

**Judd A. Harwood**

Partner

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**Bradley**

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MAY 13 2016

STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

May 12, 2016

Via Electronic Filing

(shpda.online@shpda.alabama.gov)

Mr. Alva Lambert

Executive Director

State Health Planning and Development Agency

100 North Union Street, Suite 870

Montgomery, Alabama 36104

RE: Madison Surgery Center, LLC  
CON 2010-ASC

Dear Mr. Lambert:

We respectfully submit to the State Health Planning and Development Agency (“SHPDA”) this letter as an attachment to the Notice of Change of Ownership form that we are filing pursuant to Chapter 410-1-7-.04, Rules and Regulations of the Alabama Certificate of Need Program (the “Rules”). The Change of Ownership involves Madison Surgery Center, an ambulatory surgery center in Madison County, Alabama.

## **I. Background**

Madison Surgery Center, L.L.C. received a CON to establish an ambulatory surgery center in 2002. The CON was properly implemented, and the ambulatory surgery center opened in 2004. In 2007, Mr. Gary Griffin alerted SHPDA to a reorganization of Madison Surgery Center, L.L.C.’s business entity structure that would result in the vested CON (along with other assets) being conveyed from Madison Surgery Center, L.L.C. to a newly formed entity, MSC Properties, L.L.C. (*See* November 19, 2007 Letter from Mr. Griffin to SHPDA, attached as Exhibit A.) In response, SHPDA confirmed that the proposed reorganization would not constitute a change of ownership for purposes of the CON rules and regulations at that time (*See* November 26, 2007 Letter from SHPDA to Mr. Griffin, attached as Exhibit B.).

The reorganization described to the agency in 2007 was completed, and the CON was transferred from Madison Surgery Center, L.L.C. to MSC Properties, L.L.C. Now the reorganization is being partially unwound, resulting in CON 2010-ASC being transferred back to Madison Surgery Center, L.L.C. from MSC Properties, L.L.C.

## **II. Financial Scope of Project**

The financial scope of the project will encompass the fair market value payment that Madison Surgery Center, L.L.C. will make to MSC Properties, L.L.C. as consideration for the transfer of CON 2010-ASC back to Madison Surgery Center, L.L.C. This transaction does not

involve the purchase of any new equipment, new operating costs, or other capital expenditures in excess of the spending thresholds set forth in Section 22-21-263(a)(2) of the Code of Alabama.

**III. Services to be Offered**

- A. No New Services. The transaction will not result in any new or additional services to those already being provided by Madison Surgery Center.

**IV. Beds**

- A. No New Beds. The contemplated transaction will not result in the addition of new beds.
- B. No Conversion of Beds. The contemplated transaction will not result in the conversion of beds.

**V. Stocks and Assets**

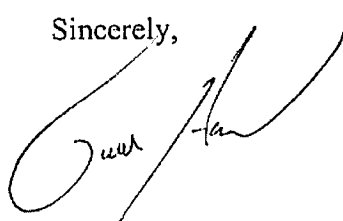
As described above, MSC Properties, L.L.C. will transfer CON 2010-ASC back to Madison Surgery Center, L.L.C. as a partial unwinding of the 2007 reorganization. Other than the foregoing, the transaction will not involve the acquisition of stock or assets.

**VI. Conclusion**

Based upon the above description of the proposed transaction and a showing that there will be no change in health services, conversion of beds, or increase or decrease in bed capacity, we respectfully request that you exercise your authority under Chapter 410-1-7-.04(2) of the Rules and determine that a certificate of need is not required for the consummation of the proposed transaction. In accordance with the SHPDA Rules, I am enclosing with this request a check in the amount of \$2,500 made payable to the Alabama State Health Planning and Development Agency.

Should you have any questions or need further information, please feel free to contact me at the number or address listed above. Thank you in advance for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Judd Harwood", written over a diagonal line that extends from the bottom left towards the top right.

Judd Harwood

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STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

November 19, 2007

Mr. Alva Lambert  
Executive Director  
State Health Planning & Dev. Agency  
P. O. Box 303025  
Montgomery, Alabama 36130-3025

**Re: Madison Surgery Center, L.L.C. – Letter of Notification**

Dear Mr. Lambert:

Madison Surgery Center, L.L.C. ("Center") is a licensed multi-specialty ambulatory surgery center located in the City of Madison, Madison County, Alabama. Center has been in operation for slightly over three years and has performed approximately thirty thousand surgeries. Presently, Center has thirty-three individuals as stockholders and 117 physicians on its Medical Staff. Center was issued CON No. 2010-ASC as of August 2, 2002 and CON No. 2010-ASC-MOD was issued May 29, 2003. By letter dated March 1, 2005, SHPDA confirmed the CON had been obligated per CON Rules and Regulations 410-1-11-.05 Completion of the Obligation and that no further action was required by your Agency. Center's building was completed in September 2004. Center was licensed on October 20, 2004 by the Alabama Department of Public Health and licensure continues in good standing.

Center is contemplating certain business entity re-arrangement or re-alignment activities. Per our conversation on November 16, 2007, Center seeks to notify your Agency of these activities. Center anticipates the business entity re-arrangement activities will be completed by the end of this year or the first part of next year. Center believes the re-arrangement does not require action by your Agency; that the re-arrangement is not a change in ownership; and that the re-arrangement is in compliance with CON Rules and Regulations.

Center desires for your Agency to have notice of these business entity re-arrangement activities. The current business entity arrangement and the proposed business entity re-arrangement are described as follows:

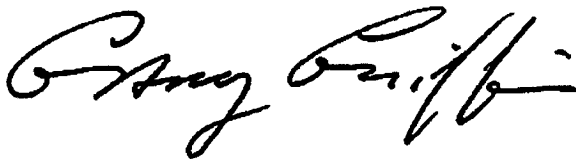
1. Currently, all assets, including land, building and fixtures, equipment, CON, ASC licensure and supplies are held in and controlled by Madison Surgery Center, L.L.C., an Alabama limited liability company. No other legal entities currently pertain to or are related to Center.

2. Re-arrangement proposes that a new LLC would be formed anticipated to have the name MSC Properties, L.L.C. ("Properties"). Center would be the sole initial owner of Properties.
3. Certain assets known as the Real Property Asset would be conveyed from Center to Properties. The Real Property Asset is anticipated to consist of land, building, fixtures and CON No. 2010-ASC-MOD.
4. Upon conveyance of the Real Property Asset to Properties, Center would distribute its entire membership interest in Properties to the members of Center. At that point Center and Properties would each have the exact same ownership. Over time, it is anticipated that the ownership of Center and Properties would diverge.
5. Upon conveyance of the Real Property Asset to Properties, a Lease Agreement would become immediately effective with Center, which Lease Agreement would include the Real Property Asset. The Lease Agreement between Properties and Center is anticipated to be a multi-year lease for the Real Property Asset including CON No. 2010-ASC-MOD.

The above business entity re-arrangement or re-alignment is generally referred to as a partnership division under Section 708 of the Internal Revenue Code. In such division, no gain is recognized on the transfer of assets to MSC Properties, L.L.C. and there is no termination of the original entity, which will continue as Madison Surgery Center, L.L.C. The role of Properties would be to lease these assets under a lease Agreement to Center. With the lease, Center would continue to be a SHPDA defined health care facility and continue to be the legal entity licensed as an ambulatory surgery center by the Alabama Department of Public Health.

Thank you for your attention in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Gary Griffin

cc: Dr. Peter Vevon, President, Madison Surgery Center, LLC, Board of Managers  
Mr. Fred Fohrell



**STATE HEALTH PLANNING AND DEVELOPMENT AGENCY**

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

November 26, 2007

Mr. Gary Griffin  
Gary Griffin & Associates, Inc.  
Post Office Box 8551  
Gadsden, AL 35902-8551

Re: Madison Surgery Center, L.L.C.  
Reorganization

Dear Mr. Griffin:

This is written in response to your letter dated November 19, 2007 in which you notified this agency of certain business entity re-arrangement or re-alignment activities. Per our conversation on November 16, 2007, Madison Surgery Center ("Center") notified this Agency of these activities as outlined below. These activities are projected to be completed by the end of this year or the first part of next year.

The current business entity arrangement and the proposed business entity re-arrangement are described by you as follows:

1. "Currently, all assets, including land, building and fixtures, equipment, CON, ASC licensure and supplies are held in and controlled by Madison Surgery Center, L.L.C., an Alabama limited liability company. No other legal entities currently pertain to or are related to Center.
2. Re-arrangement proposes that a new LLC would be formed anticipated to have the name MSC Properties, L.L.C. ("Properties"). Center would be the sole initial owner of Properties.
3. Certain assets known as the Real Property Asset would be conveyed from Center to Properties. The Real Property Asset is anticipated to consist of land, building, fixtures and CON No. 2010-ASC-MOD.
4. Upon conveyance of the Real Property Asset to Properties, Center would distribute its entire membership interest in Properties to the members of Center. At that point Center

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025  
PHONE: (334) 242-4103 FAX: (334) 242-4113

Gary Griffin  
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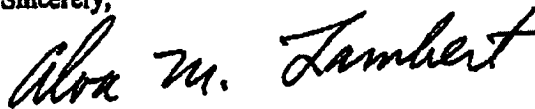
and Properties would each have the exact same ownership. Over time, it is anticipated that the ownership of Center and Properties would diverge.

5. Upon conveyance of the Real Property Asset to Properties, a Lease Agreement would become immediately effective with Center, which Lease Agreement would include the Real Property Asset. The Lease Agreement between Properties and Center is anticipated to be a multi-year lease for the Real Property Asset including CON No. 2010-ASC-MOD.

The above business entity re-arrangement or re-alignment is generally referred to as a partnership division under Section 708 of the Internal Revenue Code. In such division, no gain is recognized on the transfer of assets to MSC Properties, L.L.C. and there is no termination of the original entity, which will continue as Madison Surgery Center, L.L.C. The role of Properties would be to lease these assets under a lease Agreement to Center. With the lease, Center would continue to be a SHPDA defined health care facility and continue to be the legal "entity licensed as an ambulatory surgery center by the Alabama Department of Public Health."

Based on the information you have provided, these arrangements do not constitute a change in ownership. If you have comments or questions, please call Betty Schoenfeld at (334) 242-4103.

Sincerely,



Alva M. Lambert  
Executive Director

AML:bws

State Health Planning And Development Agency

Alabama CON Rules & Regulations

# CHANGE OF OWNERSHIP

## Part I: Purchasing Organization Information

Name of Organization: Madison Surgery Center, L.L.C.  
 Address (PO Box #): 460 Lanier Road  
 City, State, Zip, County: Madison, AL 35758  
 Number/Type Licensed Beds: N/A  
 Owner(s): Madison Surgery Center, L.L.C.  
 Operator(s): Madison Surgery Center, L.L.C.

## Part II: Selling Organization Information

Name of Organization: MSC Properties, L.L.C.  
 Address (PO Box #): 460 Lanier Road  
 City, State, Zip, County: Madison, AL 35758  
 Number/Type Licensed Beds: N/A  
 Owner(s): MSC Properties, L.L.C.  
 Operator(s): N/A

## Part III: Value of Consideration

Monetary Value of Purchase: Please see attached letter No./Type Beds: N/A  
 Terms of Purchase: Please see attached letter.  
*(add more pages as necessary to describe the sale)*

## Part IV: List of Certificate of Need Authority

Number of Beds: N/A  
 Types of Institutional Health Services: Ambulatory Surgery Center  
 List Service Area by County for Home Health Agencies: N/A

On an Attached Sheet Please Address the Following:

State Health Planning And Development Agency

Alabama CON Rules & Regulations

\*1.) The financial scope of the project to include the preliminary estimate of costs broken down by equipment, construction, and yearly operating costs.

\*2.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service and whether the service is an extension of a presently offered service, or whether the service is a new service).

\*3.) Whether the proposal will include the addition of any new beds.

\*4.) Whether the proposal will involve the conversion of beds.

\*5.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

I certify that I agree to provide the information necessary (financial, utilization of services and beds, etc.) so the new owner can have the necessary information to complete reports as necessary for the entire fiscal year. The purchaser has agreed to these terms.

Seller(s) Signature(s): [Signature]  
Owner(s): \_\_\_\_\_

Operator(s): \_\_\_\_\_

Title/Date: 5/12/16

I certify that I will be responsible for retaining records as necessary to complete reports required for the entire fiscal year, and agree to these terms. I have enclosed a check in the amount of \$2,500 made payable to 'Alabama State Health Planning and Development Agency' to cover the cost of the change of ownership.

YES  NO The above Purchaser and Seller have agreed to these purchase terms.

Purchaser Signature: [Signature]  
Title/Date: President Madison Surgery Ctr.