

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Deborah Platt Majoras, Chairman**  
                                  **Thomas B. Leary**  
                                  **Pamela Jones Harbour**  
                                  **Jon Leibowitz**

**In the Matter of**

**DAVITA INC.,  
a corporation.**

**Docket No. C-4152**

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by DaVita Inc. of Gambro Healthcare Inc., a subsidiary of Gambro AB, and DaVita Inc. (hereafter referred to as “Respondent”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

1. Respondent DaVita Inc. is 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 601 Hawaii Street, El Segundo, CA 90245.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

## ORDER

### I.

**IT IS ORDERED** that, all capitalized terms used in this Order to Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement.

### II.

**IT IS FURTHER ORDERED** that:

- A. From the date DaVita signs the Consent Agreement until the Time of Divestiture of each Clinic To Be Divested and until all Assets Associated with each Clinic To Be Divested are divested pursuant to the Consent Agreement, DaVita shall:
  1. Maintain each Clinic To Be Divested and all Assets Associated with it in substantially the same condition (except for normal wear and tear) existing at the time DaVita signs the Consent Agreement;
  2. Take such actions that are consistent with the past practices of DaVita or Gambro, respectively, in connection with such Clinic To Be Divested and the Assets Associated with it and that are taken in the Ordinary Course Of Business and in the normal day-to-day operations of DaVita or Gambro;
  3. **Keep available** the services of the current officers, employees, and agents of DaVita; and maintain the relations and good will with Suppliers, Payors, Physicians, and other third parties.





- 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; *PROVIDED, HOWEVER*, this Paragraph II.C.6.a. does not apply to the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer of that 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 that correspond to such Clinic as listed in Appendix B to the Decision and Order contained in the Consent Agreement. *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 II.C.6.b. shall not apply to the Westside Clinic, the Colton Clinic, and the South S.F. Clinic, to the Assets Associated with those Clinics, or to the Acquirers of those Clinics; *PROVIDED, FURTHER, HOWEVER*, the terms of this Paragraph II.C.6.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 the Consent Agreement, 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.
7. 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 the Consent Agreement 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.
  8. 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.
  9. 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.
- D. The purpose of Paragraph II of this Order to Maintain Assets is: a request to,

B. No later than one (1) day after this Order to Maintain Assets is made final, DaVita shall, pursuant to the Monitor Agreement and to this Order to Maintain Assets, transfe

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 the Consent Agreement and this Order to Maintain Assets. 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 the Consent Agreement and this Order to Maintain Assets.
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 Commission 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 Commission.
6. DaVita shall indemnify the Monitors and hold the Monitors harmless against any losses, claims, damages, ~~Article 5, Federal Conditions of Fair~~ in connec



- E. The Commission 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 Commission materials and information received in connection with the performance of the Monitors' duties.
- F. If the Commission determines that the Monitors have ceased to act or

and upon written request with reasonable notice to DaVita, DaVita shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of DaVita and in the presence of counsel, to all facilities and access nce6hvo.td