

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHAEL A. COX, Attorney General
of the State of Michigan, on behalf of the
People of the State of Michigan,

Plaintiff,

v

DAVITA INC., a Corporation
and GAMBRO HEALTHCARE INC., a Corporation,

Defendants.

Hon. Joyce Draganchuk
Ingham County CC No. 05-1181-CP

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CONSENT JUDGMENT

The Plaintiff, Michigan Attorney General Michael Cox (MIAG), on behalf of the State of Michigan, brought this lawsuit against Defendants DaVita, Inc. (DaVita) and Gambro Healthcare Inc. (Gambro) alleging violations of the Michigan Antitrust Reform Act (MARA), MCL 445.771, *et seq.* for entering into a contract whereby DaVita would purchase Gambro's outpatient kidney dialysis clinics in Michigan, which would have the effect of restraining commerce or trade in the provision of End Stage Renal Disease (ESRD) outpatient dialysis services in the relevant Michigan geographic markets of Kent County, Ottawa County, Jackson County, and Muskegon County; and

Defendants DaVita and Gambro have denied the allegations that their contract and the proposed acquisitions by DaVita of Gambro's assets constituted restraints of trade under Section 2 of MARA, MCL 445.772;

The parties agree that this Court has jurisdiction over the subject matter pursuant to the Revised Judicature Act (RJA), MCL 14.02 and MCL 600.605, and Section 5 of MARA, MCL 445.775;

The parties agree that this Court has personal jurisdiction over the Defendants pursuant to Sections 711 and 715 of the RJA, MCL 600.711 and 600.715.

The parties, through their respective counsel, consent to the entry of this Consent Judgment without trial or adjudication of any issue or fact, and without the Consent Judgment constituting any evidence against, or an admission by, any party with respect to any issue of law or fact;

MIAG has consented to Defendant DaVita's proposed acquisition of Defendant Gambro, based on Defendant DaVita's representation that it will divest certain Michigan assets for the purpose of maintaining viable competition in the ESRD outpatient dialysis service markets;

Defendant DaVita represents it has a ready, willing, and able buyer to purchase the divested assets;

NOW, THEREFORE, before taking of any testimony and without trial or final adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

IT IS HEREBY ORDERED:

- A. This Court has jurisdiction over the subject matter pursuant to the RJA, MCL 14.102 and MCL 600.605, and Section 5 of MARA, MCL 445.775.
- B. This Court has personal jurisdiction over the Defendants pursuant to Sections 711 and 715 of the RJA, and MCL 600.711 and MCL 600.715.

II. DEFINITIONS

IT IS HEREBY ORDERED that the following definitions shall apply in this Order:

- 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. (including, after the Effective Date, Gambro Healthcare Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Gambro" means Gambro Healthcare Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Gambro Healthcare Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Commission Decision and Order" means the Order to be entered by the Federal Trade Commission in the Matter of DaVita, Inc., a corporation, Commission File No. 051-0051.
- E. "MIAG" means the State of Michigan, Department of Attorney General.
- F. "Acquirer" means Renal Advantage.
- G. "Appendix A Clinics" means Clinics listed in Appendix A to this Order.
- H. "Appendix A Clinic Assets" means the Appendix A Clinics, and all Assets Associated with each of those Clinics, except for the Owned Real Property.
- I. "Assets Associated" means the following assets Relating To the Operation Of A Clinic:
1. all rights under the Clinic's Physician Contracts;
 2. leases for the Real Property of the Clinic;

3. consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and at least ten (10) treatment days of dialysis supplies and pharmaceuticals, including, but not limited to, erythropoietin;
4. all rights, title and interest of DaVita in any tangible property (except for consumable or disposable inventory) that has been on the premises of the Clinic at any time since July 28, 2005, including, but not limited to, all equipment, furnishings, fixtures, improvements, and appurtenances;
5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of The Clinic located on the premises of the Clinic or in the possession of the Regional Manager responsible for such Clinic (or copies thereof where DaVita has a legal obligation to maintain the original document), including, but not limited to:
 - a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,
 - b. financial records,
 - c. personnel files,
 - d. Physician lists and other records of the Clinic's dealings with Physicians,
 - e. maintenance records,
 - f. documents Relating To policies and procedures,
 - g. documents Relating To quality control,
 - h. documents Relating To Payors,
 - i. documents Relating To Suppliers,
 - j. documents Relating To Clinics other than the Clinic To Be Divested,

PROVIDED, HOWEVER, if such documents are located other than on the premises of the Clinic To Be Divested, DaVita may submit a copy of the document with the portions not Relating To the Clinic To Be Divested 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 DaVita to make such disclosure;

6. DaVita's Medicare and Medicaid provider numbers, to the extent transferable;
7. all permits and licenses, to the extent transferable;
8. Intangible Property relating exclusively to the Operation Of The Clinic; and a royalty-free perpetual worldwide license for the use, without any limitation, of all other Intangible Property Relating To the Operation Of The Clinic (including the right to transfer or sublicense such Intangible Property, exclusively or nonexclusively, to others by any means); and
9. assets that are used in, or necessary for, the Operation Of The Clinic.

PROVIDED, HOWEVER, that "Assets Associated" does not include Excluded Assets.

J. "Assets To Be Divested" means the Appendix A Clinic Assets.

K. "Clinic" means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.

L. "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 "joiner" agreements with Physicians in the same medical practice as a medical director of the Clinic.

M. "Clinic To Be Divested" and "Clinics To Be Divested" means the Appendix A Clinics.

N. "Contract Services" means services performed pursuant to any Clinic's Physician Contract.

O. "DaVita Employee Of A Clinic To Be Divested" and "DaVita Employee Of The Clinic To Be Divested" means an Employee Of A Clinic To Be Divested who is employed by DaVita.

P. "DaVita's Medical Protocols" means medical protocols promulgated by either DaVita or Gambro, whether in hard copy or embedded in software, that have been in effect at any time since July 28, 2005. *PROVIDED, HOWEVER*, "DaVita's 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 either DaVita or Gambro.

Q. "Divestiture Agreements" means any agreement pursuant to which DaVita divests any Appendix A Clinic Assets pursuant to this Order.

R. "Effective Date" means the date on which DaVita acquires Gambro Healthcare Inc.

S. "Employee Of A Clinic To Be Divested" and "Employee Of The Clinic To Be Divested" mean any individual (including, but not limited to, a clinic director, manager, nurse, technician, clerk, or social worker) who is not a Regional Manager, who is employed by DaVita or by the Acquirer who has worked part-time or full-time on the premises of such Clinic To Be Divested at any time since June 1, 2005, regardless of whether the individual has also worked on the premises of any other Clinic.

T. "Excluded Assets" means:

1. all cash, cash equivalents, and short term investments of cash;
2. accounts receivable;
3. income tax refunds and tax deposits due DaVita;
4. unbilled costs and fees, and Medicare bad debt recovery claims, arising before a Clinic is divested to the Acquirer;
5. DaVita's Medical Protocols (except if requested by the Acquirer pursuant to Paragraph III.B.17.b. of this Order);
6. rights to the names "DaVita" and "Gambro" and any variation of those names, and any names, phrases, marks, trade names, and trademarks to the extent they include the following, "REN," "Total Renal Care," "Renal Treatment Centers," "Vivra," "At Your Service," "At Your Service (& Design)," "Dancing Star Logo," "DaVita At Home," "DaVita At Home (& Design)," "DaVita Clinical Research," "DaVita Laboratory Services," "DaVita Nephrology Partners," "DaVitaCare," "DaVita's Key To Better Health," "He/She Gives Life," "K.T. Family Foundation (& Design)," "Kidney Education And You," "Life-Alysis," "Maxine," "Miscellaneous Design (Alligator Design)," "Miscellaneous Design (Bird Design)," "Miscellaneous Design (Star in Square)," "Open Access & Open Access (& Design)," "Our Village Pharmacy," "Our Village Pharmacy (Design)," "Reggie," "Renal Connect," "Rising Star Design," "RMS," "RMS & Design," "Snappy," "Star Rx," "Star Rx (& Design)," "Star Rx Reminder," "Star Rx Reminder (& Design)," "Star/Heart Design," "Swirling Star Logo," or "Where Quality of Life Meetings Quality of Care," "Gambro Connections," "Gambro Connections (& Design)," "Gambro Healthcare Laboratory Services," "Gambro Healthcare Patient Services," "Gambro Nephrology Partners," "Labscope," "Labscope Online (& Design)," "The Patient's Benchmark in Renal Replacement Therapy," "LSO On the Go," "Servicelink," "RIMS," and "AIMS;"
7. insurance policies and all claims there under;
8. prepaid items or rebates;

9. minute books (other than governing body minute books of the Clinic To Be Divested), tax returns, and other corporate books and records;
10. any inter-company balances due to or from DaVita or its affiliates;
11. all benefits plans;
12. all writings and other items that are protected by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection, except to the extent such information is necessary to the Operation Of A Clinic that is divested;
13. telecommunication systems equipment and applications, and information systems equipment including, but not limited to computer hardware, not physically located at a Clinic To Be Divested but shared with the Clinic To Be Divested through local and/or wide area networking systems;
14. e-mail addresses and telephone numbers of DaVita's employees;
15. Software;
16. computer hardware used in the Operation Of The Clinic that is (a) not located at the Clinic, and (b) not otherwise to be divested pursuant to a Divestiture Agreement;
17. all Supplier or provider numbers issued to DaVita or Gambro by a Supplier or Payor with respect to any Clinic To Be Divested, except for DaVita's Medicare and Medicaid provider numbers for each Clinic To Be Divested;
18. rights under agreements with Payors and Suppliers that are not assignable even if DaVita and Gambro approve such assignment;
19. office equipment and furniture that (a) is not, in the Ordinary Course Of Business, physically located at the Clinic To Be Divested, (b) is shared with Clinics other than the Clinic To Be Divested, and (c) is not necessary to the Operation Of The Clinic To Be Divested.
20. Licensed Intangible Property; and
21. strategic planning documents that
 - a. relate to the Operation Of The Clinic other than the Clinic To Be Divested, and
 - b. are not located on the premises of the Clinic To Be Divested.

U. "Governmental Approvals" means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.

V. "Government Approvals For Continued Operation" means any Governmental Approvals, other than Government Approvals For Divestiture, that the Acquirer must have to continue to operate a Clinic To Be Divested.

W. "Governmental Approvals For Divestiture" means any Governmental Approvals that the Acquirer must have to own, and to initially operate, a Clinic To Be Divested, including, but not limited to, state-issued licenses and state-issued certificates of need.

X. "Intangible Property" means intangible property Relating To the Operation Of A Clinic To Be Divested including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property.

Y. "Licensed Intangible Property" means intangible property licensed to DaVita from a third party Relating To the Operation Of A Clinic To Be Divested including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property that are licensed to DaVita. ("Licensed Intangible Property" does not mean modifications and improvements to intangible property that are not licensed to DaVita)

Z. "Material Confidential 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, processes, or other trade secrets.

AA. "Monitor Agreement" means the Monitor Agreement dated _____ between DaVita Inc., and John Strack and Mitch S. Nielson of Focal Point Medical Consulting Group. The Monitor Agreement is attached as Appendix C to this Order. Confidential Exhibits A and B to the Monitor Agreement shall be kept confidential, pursuant to the Protective Order dated _____.

BB. "Operation Of A Clinic" and "Operation Of The Clinic" mean all activities Relating To the business of a Clinic, including, but not limited to:

1. attracting patients to the Clinic for dialysis services, providing dialysis services to patients of the 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 the Clinic;
3. maintaining the equipment on the premises of the Clinic, including, but not limited to, the equipment used in providing dialysis services to patients;
4. purchasing supplies and equipment for the Clinic;
5. negotiating leases for the premises of the Clinic;
6. providing counseling and support services to patients receiving products or services from the Clinic;
7. contracting for the services of medical directors for the Clinic;
8. dealing with Payors that pay for products or services offered by the Clinic, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
9. dealing with Governmental Approvals Relating To the Clinic or that otherwise regulate the Clinic.

CC. "Ordinary Course Of Business" means actions taken by any Person in the ordinary course of the normal day-to-day Operation Of The Clinic that is consistent with past practices of such Person in the Operation Of The Clinic, including, but not limited to past practice with respect to amount, timing, and frequency.

DD. "Other Contracts Of Each Clinic To Be Divested" means all contracts Relating To the Operation Of A Clinic, where such Clinic is a Clinic To Be Divested – including, but not limited to, contracts for goods and services provided to the Clinic and contracts with Payors – but does not mean the Clinic's Physician Contracts and the leases for the Real Property Of The Clinic.

EE. "Payor" means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point of service organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase medical goods or services for themselves.

FF. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

GG. "Physician" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O").

HH. "Real Property Of The Clinic" means real property on which, or in which, the Clinic is located, including real property used for parking and for other functions Relating To the Operation Of The Clinic.

II. "Relating To" means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.

JJ. "Regional Manager" means any individual who has been employed by DaVita or Gambro with supervisory responsibility for three or more Clinics.

KK. "Regional Manager Of a Clinic To Be Divested" and "Regional Manager Of The Clinic To Be Divested" mean a Regional Manager who has had direct supervisory responsibility for a Clinic To Be Divested at any time since June 1, 2005.

LL. "Renal Advantage" means Renal Advantage Inc., a Delaware corporation with a principal place of business at 115 East Park Drive, Suite 300, Brentwood, TN 37027.

MM. "Renal Advantage Divestiture Agreements" means the following agreements:

1. the Amended and Restated Asset Purchase Agreement September 12, 2005, by and among Renal Advantage Inc., Gambro Healthcare, Inc., and DaVita Inc., and
2. the Transition Services Agreement September 12, 2005, between Renal Advantage Inc. and DaVita Inc. (The Renal Advantage Divestiture Agreements are attached under seal as Non-Public Appendix D to this Order, pursuant to this Court's Protective Order dated October 12, 2005.)

NN. "Renal Associates of Grand Rapids" means Renal Associates of Grand Rapids, PC and its Physicians.

OO. "Software" means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.

PP. "Supplier" means any Person that has sold to DaVita or Gambro any goods or services, other than Physician services, for use in a Clinic To Be Divested. *PROVIDED, HOWEVER,* "Supplier" does not mean an employee of DaVita or Gambro.

QQ. "Time Of Divestiture" means the date upon which a Clinic is divested to an Acquirer pursuant to this Order and the Commission Order.

III. DIVESTITURE OF ASSETS

IT IS FURTHER ORDERED, on the condition that DaVita and Gambro consummate the Merger and the MIAG does not move to set aside this Consent Judgment, that:

- A. DaVita shall divest the Assets To Be Divested, as follows:
1. DaVita shall:
 - a. within ten (10) days after the Effective Date, divest to Renal Advantage, absolutely, and in good faith, pursuant to and in accordance with the Renal Advantage Divestiture Agreements, all the Appendix A Clinic Assets.
 - b. PROVIDED, HOWEVER, if, the Commission determines that Renal Advantage is not an acceptable acquirer or that the Renal Advantage Divestiture Agreements are not an acceptable manner of divestiture, and so notifies DaVita, then DaVita shall:
 - i. Consent to immediate entry of an amended Consent Judgment before this Court and, if necessary, Amended Order to Maintain Assets. These amended pleadings shall solely comport with the change of circumstances, unless otherwise agreed by the parties in writing;
 - ii. rescind the Renal Advantage Divestiture Agreements; and
 - iii. Divest, within six (6) months of the date after the issuance of the amended order the Appendix A Clinic Assets, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the MIAG and only in a manner that receives the prior approval of the MIAG, and is authorized by this Court.

The Renal Advantage Divestiture Agreements are incorporated by reference into this Order as Non-Public Appendix D. Non-Public Appendix D shall be kept confidential, pursuant to the Protective Order entered by this Court on October 12, 2005.

- c. Any failure by DaVita to comply with the Renal Advantage Divestiture Agreements shall constitute a failure to comply with the Order. The Renal Advantage Divestiture Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of

Renal Advantage, or any obligations of DaVita, under the Renal Advantage Divestiture Agreements.

2. If DaVita has divested the Appendix A Clinic Assets to Renal Advantage prior to the date this Order becomes final, and if, at the time the Commission makes its Order final, the Commission determines that Renal Advantage is not an acceptable acquirer or that the Renal Advantage Divestiture Agreements are not an acceptable manner of divestiture, and so notifies DaVita, then DaVita shall within three (3) business days of receiving such notification, rescind the transaction with Renal Advantage and shall divest the Appendix A Clinic Assets in accordance with the proviso to Paragraph III.A.1 b of this Order.

B. DaVita shall divest the Assets To Be Divested on the terms set forth in this Paragraph III.B., in addition to other terms that may be required by this Order and by the Divestiture Agreements; and DaVita shall agree with the Acquirer, as part of the Divestiture Agreements, to comply with the terms set forth in this Paragraph III.B.

1. DaVita shall place no restrictions on the use by any Acquirer of any of the Assets To Be Divested or any of the Clinics To Be Divested.
2. DaVita shall cooperate with the Acquirer and assist the Acquirer, at no cost to the Acquirer, at the Time Of Divestiture of each Clinic To Be Divested, in obtaining all Government Approvals For Divestiture, and all Government Approvals For Continued Operation, for each Clinic To Be Divested.
3. DaVita shall, at the Time Of Divestiture of each Clinic To Be Divested:
 - a. assign to the Acquirer all rights, title, and interest to leases for the Real Property Of The Clinic, and shall obtain all approvals necessary for such assignments; *PROVIDED, HOWEVER*, that (1) if the Acquirer obtains all rights, title, and interest to a lease for Real Property Of A Clinic To Be Divested before the Assets To Be Divested are divested pursuant to Paragraph III.A. of this Order, and (2) the Acquirer certifies its receipt of such lease and attaches it as part of the Divestiture Agreement, then DaVita shall not be required to make the assignments for such Clinic To Be Divested as required by this Paragraph; and
 - b. assign to the Acquirer all of the Clinic's Physician Contracts, and shall obtain all approvals necessary for such assignment; *PROVIDED, HOWEVER*, that (1) if the Acquirer enters into a Clinic's Physician Contract for a Clinic To Be Divested before the Assets To Be Divested are divested pursuant to Paragraph III.A of this Order, and (2) the Acquirer certifies its receipt of such contract and attaches it as part of the Divestiture Agreement, then DaVita shall not be required to make the assignment for such Clinic To Be Divested as required by this Paragraph.

4. With respect to all Other Contracts Of Each Clinic To Be Divested, DaVita shall, at the Acquirer's option and at the Time Of Divestiture of each Clinic To Be Divested:
 - a. if such contract can be assigned without third party approval, assign its 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:
 - (1) such third party approval and in assigning the contract to the Acquirer; or
 - (2) a new contract.
5. DaVita shall:
 - a. at the Time Of Divestiture of each Clinic To Be Divested, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
 - b. not object to the sharing of Payor and Supplier contract terms Relating To the Clinics To Be Divested: (i) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with DaVita not to disclose the information to any third party;
6. Until sixty (60) days after the Time Of Divestiture of each Clinic To Be Divested, DaVita shall:
 - a. facilitate interviews between each DaVita Employee Of A Clinic To Be Divested and the Acquirer of the Clinic, and shall not discourage such employee from participating in such interviews; and
 - b. not interfere in employment negotiations between each DaVita Employee Of A Clinic To Be Divested and the Acquirer of the Clinic;
7. With respect to each DaVita Employee Of A Clinic To Be Divested who receives, within sixty (60) days of the Time Of Divestiture of any Clinic at which he or she is employed, an offer of employment from the Acquirer of that Clinic, DaVita shall do the following:
 - a. DaVita shall not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the DaVita Employee Of The Clinic To Be Divested

from being employed by the Acquirer of the Clinic, and shall not offer any incentive to the DaVita Employee Of The Clinic To Be Divested to decline employment with the Acquirer of the Clinic;

- b. if the DaVita Employee Of The Clinic To Be Divested accepts such offer of employment from the Acquirer, DaVita shall cooperate with the Acquirer of the Clinic in effecting transfer of the DaVita Employee Of The Clinic To Be Divested to the employ of the Acquirer of the Clinic;
 - c. DaVita shall eliminate any contractual provisions or other restrictions that would otherwise prevent the DaVita Employee Of The Clinic To Be Divested from being employed by the Acquirer of the Clinic;
 - d. DaVita shall eliminate any confidentiality restrictions that would prevent the DaVita Employee Of The Clinic To Be Divested who accepts employment with the Acquirer of the Clinic from using or transferring to the Acquirer any information Relating To the Operation Of The Clinic;
 - e. DaVita shall pay, for the benefit of any DaVita Employee Of The Clinic To Be Divested who accepts employment with the Acquirer of the Clinic, all accrued bonuses, vested pensions and other accrued benefits.
8. For a period of two (2) years following the Time Of Divestiture of each Clinic To Be Divested, DaVita shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Employee Of A Clinic To Be Divested who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer, unless that employment relationship has already been terminated by the Acquirer; *PROVIDED, HOWEVER*, DaVita may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at Acquirer's employees; *PROVIDED, FURTHER, HOWEVER*, DaVita may hire employees who apply for employment with DaVita, as long as such employees were not solicited by DaVita in violation of this Paragraph III B.8.; *PROVIDED, FURTHER, HOWEVER*, DaVita may offer employment to an Employee Of A Clinic To Be Divested who is employed by the Acquirer in only a part-time capacity, if the employment offered by DaVita would not, in any way, interfere with the employee's ability to fulfill his or her employment responsibilities to the Acquirer.
9. For a period of not less than forty-five (45) days, which period may begin prior to the entry of this Consent Judgment and which shall end no earlier than ten (10) days after the Time Of Divestiture of each Clinic To Be Divested ("Forty-Five Day Hiring Period"), DaVita shall:

- a. facilitate interviews between each Regional Manager Of A Clinic To Be Divested and the Acquirer of the Clinic, and shall not discourage such Regional Manager from participating in such interviews; and
 - b. not interfere in employment negotiations between each Regional Manager Of A Clinic To Be Divested and the Acquirer of the Clinic; *PROVIDED, HOWEVER*, the terms of this Paragraph III. B.9.b. shall not apply after Acquirers have hired six (6) Regional Managers who were each previously employed by DaVita or Gambro at any time since June 1, 2005.
10. With respect to each Regional Manager Of A Clinic To Be Divested who receives, within the Forty-Five Day Hiring Period required by Paragraph III. B.9. of this Order an offer of employment from the Acquirer of that Clinic, DaVita shall do the following:
- a. DaVita shall not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the Regional Manager Of The Clinic To Be Divested from being employed by the Acquirer of the Clinic, and shall not offer any incentive to the Regional Manager Of The Clinic To Be Divested to decline employment with the Acquirer of the Clinic;
 - b. if the Regional Manager Of The Clinic To Be Divested accepts such offer of employment from the Acquirer, DaVita shall cooperate with the Acquirer of the Clinic in effecting transfer of the Regional Manager Of The Clinic To Be Divested to the employ of the Acquirer of the Clinic;
 - c. DaVita shall eliminate any contractual provisions or other restrictions that would otherwise prevent the Regional Manager Of The Clinic To Be Divested from being employed by the Acquirer of the Clinic;
 - d. DaVita shall eliminate any confidentiality restrictions that would prevent the Regional Manager Of The Clinic To Be Divested who accepts employment with the Acquirer of the Clinic from using or transferring to the Acquirer any information Relating To the Operation Of The Clinic;
 - e. DaVita shall pay, for the benefit of any Regional Manager Of The Clinic To Be Divested who accepts employment with the Acquirer of the Clinic, all accrued bonuses, vested pensions and other accrued benefits;
 - f. for a period of two (2) years following the Time Of Divestiture of the Clinic To Be Divested, DaVita shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Regional Manager of the Acquirer who was previously a Regional Manager of A Clinic To Be Divested to terminate his or her employment relationship with the Acquirer unless the individual has been terminated by the Acquirer;

PROVIDED, HOWEVER, DaVita may make general advertisements for Regional Managers including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at Acquirer's Regional Managers; *PROVIDED, FURTHER, HOWEVER*, DaVita may hire Regional Managers who apply for employment with DaVita, as long as such Regional Managers were not solicited by DaVita in violation of this Paragraph III B.10 f.; *PROVIDED, HOWEVER*, after Acquirer has hired six (6) Regional Managers who were each previously employed by DaVita or Gambro at any time since June 1, 2005, the terms of this Paragraph III B.10.f. shall apply only to those six (6) Regional Managers hired by the Acquirer.

11. With respect to each Physician who has provided services to a Clinic To Be Divested pursuant to any of the Clinic's Physician Contracts in effect at any time during the four (4) months preceding the Time Of Divestiture of the Clinic ("Contract Physician"):
 - a. DaVita shall not offer any incentive to the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group to decline to provide services to the Clinic To Be Divested, and shall eliminate any confidentiality restrictions that would prevent the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group from using or transferring to the Acquirer of the Clinic To Be Divested any information Relating To the Operation Of The Clinic; and
 - b. For a period of three (3) years following the Time Of Divestiture of each Clinic To Be Divested, DaVita shall not contract for the services of the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group for the provision of Contract Services to be performed in any of the areas listed in Appendix B of this Order that correspond to such Clinic. *PROVIDED, HOWEVER*, if the Contract Physician, or the Contract Physician's practice group, or other members of the Contract Physician's practice group were providing services to a Clinic pursuant to a contract with DaVita or Gambro in effect as of June 1, 2005, then DaVita may contract with such Contract Physicians, or the Contract Physician's practice group, or other members of the Contract Physician's practice group for services to be provided to that particular Clinic; *PROVIDED, FURTHER, HOWEVER*, the terms of this Paragraph III.B.11 b. shall not apply, in Kent County, Michigan, to Renal Associates of Grand Rapids if, prior to the date the Appendix A Clinic Assets are divested pursuant to Paragraph II.A.1, DaVita terminates, in writing, any contractual rights DaVita has with Renal Associates of Grand Rapids that prevent or hinder, in any way, the ability

of Renal Associates of Grand Rapids, to contract with, or offer services to, any Person other than DaVita.

12. With respect to Material Confidential Information relating exclusively to any of the Clinics To Be Divested, DaVita shall:
 - a. not disclose such information to any Person other than the Acquirer of such Clinic;
 - b. after the Time Of Divestiture of such Clinic:
 - (1) not use such information for any purpose other than complying with the terms of this Order or with any law; and
 - (2) destroy all records of such information, except to the extent that:
 - (1) DaVita is required by law to retain such information, and (2) DaVita's inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of DaVita.
13. At the Time Of Divestiture of each Clinic To Be Divested, DaVita shall provide the Acquirer of the Clinic with manuals, instructions, and specifications sufficient for the Acquirer to access and use any information
 - a. divested to the Acquirer pursuant to this Order, or
 - b. in the possession of the Acquirer, and previously used by DaVita or Gambro in the Operation Of The Clinic.
14. For two (2) years following the Time Of Divestiture of each Clinic To Be Divested, DaVita shall not solicit the business of any patients that received any goods or services from such Clinic between May 1, 2005, and the date of such divestiture, *PROVIDED, HOWEVER*, DaVita may (i) 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 (ii) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any DaVita employee.
15. DaVita shall convey to each Acquirer of a Clinic To Be Divested 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 The 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.

16. DaVita shall do nothing to prevent or discourage Suppliers that, prior to the Time Of Divestiture of any Clinic To Be Divested, supplied goods and services for use in any Clinic To Be Divested from continuing to supply goods and services for use in such Clinic.
17. With respect to DaVita's Medical Protocols:
 - a. DaVita shall retain a copy of DaVita's Medical Protocols until six (6) months after all of the Assets To Be Divested have been divested pursuant to this Order;
 - b. If the Acquirer of a Clinic To Be Divested requests in writing to DaVita, within six (6) months of the Time Of Divestiture of that Clinic to that Acquirer, that DaVita license a copy of DaVita's Medical Protocols to that Acquirer, DaVita shall within five (5) business days of such request, grant to that Acquirer a royalty-free perpetual worldwide license for the use, without any limitation, of DaVita's Medical Protocols (including the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means); and
 - c. DaVita shall create no disincentive for the Acquirer of a Clinic To Be Divested to make such a request for a license for DaVita's Medical Protocols, and shall not enter into any agreement or understanding with any Acquirer that the Acquirer not make such a request.

C. DaVita shall not acquire Gambro Healthcare Inc. until it has obtained for all Clinics To Be Divested:

1. all Governmental Approvals For Divestiture necessary for the Acquirers of such Clinics to be able to own, and initially operate, the Clinics;
2. all approvals for assignment of the leases for the Real Property Of The Clinics, as required by to Paragraph III.B.3 a. of this Order; and III.B.3 b. of this Order.

Copies of all such approvals shall be incorporated into the Divestiture Agreements as appendices.

D. The purpose of Paragraph III of this Order is to ensure the continuation of the Clinics To Be Divested as, or as part of, ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the acquisition by DaVita Inc. of Gambro Healthcare Inc., to ensure that the Clinics To Be Divested are operated independently of, and in competition with, DaVita, and to remedy the lessening of competition alleged in the MIAG's Complaint.

IV. ADVANCED WRITTEN NOTIFICATION

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order is issued, DaVita shall not, without providing advance written notification to the MIAG in the manner described in this paragraph, directly or indirectly:

A. acquire any assets of or financial interest in any Clinic located in any of the areas listed in Appendix B of this Order; or

B. enter into any contract to participate in the management or Operation Of A Clinic located in any of the areas listed in Appendix B of this Order, except to the extent that the contract relates exclusively to:

1. off-site lab services or social worker support materials; or
2. billing services, collection services, bookkeeping services, accounting services, supply purchasing and logistics services, or the preparation of financial reports and accounts receivable reports (collectively "Such Services"), where appropriate firewalls and confidentiality agreements are implemented to prevent Material Confidential Information of the Clinic from being disclosed to anyone participating in any way in the operation or management of any Clinic owned by DaVita or any Clinic other than the Clinic to which Such Services are being provided. Davita shall include in the advance written notification (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 USC § 18a, and Rules, 16 CFR § 801-803, Relating To the proposed transaction (hereinafter referred to as "the FTC Notification), *PROVIDED, HOWEVER*, (i) one copy of the FTC Notification shall be filed with the MIAG contemporaneous with the filing the advanced written notification being filed with the Secretary of the Commission as required in Paragraph III of the Commission Order; and (ii) the FTC Notification is required from DaVita and not from any other party to the transaction. DaVita shall provide the Notification to the MIAG at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the MIAG make a written request for additional information or documentary material (as permitted under state and federal law), DaVita shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the MIAG.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which FTC Notification is required to be made, and has been made to either the Commission or the US Department of Justice, pursuant to Section 7A of the Clayton Act, 15

USC § 18a, and DaVita has voluntarily supplied the MIAG with contemporaneous copies of same.

V. APPOINTMENT OF A MONITOR

IT IS FURTHER ORDERED that:

A. John Strack and Mitch S. Nielson, CPA, of Focal Point Medical Consulting Group, shall be appointed Monitors to assure that DaVita expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.

B. No later than one (1) day after this Order is made final, DaVita shall, pursuant to the Monitor Agreement and to this Order, transfer to the Monitors all the rights, powers, and authorities necessary to permit the Monitors to perform their duties and responsibilities in a manner consistent with the purposes of this Order.

C. In the event a substitute Monitor is required, DaVita agrees to stipulate to the entry of an Amended Order Appointing a New Monitor. The MIAG 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 MIAG 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 MIAG, confers on the Monitor all the rights and powers necessary to permit the Monitors to monitor DaVita's compliance with the terms of this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements in a manner consistent with the purposes of this Order.

D. DaVita shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitors:

1. The Monitors shall have the power and authority to monitor DaVita's compliance with the terms of this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitors in a manner consistent with the purposes of this Order and in consultation with the MIAG, including, but not limited to:
 - a. Assuring that DaVita expeditiously complies with all of its obligations and perform all of its responsibilities as required by this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements;
 - b. Monitoring any transition services agreements;

- c. Assuring that Material Confidential Information is not received or used by DaVita or the Acquirer, except as allowed in this Order and in the Stipulated Order to Maintain Assets, in this matter.
2. The Monitors shall act in a fiduciary capacity for the benefit of the MIAG.
3. The Monitors shall serve for such time as is necessary to monitor DaVita's compliance with the provisions of this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements.
4. Subject to any demonstrated legally recognized privilege, the Monitors shall have full and complete access to DaVita's personnel, books, documents, records kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitors may reasonably request, related to DaVita's compliance with its obligations under this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements. DaVita shall cooperate with any reasonable request of the Monitors and shall take no action to interfere with or impede the Monitors' ability to monitor DaVita's compliance with this Stipulated Order, the Order to Maintain Assets, and the Divestiture Agreements.
5. The Monitors shall serve, without bond or other security, at the expense of DaVita on such reasonable and customary terms and conditions as the MIAG may set. The Monitors shall have authority to employ, at the expense of DaVita, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitors' duties and responsibilities. The Monitors shall account for all expenses incurred, including fees for services rendered, subject to the approval of the MIAG.
6. DaVita shall indemnify the Monitors and hold the Monitors harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitors' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitors.
7. DaVita shall report to the Monitors in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the MIAG. The Monitors shall evaluate the reports submitted to the Monitors by DaVita, and any reports submitted by the Acquirer with respect to the performance of DaVita's obligations under this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements.

8. Within one (1) month from the date the Monitors are appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the MIAG, the Monitor shall report in writing to the MIAG concerning performance by DaVita of its obligations under this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements.
9. DaVita may require the Monitors and each of the Monitors' consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitors from providing any information to the MIAG.

E. The MIAG may, among other things, require the Monitors and each of the Monitors' consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To MIAG materials and information received in connection with the performance of the Monitors' duties.

F. If the MIAG determines that the Monitors have ceased to act or failed to act diligently, the MIAG request DaVita to stipulate to the appointment of a substitute Monitor in the same manner as provided in this Paragraph V.

G. The MIAG may on its own initiative, or at the request of the Monitors, issue such additional directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Stipulated Order to Maintain Assets, and the Divestiture Agreements.

H. A Monitor or Monitors appointed pursuant to this Order may be the same Person appointed as a trustee pursuant to Paragraph V of this Order and may be the same Person or Persons appointed as Monitor or Monitors under the Stipulated Order to Maintain Assets.

VI. APPOINTMENT OF TRUSTEE

IT IS FURTHER ORDERED that:

A. If DaVita has not divested, absolutely and in good faith and with the MIAG's prior approval, all of the Assets To Be Divested pursuant to Paragraph III of this Order, the MIAG may move the Court to appoint a trustee to divest any of the Assets To Be Divested that have not been divested pursuant to Paragraph III of this Order in a manner that satisfies the requirements of Paragraph III of this Order. In the event the MIAG moves for an order to appoint a trustee, DaVita shall stipulate to the entry of an Order Appointing a Trustee. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the MIAG from seeking monetary damages, civil penalties or any other relief available to it, including a court-appointed trustee, for any failure by DaVita to comply with this Order.

B. The MIAG shall select the trustee, subject to the consent of DaVita, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in

acquisitions and divestitures. If DaVita has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the MIAG to DaVita of the identity of any proposed trustee, DaVita shall be deemed to have consented to the selection of the proposed trustee.

C. Within ten (10) days after the Court enters an Order Appointing a Trustee, DaVita shall execute a trust agreement that, subject to the prior approval of the MIAG, transfers to the trustee all rights and powers necessary to permit the trustee to affect the divestitures required by this Order.

D. When this Court grants the MIAG's motion for appointment of a trustee, the following terms and conditions will apply regarding the trustee's powers, duties, authority, and responsibilities:

1. The trustee shall have the exclusive power and authority to divest any of the Assets To Be Divested that have not been divested pursuant to Paragraph III of this Order.
2. The trustee shall have twelve (12) months from the date the Court orders the appointment of the trustee to accomplish the divestiture, which shall be subject to the prior approval of the MIAG. If, however, at the end of the twelve (12) month period, the trustee has submitted a divestiture plan or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the MIAG; *PROVIDED, HOWEVER*, the MIAG may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the trustee may request. DaVita shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. DaVita shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by DaVita shall extend the time for divestiture under this Paragraph VI in an amount equal to the delay, as determined by the Court.
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 MIAG, subject to DaVita's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer or Acquirers 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 MIAG 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 MIAG;

PROVIDED, FURTHER, HOWEVER, that DaVita shall select such entity within five (5) days of receiving notification of the MIAG'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 MIAG 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 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 trustee shall be based at least in significant part on a Commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
 6. DaVita shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
 7. The trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The trustee shall report in writing to DaVita and to the MIAG every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
 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 MIAG.
- E. If the MIAG determines that a trustee has ceased to act or failed to act diligently, the MIAG may move for appointment of a substitute trustee in the same manner as provided in this Paragraph VI.
- F. The Court may on its own initiative or at the request of either the MIAG or 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 or the Order to Maintain Assets.

VII. REPORTING REQUIREMENTS

IT IS FURTHER ORDERED that:

A. Beginning thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until DaVita has fully complied with Paragraphs III.A., III.B.3., III.B.6., III.B.9., III.B.11., III.B.13., and III.B.17. of this Order, DaVita shall submit to the MIAG a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements. DaVita shall submit at the same time a copy of these reports to the Monitors, if any Monitors have been appointed.

B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4) years, DaVita shall submit to the MIAG verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order, the Order to Maintain Assets, and the Divestiture Agreements. DaVita shall submit at the same time a copy of these reports to the Monitors, if any Monitors have been appointed.

VIII. ORDER TO MAINTAIN ASSETS

IT IS FURTHER ORDERED, on the condition that Defendants DaVita and Gambro consummate the merger and the MIAG does not move to set aside this Consent Judgment, and until full divestiture has been accomplished, Defendants shall comply with all terms of this Court's Stipulated Order to Maintain Assets entered on October 4, 2005.

IX. NOTIFICATION OF CHANGE IN LEGAL STATUS

IT IS FURTHER ORDERED that DaVita shall notify the MIAG at least thirty (30) days prior to:

A. Any proposed dissolution of DaVita,

B. Any proposed acquisition, merger or consolidation of DaVita, or

C. Any other change in DaVita that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in DaVita.

X. COMPLIANCE INSPECTION

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to DaVita, DaVita shall permit any duly authorized representative of the MIAG:

A. Access, during office hours of DaVita and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of DaVita related to compliance with this Order; and

B. Upon five (5) days' notice to DaVita and without restraint or interference from DaVita, to interview officers, directors, or employees of DaVita, who may have counsel present, regarding such matters.

XI. NOTICES

IT IS FURTHER ORDERED that any notices required by this Consent Judgment shall be delivered by regular mail to the parties at the following addresses:

For Defendants:

Joel Grosberg
McDermott Will & Emery
Attorney for DaVita
600 13th Street, N.W.
Washington, D.C. 20005

Scott T. Larson
General Counsel
Gambro Healthcare, Inc.
1627 Cole Street
Lakewood, CO 80401

For the MIAG:

Michelle M. Rick
State of Michigan Department of Attorney General
Consumer Protection Division
525 West Ottawa St.
P.O. Box 30755
Lansing, MI 48909

XII. ATTORNEYS FEES AND COSTS

IT IS FURTHER ORDERED:

A. DaVita shall pay a total of \$25,000 to the MIAG for attorneys' fees and investigative costs associated with this matter. DaVita shall, within 14 days of the entry of this Consent Judgment, mail a check payable to the State of Michigan Department of Attorney General to the following address:

State of Michigan Department of Attorney General
Consumer Protection Division
Attention: Michelle Rick
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909

B. If the MIAG successfully brings an action to enforce the provisions of this Consent Judgment, Defendants shall reimburse the MIAG all reasonable costs and attorneys' fees associated with bringing such enforcement action.

XIII. PARTIES BOUND

IT IS FURTHER ORDERED that this Consent Judgment is binding upon the parties, their successors and assigns, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal services or otherwise.

XIV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court shall exercise continuing jurisdiction over the implementation of the obligations in this Consent Judgment. The Consent Judgment shall terminate 10 years from the date the Order is issued.

Dated: OCT 14 2005

JOYCE DRAGANCHUK

Ingham County Circuit Court Judge

Approved as to Form and Substance

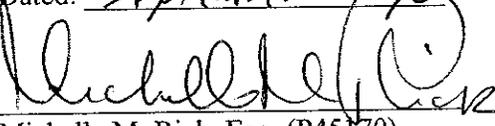


Eric Doster, Esq., (P 41782)
Attorney for Defendant DaVita
Foster, Swift, Collins & Smith, P.C.
313 S. Washington Square
Lansing, MI 48933

Howard E. O'Leary, Jr., Esq., (P 18461)
Attorney for Defendant Gambro
Dykema Gossett PLLC
1300 I Street, NW, Suite 300W
Washington, D.C. 20005

Dated: September 30, 2005

Dated _____



Michelle M. Rick, Esq. (P45170)
Assistant Attorney General
Attorney for Plaintiff
State of Michigan Department of Attorney General
Consumer Protection Division
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909

Dated: October 12, 2005

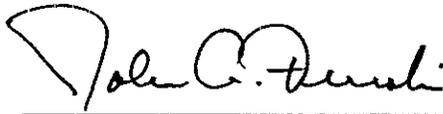
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Dated: _____

Ingham County Circuit Court Judge

Approved as to Form and Substance



Eric Doster, Esq. (P 41782)
Attorney for Defendant DaVita
Foster, Swift, Collins & Smith, P.C.
313 S. Washington Square
Lansing, MI 48933

John A. Ferroli, Esq. (P 35869)
Attorney for Defendant Gambro
Dykema Gossett, PLLC
300 Ottawa Avenue, NW
Suite 700
Grand Rapids, MI 49503

Dated: _____

Dated: Sept. 29, 2005

Michelle M. Rick, Esq. (P 45170)
Assistant Attorney General
Attorney for Plaintiff
State of Michigan Department of Attorney General
Consumer Protection Division
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909

Dated: _____

APPENDIX A

APPENDIX A CLINICS

	Clinic Name	Clinic Address
	Gambro Healthcare – Clyde Park	4893 Clyde Park Avenue Southwest Wyoming, MI 49509
	Gambro Healthcare – Jackson	200 South East Avenue Jackson, MI 49201
	Gambro Healthcare – Rockford	311 Rockford Park Drive NE Rockford, MI 49341
	Gambro Healthcare – Zeeland	2 Royal Park Drive Zeeland, MI 49464
	DaVita Roosevelt Park	1080 West Norton Avenue Muskegon, MI 49441

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 MIAG by DaVita.

	Divested Clinics	Corresponding Area Definition
1	Gambro Healthcare – Clyde Park, Gambro Healthcare – Rockford	The area in and/or near Grand Rapids, Michigan, consisting of: Kent County (Michigan).
2	Gambro Healthcare – Zeeland	The area in and/or near Zeeland, Michigan, consisting of: Ottawa County (Michigan) and 49423, 49434.
3	Gambro Healthcare – Jackson	The area in and/or near Jackson, Michigan, consisting of: Jackson County (Michigan).
4	DaVita Roosevelt Park	The area in and/or near Muskegon, Michigan, consisting of: Muskegon County (Michigan).

APPENDIX C

MONITOR AGREEMENT MONITOR AGREEMENT

MONITOR AGREEMENT (the "Agreement"), dated as of October 4, 2005, between DaVita Inc ("Respondent") and John Strack and Mitch Nielson of FocalPoint Medical Consulting Group ("Monitors").

PRELIMINARY STATEMENT

WHEREAS the Michigan Department of Attorney General (MIAG) will submit to the Ingham County Circuit Court a Consent Judgment that provides, among other things, that Respondent DaVita, Inc. (Respondent) divest a number of dialysis clinics and assets associated with those clinics located within the State of Michigan, Respondent terminate management contracts Respondent has with certain dialysis clinics, enter into agreements -- if necessary -- providing the acquirers of the dialysis clinics with transition services, and engage a monitor to monitor Respondent's compliance with its obligations under the Consent Judgment and Asset Maintenance Order ("Orders");

WHEREAS, the Ingham County Circuit Court is expected to enter the Consent Judgment and appoint the Monitors pursuant to the Order to monitor Respondent's compliance with the terms of the Orders, and the Monitors have consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to prior approval of the MIAG, conferring all the rights and powers necessary to permit the Monitors to carry out their duties and responsibilities pursuant to the Orders;

WHEREAS, this Monitor Agreement, although executed by the Monitors and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or the Monitors under the Orders, until the Ingham County Circuit Court enters the Consent Judgment and Asset Maintenance Orders;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the MIAG's approval of this Agreement and the Ingham County Circuit Court's entry of the Consent Judgment .

DEFINITIONS

1. "Respondent DaVita" means DaVita Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at El Segundo, CA, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, divisions, groups and affiliates controlled by DaVita, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
2. "Other Parties" means any Person that receives approval of the Ingham County Circuit Court to acquire any of the Assets To Be Divested or is a party to the Relevant Agreements pursuant to Paragraph II and V of the Decision and Order.
3. "Acquisition Date" means the date on which the first of the Relevant Agreements pursuant to Paragraph II and V of the Federal Trade Commission Decision and Order goes into effect.
4. "Relevant Agreements" means: the divestiture agreement and transition services agreements entered into pursuant to Paragraphs II and V of the Decision and Order, including but not limited to, the Renal Advantage Divestiture Agreements and the Transition Services Agreement between Renal Advantage Inc. and DaVita.
5. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Orders.

ARTICLE I

Powers of the Monitors. The Monitors shall have the rights, duties, powers and authority conferred upon the Monitor by the Orders that are necessary for the Monitors to monitor Respondent's compliance with the Orders. No later than one day after the Stipulated Order to Maintain assets is entered, Respondent hereby transfers to the Monitors all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities pursuant to the Stipulated Asset Maintenance Order and consistent with the purposes of the Consent Judgment. Any descriptions thereof contained in this Agreement in no way modify the Monitors' powers and authority or Respondent's obligations under the Orders.

Monitor's Duties. The Monitors shall monitor Respondent's compliance with the Orders, including but not limited to:

- a. Assuring that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders in this matter;
- b. Monitoring Relevant Agreements;
- c. Assuring that Confidential Business Information is not received or used by Respondent or Other Parties, except as allowed in the Orders in this matter.

Duration of Monitor's Authority. The Monitors shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

Confidential and Proprietary Information. The Monitors shall enter into a confidentiality agreement, attached hereto as Confidential Exhibit A, agreeing to be bound by the terms and conditions of the Orders. The Monitors must retain and maintain all Material Confidential Information it receives from either Respondent or Relevant Parties on a confidential basis except as is permitted by the Orders. The Monitors may disclose confidential information only to persons employed by or working with the Monitors under this Agreement, to persons employed at MIAG, and as permitted by Respondent or Relevant Parties with respect to information they provided the Monitor. The Monitors shall require any person retained by the Monitor to assist in carrying out the duties and responsibilities of the Monitors to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which the Monitors must adhere under this Agreement. The Monitors shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of his duties under this Agreement and shall not disclose any confidential information relating thereto. Monitor reports that are provided to persons employed at the MIAG, Federal Trade Commission, and the State of California may be shared between persons employed at the MIAG, Federal Trade Commission, and the State of California.

Restrictions. The Monitors shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of the Respondent.

Reports. Monitors shall report to the MIAG pursuant to the terms of the Orders and as otherwise requested by the MIAG staff.

Access to records, documents and facilities. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitors may reasonably request, related to Respondent' compliance with their obligations under the Orders in this matter. Respondent shall cooperate with any reasonable request of the Monitors and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent' compliance with the Orders.

ARTICLE II

Retention and payment of Counsel, Consultants, and other Assistants. The Monitors shall have the authority to employ, at the cost and expense of the Respondent, such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitors' duties and responsibilities as allowed pursuant to the Orders.

Compensation. The Monitors shall be compensated by Respondent for his services under this Agreement pursuant to the fee schedule attached as Confidential Exhibit B for time spent in connection with the discharge of his duties under this Agreement and the Orders. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by the Monitors in the performance of his duties under the Mandate; and (b) fees and disbursements reasonably incurred by any advisor appointed by the Monitors pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. The Monitors shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitors submit an invoice to Respondent. Respondent shall pay such invoices within thirty (30) days of receipt. When filing the same report with the MIAG, the Federal Trade Commission, and the State of California, the Monitor will not charge Respondent additional fees for each report.

ARTICLE III

Monitor's liabilities and indemnification. Respondent shall indemnify the Monitors and hold the Monitors harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitors' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitors.

Monitor's removal. If the MIAG determines that Monitors cease to act or fail to act diligently and consistent with the purpose of the Orders, Respondent shall terminate this Agreement and appoint a substitute Monitor, subject to MIAG approval and consistent with the Orders.

Approval by the Ingham County Circuit Court. This Agreement shall have no force or effect until approved by the Ingham County Circuit Court, other than Respondent obligations under Exhibit A and the confidentiality provisions herein.

Termination: This Agreement shall terminate the earlier of: (a) the date set forth in the Order; (b) Respondent' receipt of written notice from the MIAG that the MIAG has determined that John Strack and Mitch Nielsen have ceased to act or failed to act diligently, or are unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by the Monitor to Respondent and to the MIAG, upon resignation of the Monitors; or (d) when DaVita's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed, provided, however, that the MIAG may require that DaVita extend this Monitor Agreement or enter into an additional agreement with the Monitors as may be necessary or appropriate to accomplish the purposes of the Orders. If this Monitor Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force. The termination of the Monitors pursuant to this Monitor Agreement and Orders does not change the status of the Monitor with regard to any other Monitor Agreement entered into by Respondent with the Federal Trade Commission and the State of California. Termination of the Monitors pursuant to the Monitor Agreements entered into by the Respondent with the Federal Trade Commission and State of California pursuant to those governmental entities' respective orders does not change the status of the Monitors with regard to this Monitor Agreement and Orders.

Conflicts of Interest: If the Monitors become aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of his duties under this Agreement, the Monitors shall promptly inform Respondent and the MIAG of any such conflict.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY:



NAME:

John Strack
FocalPoint Medical Consulting Group

BY: _____

NAME: _____

FocalPoint Medical Consulting Group

RESPONDENT

BY: _____

NAME: _____

TITLE: _____

Approval by the Ingham County Circuit Court This Agreement shall have no force or effect until approved by the Ingham County Circuit Court, other than Respondent obligations under Exhibit A and the confidentiality provisions herein.

Termination: This Agreement shall terminate the earlier of: (a) the date set forth in the Order; (b) Respondent's receipt of written notice from the MIAG that the MIAG has determined that John Strack and Mitch Nielsen have ceased to act or failed to act diligently, or are unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by the Monitor to Respondent and to the MIAG, upon resignation of the Monitors; or (d) when DaVita's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed, provided, however, that the MIAG may require that DaVita extend this Monitor Agreement or enter into an additional agreement with the Monitors as may be necessary or appropriate to accomplish the purposes of the Orders. If this Monitor Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force. The termination of the Monitors pursuant to this Monitor Agreement and Orders does not change the status of the Monitor with regard to any other Monitor Agreement entered into by Respondent with the Federal Trade Commission and the State of California. Termination of the Monitors pursuant to the Monitor Agreements entered into by the Respondent with the Federal Trade Commission and State of California pursuant to those governmental entities' respective orders does not change the status of the Monitors with regard to this Monitor Agreement and Orders.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY: _____

NAME: _____
FocalPoint Medical Consulting Group

BY: Mitch Nielsen

NAME: Mitch S. Nielson
FocalPoint Medical Consulting Group

RESPONDENT

BY: _____

NAME: _____

TITLE: _____

Approval by the Ingham County Circuit Court. This Agreement shall have no force or effect until approved by the Ingham County Circuit Court, other than Respondent obligations under Exhibit A and the confidentiality provisions herein.

Termination: This Agreement shall terminate the earlier of: (a) the date set forth in the Order; (b) Respondent's receipt of written notice from the MIAG that the MIAG has determined that John Strack and Mitch Nielsen have ceased to act or failed to act diligently, or are unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by the Monitor to Respondent and to the MIAG, upon resignation of the Monitors; or (d) when DaVita's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed, provided, however, that the MIAG may require that DaVita extend this Monitor Agreement or enter into an additional agreement with the Monitors as may be necessary or appropriate to accomplish the purposes of the Orders. If this Monitor Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force. The termination of the Monitors pursuant to this Monitor Agreement and Orders does not change the status of the Monitor with regard to any other Monitor Agreement entered into by Respondent with the Federal Trade Commission and the State of California. Termination of the Monitors pursuant to the Monitor Agreements entered into by the Respondent with the Federal Trade Commission and State of California pursuant to those governmental entities' respective orders does not change the status of the Monitors with regard to this Monitor Agreement and Orders.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY: _____

BY: _____

NAME: _____
FocalPoint Medical Consulting Group

NAME: _____
FocalPoint Medical Consulting Group

RESPONDENT

BY: 
Joseph Schott

NAME: Vice President, General

TITLE: Counsel & Secretary