need application⁶, which raises a number of concerns, among them is the repeated use of the same patient data to support multiple certificate of need applications, an issue we brought to the Board's attention in our oral and written testimony in opposition to

³ See FMC Batavia CON Application #09-067, pg. 60.

⁴ See FMC East Aurora CON Application #10-086, pg. 50.

⁵ See FMC East Aurora Application #11-120, pg. 80

⁶ FMC-West Batavia, CON #09-067, was approved by the Board on March 2, 2010.

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FMC's failed attempt to obtain a certificate of need last year for its Project #10-086. We restate our concerns about the possibility of FMC taking advantage of the Board's general practice of reviewing certificate of need applications individually without taking into account any previous application by an applicant. When the same physician has supported numerous recent certificate of need applications, as is the case here, his referral data from those applications is of great relevance.

The understated capacity of existing dialysis facilities in the service area.

Contrary to FMC's assertions, there is existing capacity in the dialysis facilities within the service area to accommodate any future increased demand for dialysis services from the community. Patients to be referred by Dr. Dodhia to the new FMC - East Aurora facility live well within 30 minutes of four other new facilities: FMC- West Batavia (0% occupancy); U.S. Renal Care, Bolingbrook (0% occupancy); FMC-West Chicago (32% occupancy) and FMC-Naperbrook (0% occupancy).

While FMC continues to discard the viability of FMC West Batavia, which is or will soon be operational, and as determined by MapQuest, FMC West Batavia is 20 minutes driving time from the Project, and therefore viable to serve the needs of patients from Aurora (see Exhibit B, attached hereto). Furthermore, when measured from the center of zip codes 60505 and 60506, FMC West Batavia is 18 and 12 minutes driving time, respectively (see chart and map, Exhibit C, attached hereto). Therefore, we believe that FMC West Batavia is not only a viable alternative, but significantly material to the analysis concerning the viability and need of the Project. We encourage the Board to withhold its approval of the Project until FMC West Batavia becomes fully occupied.

In addition, we respectfully suggest that the Board inquire whether the 15 patients at FMC Aurora that are from zip code 60542 will now transfer to FMC West Batavia now that it is operational, and further inquire whether new patients from that zip code will be admitted to FMC West Batavia, which would then reduce FMC Aurora's census to 65.3%, and thereby obviating the need for the Project.

Moreover, we submit that FMC West Chicago, US Renal Care Bolingbrook and FMC Naperbrook facilities are also viable options to the Project. Those facilities are well within the 30 minutes travel standard adopted by the Board, when such travel time is measured from the center of three primary zip codes - 60504, 60505 and 60506 - that Dr. Dodhia purports to refer patients to the Project. Assuming a normal distribution of patients within those zip codes, those facilities are a viable option for all patients

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residing within those zip codes. As set forth in Exhibit C hereto, when the travel time is measured from the center of those zip codes:

- FMC West Chicago is:
 - 10.15 miles/16 minutes from the center of 60504;
 - 13.41 miles/23 minutes from the center of 60505; and
 - 14.86 miles/24 minutes from the center of 60506.

- US Renal Care Bolingbrook is 13.91 miles/22 minutes from the center of 60504.

- FMC Naperbrook is:
 - 8.23 miles/13 minutes from the center of 60504;
 - 12.58 miles/23 minutes from the center of 60505; and
 - 15.59 miles/30 minutes from the center of 60506.

As of the 3rd Quarter of 2011, FMC West Chicago is at 32% utilization pursuant to the most recently available Renal Network data. Thus, when coupled with the available capacity at FMC West Batavia, FMC West Chicago can absorb a significant amount of the projected increase demand if it in fact materializes.

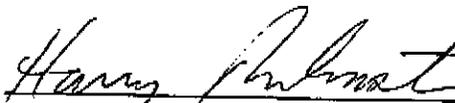
Also, US Renal Care Bolingbrook, approved by the Board in October 2011, is a viable alternative with its 13-stations as it is only 15.32 miles and 25 minutes driving time from the Project. Equally viable is FMC Naperbrook, just recently approved by the Board, with its 16-stations, and is only 11.54 miles and within 20 minutes driving time from the Project. Together, with the aforementioned facilities, FMC Naperbrook provides all patients from zip codes 60504, 60505, 60506 with three additional underutilized facilities within 30 minutes travel time where they can obtain their ESRD treatments.

In summary, the picture FMC is trying to paint with respect to the dire need within the community for an additional dialysis facility now in Aurora, in the absence of viable alternative options, is simply not accurate. For all of the foregoing reasons, the FMC-East Aurora certificate of need application should be denied, again.

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Respectfully Submitted,

FOX VALLEY DIALYSIS, LTD.

By: 
Harry Rubinstein, M.D., President

Attachments

Cc: Calvin Ganong
Andrés J. Gallegos, Esq.
Delia Wozniak

Exhibit A The Renal Network 9/10 Utilization Data as of 09-30-2011

Region	Provider #	Facility Name	Hemo Stations	MWFF Shifts	TTS Shifts	In-Center Hemo Patients	Home Hemo Patients	CAPD Patients
IL-7	142515	FMC - AURORA DIALYSIS CENTER	14	4	4	109	0	8

Driving Directions from 934 E New York St, Aurora, Illinois 60505 to 2580 Fabyan Pkw... Page 1 of 2



Notes

Trip to:
2580 Fabyan Pkwy
West Chicago, IL 60185-9600
11.00 miles / 19 minutes

A 934 E New York St, Aurora, IL 60505-3724

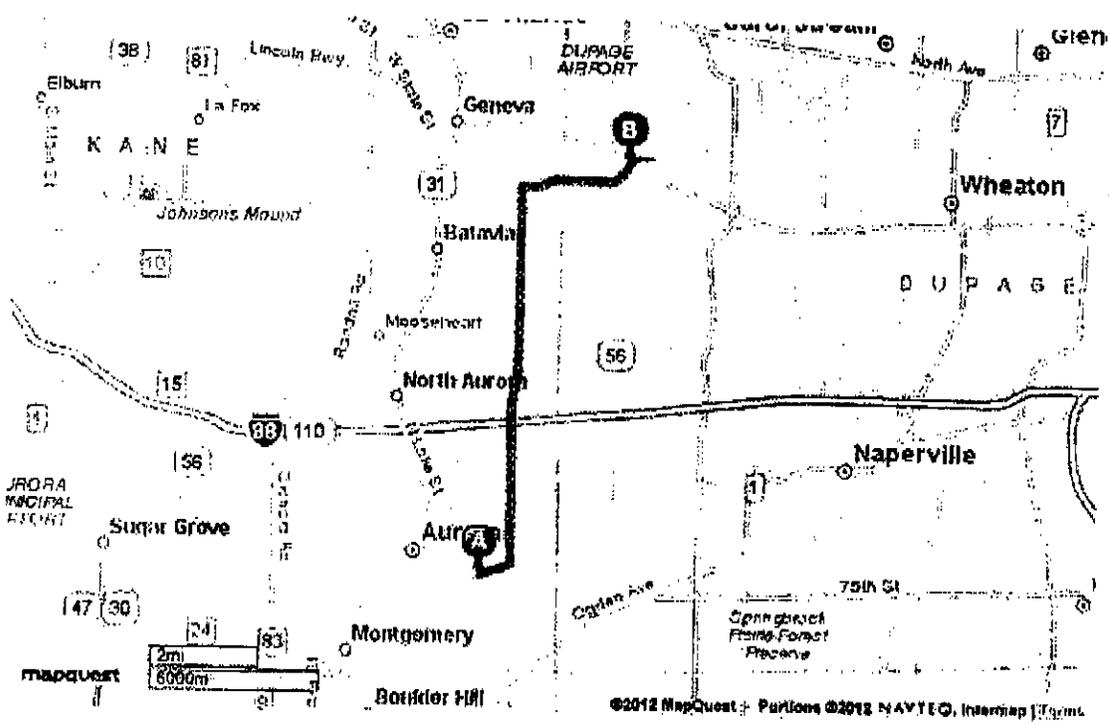
-  1. Start out going east on E New York St toward Hickory Ave. [Map](#) 0.6 Mi
0.6 Mi Total
-  2. Turn left onto N Farnsworth Ave. [Map](#) 4.0 Mi
4.6 Mi Total
-  3. N Farnsworth Ave becomes Kirk Rd. [Map](#) 3.9 Mi
8.5 Mi Total
-  4. Turn right onto E Fabyan Pky. [Map](#) 2.5 Mi
11.0 Mi Total
-  5. 2580 FABYAN PKWY. [Map](#)

B 2580 Fabyan Pkwy, West Chicago, IL 60185-9600

EXHIBIT B

Driving Directions from 934 E New York St, Aurora, Illinois 60505 to 2580 Fabyan Pkw... Page 2 of 2

Total Travel Estimate: 11.00 miles - about 19 minutes



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Exhibit C**Zip Code Centers are according to MapQuest****60506 (Center)**

1300-1311 Winona Ave, 60506	FMC - West Batavia, 2580 W Fabyan Pkwy, 60510	7.22 miles / 12 minutes
1300-1311 Winona Ave, 60506	FMC - West Chicago, 450 E Roosevelt Rd, 60185	14.86 miles / 24 minutes
1300-1311 Winona Ave, 60506	FMC - Naperbrook, 2451 S. Washington St, 60565	15.59 miles / 30 minutes

60505 (Center)

500-599 Columbia St, 60505	FMC - West Batavia, 2580 W Fabyan Pkwy, 60510	9.30 miles / 18 minutes
500-599 Columbia St, 60505	FMC - West Chicago, 450 E Roosevelt Rd, 60185	13.41 miles / 23 minutes
500-599 Columbia St, 60505	FMC - Naperbrook, 2451 S. Washington St, 60565	12.58 miles / 23 minutes

60504 (Center)

700-799 Long Grove Dr, 60504	US Renal Care 396 Remington Blvd, 60440	13.91 miles / 22 minutes
700-799 Long Grove Dr, 60504	FMC - West Chicago, 450 E Roosevelt Rd, 60185	10.15 miles / 16 minutes
700-799 Long Grove Dr, 60504	FMC - Naperbrook, 2451 S. Washington St, 60565	8.23 miles / 13 minutes
