

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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| In the Matter of |) | |
| |) | |
| DAVITA INC. |) | |
| a corporation, |) | |
| |) | |
| RV MANAGEMENT CORP. |) | |
| a corporation, |) | |
| |) | |
| RENAL VENTURES PARTNERS, LLC |) | |
| a limited liability company, |) | Docket C- |
| |) | |
| RENAL VENTURES LIMITED, LLC |) | |
| a limited liability company, |) | |
| |) | |
| and |) | |
| |) | |
| RENAL VENTURES MANAGEMENT, LLC |) | |
| a limited liability company. |) | |
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not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as all

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “DaVita” means DaVita Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by DaVita Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, DaVita will include Renal Ventures Management.
- B. “Renal Ventures” means RV Management Corp. and Renal Ventures Partners, LLC, their directors, officers, employees, agents, representatives, successors, and assigns; and their joint ventures, subsidiaries, divisions, groups, and affiliates contr6-1(i)-2(dwlls)1(d22(og]TJ 0 34 >>B (

- I. “Acquisition Date” means the date on which the Acquisition is consummated.
- J. “DaVita Joint Venture Equity Interests” means the joint venture equity interest owned by DaVita in (1) DaVita Denton Dialysis, located at 3305 Unicorn Lake Blvd., Denton, TX 76210-0102; and (2) DaVita Lawrenceville Dialysis, located at 1840 Princeton Avenue, Lawrenceville, NJ 08648.
- K. “Brick, NJ Area” means the area in and around Brick, NJ, consisting of the zip codes and areas described in Appendix B to this Order.
- L. “Clifton, NJ Area” means the area in and around Clifton, NJ, consisting of zip codes and areas described in Appendix B to this Order.
- M. “Clinic” means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- N. “Clinic’s Physician Contracts” means all agreements to provide the services of a Physician to a Clinic, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical director for the Clinic and “joinder” agreements with Physicians in the same medical practice as a medical director of the Clinic.
- O. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain, owned by or pertaining to, a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, policies and procedures, processes, or other trade secrets.
- P. “Contract Services” means services performed pursuant to any Clinic’s Physician Contract.
- Q. “DaVita Clinics” or “DaVita Clinic” means any one, or all of following:
1. DaVita Frisco Dialysis, located at 6116 Sports Village Road, Frisco, TX 75033;
 2. DaVita Hackettstown Dialysis, located at 657 Willow Grove St., 1st Floor West Wing, Suite 202, Hackettstown, NJ 07840; and
 3. DaVita Joint Venture Equity Interests.
- R. “DaVita Clinic Assets” and “Renal Ventures Clinic Assets” mean the following assets Relating To the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic, respectively:
1. all rights under the Clinic’s Physician Contracts;

2. leases for the Real Property of the Clinics;
3. consumable or disposable inventory consistent with the ordinary course of business

Respondents may divest a copy of the document with the portions not Relating To the DaVita Clinics or the Renal Ventures Clinics redacted, and

- k. copies of contracts with Payors and Suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of Respondents to make such disclosure.
- 6. Respondents' Medicare and Medicaid provider numbers, to the extent transferable;
- 7. all permits and licenses, to the extent transferable;
- 8. DaVita Policies and Procedures and Renal Ventures Policies and Procedures, if such Policies and Procedures are used exclusively in the DaVita Clinics or Renal Ventures Clinics, respectively;
- 9. Intangible Property relating exclusively to the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic; and
- 10. Any other assets that are used in, or necessary for, the Operation Of A Clinic.

PROVIDED, HOWEVER, that "assets Relating To the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic" does not include Excluded Assets.

- S. "DaVita Medical Protocols" means medical protocols promulgated by DaVita, whether in hard copy or electronic copy, that have been in effect at a DaVita Clinic at any time since January 1, 2016, *PROVIDED, HOWEVER*, "DaVita Medical Protocols" does not mean medical protocols adopted or promulgated, at any time, by any Physician or by any Acquirer, even if such medical protocols are identical, in whole or in part, to medical protocols promulgated by DaVita.
- T. "DaVita Policies and Procedures" means the dialysis policies and procedures manual promulgated by DaVita, whether in hard copy or electronic copy, that have been in effect at a DaVita Clinic, at any time since January 1, 2016.
- U. "Denton, TX Area" means the area in and around Denton, TX, consisting of the zip codes and areas described in Appendix B to this Order.
- V. "Designated Employee" means (1) an Employee Of A DaVita Clinic, (2) an Employee Of A Renal Ventures Clinic, and (3) any of the additional DaVita, Renal Ventures Management, or Renal Ventures Limited employees or persons who occupy the job descriptions listed in Non-Public Appendix C to this Order.
- W. "Divestiture Trustee" means the person appointed to act as Trustee by the Commission pursuant to Paragraph II.A or Paragraph V of this Order.

1. attracting patients to such Clinic for dialysis services, providing dialysis services to patients of such Clinic, and dealing with their Physicians, including, but not limited to, services Relating To hemodialysis and peritoneal dialysis;
2. providing medical products to patients of such Clinic;
3. maintaining the equipment on the premises of such Clinic, including, but not limited to, the equipment used in providing dialysis services to patients;
4. purchasing supplies and equipment for such Clinic;
5. negotiating leases for the premises of such Clinic;
6. providing counseling and support services to patients receiving products or services from such Clinic;
7. contract 0.00-6(ces)-5(fn]TJ - -0.004 7p/P <</MCID 47 >>BDC -7.49 -1.15 Td6(nt)-)-2(ng2]

LL. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).

MM. “Real Property” means the real property on which, or in which, the

SS. “DaVita-PDA Divestiture Agreement” means the following agreements, attached as Non-Public Appendix A to this Order including, but not limited to, the Amended and Restated Asset Purchase Agreement dated February 27, 2017, by and among DaVita and PDA, and

PROVIDED FURTHER, HOWEVER, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which any of the divestitures accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture including, but not limited to, entering into additional agreements or

- D. With respect to the Renal Ventures Medical Protocols, DaVita shall grant to the Acquirer royalty-free, worldwide non-exclusive licenses for the use, without any limitation, of the Renal Ventures Medical Protocols (including the right to transfer or sublicense, exclusively or nonexclusively, to others by any means).
- E. With respect to Renal Ventures Policies and Procedures and the DaVita Policies and Procedures not used exclusively at Renal Ventures Clinics or DaVita Clinics, respectively, DaVita shall grant to the Acquirer a royalty-free, perpetual, worldwide, non-exclusive, non-transferable (unless PDA is sold or any PDA Clinic is sold) and non-sublicensable license to use, without any limitation, such Policies and Procedures.
- F. With respect to Intangible Property not exclusively Relating To the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic, DaVita shall grant to the Acquirer a royalty-free, perpetual, worldwide, non-exclusive, non-transferable (unless PDA is sold or any PDA Clinic is sold) and non-sublicensable, license to use, without any limitation, all Intangible Property.
- G. Respondents shall:
1. Place no restrictions on the use by any Acquirer of any of the DaVita Clinic Assets or Renal Ventures Clinic Assets to be divested to such Acquirer, or interfere with or otherwise attempt to interfere with any Acquirer's use of any of the DaVita Clinic Assets or Renal Ventures Clinic Assets to be divested to such Acquirer including, but not limited to, seeking or requesting the imposition of Governmental Approvals or other governmental restrictions on the Acquirer's business operations Relating To such Clinics.
 2. Assign to the Acquirer all of the Clinic's Physician Contracts for the DaVita Clinics and Renal Ventures Clinics. *PROVIDED HOWEVER*, that (1) if the Acquirer enters into a Clinic Physician Contract for a DaVita Clinic or a Renal Ventures Clinic before such Clinics are divested pursuant to Paragraph II.A. of this Order, and (2) the Acquirer certifies its receipt of such contract and attaches it as part of the Remedial Agreement, then Respondents shall not be required to make the assignment for such Clinics as required by this Paragraph.
 3. With respect to all contracts included in DaVita Clinic Assets and Renal Ventures Clinic Assets other than Clinic's Physician Contracts, at the Acquirer's option and at the Time of Divestiture of each DaVita Clinic and Renal Ventures Clinic:
 - a. if such contract can be assigned without third party approval, assign Respondents' rights under the contract to the Acquirer; and
 - b. if such contract can be assigned to the Acquirer only with third party approval, assist and cooperate with the Acquirer in obtaining:

- i. such third party approval and in assigning the contract to the Acquirer, or
- ii. a new contract.

H. Respondents shall:

1. at the Time of Divestiture of each DaVita Clinic and Renal Ventures Clinic, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
2. not object to the sharing of Payor and Supplier contract terms Relating To the DaVita Clinics and the Renal Ventures Clinics: (a) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (b) if the Acquirer enters into a confidentiality agreement with Respondents not to disclose the information to any third party.

I. Respondents shall:

1. If requested by an Acquirer, facilitate interviews between each Designated Employee and the Acquirer, and shall not discourage such employees from participating in such interviews;
2. not interfere in employment negotiations between each Designated Employee and an Acquirer;
3. not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the Designated Employee from being employed by an Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with an Acquirer;
4. cooperate with an Acquirer of a DaVita Clinic or a Renal Ventures Clinic in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts such offer of employment from an Acquirer;
5. eliminate any contractual provisions or other restrictions that would otherwise prevent the Designated Employee from being employed by an Acquirer;
6. eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to an Acquirer any information Relating To the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic; and
7. pay, for the benefit of any Designated Employee who accepts employment with an Acquirer, all accrued bonuses, vested pensions and other accrued benefits.

Respondents shall comply with the terms of this Paragraph II.I. from the time Respondents sign the Agreement Containing Consent Order until sixty (60) days after the Time of Divestiture of each DaVita Clinic and each Renal Ventures Clinic for the employees who are Designated Employees.

PROVIDED, HOWEVER, that if, at any time after the Time of Divestiture, the Acquirer of the DaVita Clinic Assets and the Renal Ventures Clinic Assets gives Respondents an unsolicited list of employees to whom the Acquirer does not intend to offer employment, then such employees may be hired by DaVita as full-time employees without violating this Paragraph II.I.

PROVIDED, FURTHER, HOWEVER, that no earlier than fifteen (15) days after the Time of Divestiture, Respondents may submit a written request to the Acquirer wsnmin43 Tc 0.003s-

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1. divested to the Acquirer pursuant to this Order, or
 2. in the possession of the Acquirer, and previously used by Respondents in the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic.
- N. For two (2) years following the Time of Divestiture of each DaVita Clinic and each Renal Ventures Clinic, DaVita shall not solicit the business of any patient who received any goods or services from such Clinic between July 1, 2016, and the date of such divestiture, *PROVIDED, HOWEVER*, DaVita may (1) make general advertisements for the business of such patients including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at such patients, and (2) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any DaVita employee.
- O. Respondents shall convey to the Acquirer of the DaVita Clinics and Renal Ventures Clinics the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic by the Acquirer, and if the Acquirer is unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.
- P. Respondents shall do nothing to prevent or discourage Suppliers that, prior to the Time of Divestiture of any DaVita Clinic or any Renal Ventures Clinic, supplied goods and services for use in any such Clinic from continuing to supply goods and services for use in such Clinic. Additionally, Respondents shall use reasonable best efforts to assist the Acquirer in entering agreements with existing or new Suppliers if agreements cannot be assigned to the Acquirer.
- Q. Respondents shall not terminate any transition services agreement that is a part of any Remedial Agreement before the end of the term approved by the Commission without prior approval of the Commission.
- R. The purpose of Paragraph II of this Order is to ensure the continuation of the DaVita Clinics and the Renal Ventures Clinics as, or as part of, an ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the Acquisition, to ensure that the DaVita Clinics and the Renal Ventures Clinics are operated independently of, and in competition with, Respondents' clinics, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order is issued, DaVita shall not, without

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IV.

IT IS FURTHER ORDERED that:

- A. Richard Shermer of R. Shermer & Co. shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, attached as Appendix D and Non-Public Appendix E (Compensation) to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of DaVita, which consent shall not be unreasonably withheld. If DaVita has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to DaVita of the identity of any proposed Monitor, DaVita shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, DaVita shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor DaVita's compliance with the terms of this Order, and the Remedial Agreements in a manner consistent with the purposes of this Order.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order, and the Remedial Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by this Order, and the Remedial Agreements;
 - b. Monitoring any transition services agreements;

8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, and the Remedial Agreements.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph IV.
 - G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, and the Remedial Agreements.

4. The Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to DaVita's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner that receives the prior approval of the Commission and to an Acquirer or Acquirers that receive the prior approval of the Commission, as required by this Order; *PROVIDED, HOWEVER*, if the Trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the Trustee shall divest the assets to the acquiring entity selected by DaVita from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that DaVita shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Trustee shall serve, without bond or other security, at the cost and expense of DaVita, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have the authority to employ, at the cost and expense of DaVita, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Trustee's duties and responsibilities. The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for the Trustee's services, all remaining monies shall be paid at the direction of DaVita, and the Trustee's power shall be terminated. The compensation of the

9. DaVita may require the Trustee and each of the Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Trustee from providing any information to the Commission.
- E. If the Commission determines that a Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Trustee in the same manner as provided in this Paragraph V.
- F. The Commission or, in the case of a court-appointed Trustee, the court, may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.

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5. Not

Non-Public Appendix A
Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix B

Zip Codes and Areas

APPENDIX B

AREA DEFINITIONS

- Five digit numbers refer to zip codes.
- Geographic areas bounded by roads include all properties abutting the referenced road (*i.e.*, properties on both sides of the road).
- Zip codes or other areas fully surrounded by areas included in the area definition shall be considered part of the area definition.
- Area definitions are based on maps submitted to the Commission staff by DaVita.

| | Divested Clinics (Medicare Provider Numbers) | Corresponding Area Definition |
|---|---|--|
| 1 | RVM Brick | The area in and/or near Brick, New Jersey, consisting of: 07731, the portion of 08527 that lies to the south and east of Aldrich Road, Bennetts Mills Road, and West Veterans Highway, the portion of 08533 that lies to the east of Hawkin Road and to the south of West Veterans Highway, 08701, 08720, 08723, 08724, 08732, the portion of 08733 that lies to the east of Hawkin Road and Route 539, 08735, 08738, 08742, 08751, 08753, 08755, 08757, and the portion of 08759 that lies to the east of Route 539 and north of Route 530. |
| 2 | RVM Clifton | The area in and/or near Clifton, New Jersey, consisting of: 07011, 07012, 07013, 07014, 07055, 07424, 07501, 07503, 07504, 07505, 07513, 07514, and 07524. |
| 3 | DVA Hackettstown | The area in and/or near Hackettstown, New Jersey, consisting of: 07821, 07825, 07828, 07836, 07838, 07840, 07847, 07850, 07852, 07853, 07856, 07857, 07863, 07865, 07876, 07874, and 07930. |
| 4 | DVA Lawrenceville | The area in and/or near Lawrence Township, New Jersey, consisting of: 08608, 08609, 08610, 08611, 08618, 08619, the portion of 08620 that lies to the west of Interstate 95, 08628, 08629, 08638, 08648, 08690, and the portion of 08691 that lies to the west of Interstate 95. |

5 RVM Somerville

The area in and/or near Somerville, New Jersey, consisting of: 07059, the portion of 07920 that lies to the south of Interstate 78, 07921, 08805, 08807, 08812, 08835, 08836, 08844, 08846, 08853, 08854, 08869, the portion of 08873 that lies north of Amwell Road and west of Demott Lane, 08876, and 08880.

Non-Public Appendix C
Designated Employees and Job Descriptions

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix D

Monitor Agreement

Non-Public Appendix E

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]