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November 10, 2016

VIA E-MAIL ([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov))

ALVA M. LAMBERT  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36140

Re: *The Children's Hospital of Alabama  
Request for Non-Reviewability Determination*

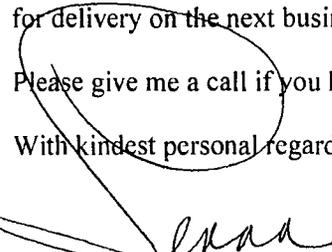
Dear Mr. Lambert:

On behalf of The Children's Hospital of Alabama ("Children's Hospital") and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules") § 410-1-7-.02 and § 410-1-3-.09, attached hereto as **Exhibit A** is a Request for your determination that the opening of a second new Children's Hospital leased location to provide existing hospital outpatient Physical Therapy/Occupational Therapy/Speech and Hearing/Rehabilitation Center Services ("PT/OT/SH/Rehab Services") does not require a CON in that it does not involve a new institutional health service or any expenditures in excess of the statutory thresholds requiring CON Review.

In accordance with CON Rule § 410-1-3-.09, a pdf copy of this Request is being submitted electronically on the 10<sup>th</sup> day of November, 2016, to [shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov); a paper original will be preserved in our files; and a fee of \$1,000.00 is being sent via overnight FedEx to SHPDA on the 10<sup>th</sup> day of November, 2016, for delivery on the next business day, Monday, November 14, 2016.

Please give me a call if you have any questions.

With kindest personal regards,



Lenora W. Pate  
FOR THE FIRM

LWP/lcc  
Enclosure



Alva M. Lambert  
November 10, 2016  
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c: Nicole Horn  
Brad Williams  
Mike McDevitt  
Christi Napper

**EXHIBIT A**

**BEFORE THE STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY OF THE STATE OF ALABAMA§**

**IN THE MATTER OF:** )  
 )  
**THE CHILDREN’S HOSPITAL OF ALABAMA** ) **Request for Non-Reviewability**  
 ) **Determination**  
 ) **RV-\_\_\_\_\_**

**REQUEST FOR NON-REVIEWABILITY DETERMINATION**

On behalf of The Children’s Hospital of Alabama (“Children’s Hospital”) and pursuant to the Alabama Certificate of Need Program Rules and Regulations (“CON Rules”) § 410-1-7-.02 and § 410-1-3-.09, and Alabama Code § 22-21-260, *et.seq.*, this Request is hereby filed with the State Health Planning and Development Agency (“SHPDA”) for a determination that Children’s Hospital’s proposal, more fully described herein, to open a second Children’s Hospital location to provide its existing hospital outpatient Physical Therapy/Occupational Therapy/Speech and Hearing/Rehabilitation Center Services (“PT/OT/SH/Rehab Center Services”) in a proposed new leased space at 3600 Ridgeway Drive, Homewood, Alabama, 35209, is not subject to CON Review for the reasons stated below, and that no CON is required for this Proposal (“Proposal”).

The following factual and legal information is hereby included in support of this Request, and a Children’s Hospital check in the amount of \$1,000.00 made payable to the State Health Planning and Development Agency is being filed in accordance with CON Rule § 410-1-3-.09, simultaneously with SHPDA, as the required filing fee for this Request pursuant to CON Rule § 410-1-7-.02.

**PROPOSAL**

**1. Facts:**

1.1 Children’s Hospital is a not-for-profit Pediatric Specialty Hospital located in Birmingham, Alabama in Jefferson County. In addition to providing the total scope of pediatric specialty services for the citizens of Alabama, Children’s Hospital also currently offers and provides ,

and has continuously provided since the 1990's, existing hospital outpatient Physical Therapy/Occupational Therapy/Speech and Hearing/Rehabilitation Center Services.

1.2 Children's Hospital's existing hospital outpatient PT/OT/SII Rehab Center Services are currently provided exclusively at its University Park, 1208 Third Avenue South, Birmingham, Alabama, 35233 location. ("Children's Third Avenue South PT/OT/SH/Rehab Center Services" or "Children's Third Avenue South Location").

1.3 All existing Children's Third Avenue South PT/OT/SH/Rehab Center Services are currently owned and operated exclusively by Children's Hospital; provided by Children's Hospital Medical Services Staff and Children's Hospital clinical therapy staff; and billed under the Children's Hospital's provider number.

1.4 Children's Hospital proposes to own and operate a new **second** leased location, to provide its existing hospital outpatient PT/OT/SH/Rehab Center Services, at Magnolia Hall, 3600 Ridgeway Drive, Homewood, Alabama, 35209, ("Children's Lakeshore PT/OT/SH/Rehab Center Services" or "Children's Lakeshore Location").

1.5 The same existing hospital outpatient PT/OT/SH Rehab Center Services currently provided at the Children's Third Avenue South location will also be provided at the proposed **new** Children's Lakeshore Location, with the exception of hearing services that may not be offered at the Children's Lakeshore Location initially, but may be in the future.

1.6 The Children's Hospital PT/OT/SH/Rehab Center Services proposed to be offered and provided in the new leased Children's Lakeshore Location will also be owned and operated exclusively by Children's Hospital; provided by Children's Hospital Medical Services Staff and Children's Hospital clinical therapy staff; and billed under the Children's Hospital provider number.

1.7 Children's Hospital proposes to lease 4,555 square feet of space in Magnolia Hall, owned by the Lakeshore Foundation, for an initial five (5) year lease term, upon commercially reasonable terms to be finalized and executed upon approval of this Request by SHPDA.

1.8 Children’s Hospital proposes to use its existing outpatient Medical Services Staff, and its clinical therapy staff from the Children’s Hospital Third Avenue South Location at the new proposed Children’s Lakeshore Location, with no new Children’s clinical therapy staff being hired for the Children’s Lakeshore Location; however, Children’s will hire new clerical registration staff to be located at the new proposed Children’s Lakeshore Location.

1.9 Children’s Medical Staff Services, currently provided by the UAB Division of Pediatric Medicine, and substantially similar Children’s clinical therapy staff services currently provided at the Children’s Third Avenue Location will also be provided at the new proposed Children’s Lakeshore Location with some, or all, of the Children’s Hospital clinical therapy staff traveling between the two Children’s locations.

1.10 Although the new proposed Children’s Lakeshore Location will be open **full-time**, just as the Children’s Third Avenue South Location, the specific clinical specialty services may be provided on alternate dates between the Children’s Lakeshore Location and the Children’s Third Avenue South Location, if necessary to accommodate staffing scheduling ratios.

1.11 The existing outpatient Medical Director for the Children’s Third Avenue South Location will provide Medical Director Rehabilitation Center Services for both the Children’s Third Avenue South Location and the new proposed Children’s Lakeshore Location.

1.12 The proposed expenditures associated with this Proposal fall well below the statutory expenditure thresholds for CON Review set forth in Alabama Code § 22-21-263, and CON Rules § 410-1-4-.01, as indexed and set forth in SHPDA’s September 19, 2016 Memorandum, as follows:

<b>Major Medical Equipment:</b>	<b>\$2,923,059</b>
<b>New Operating Costs:</b>	<b>\$1,169,223</b>
<b>Other Capital Expenditure:</b>	<b>\$5,846,117</b>

1.13 Children’s Hospital estimates that the Proposal will involve **only** the following total approximate expenditures:

<b>Major Medical Equipment:</b>	<b>\$141,950.77</b>
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<b>New Operating Costs:</b>	<b>\$189,995.20</b>
<b>Other Capital Expenditure:</b>	<b>\$285,608.12</b>
<b>Total Proposal Costs:</b>	<b>\$617,554.09</b>

1.14 This Children’s Proposal, therefore, does **not** trigger any statutory expenditure thresholds for CON Review, per Alabama Code § 22-21-263, as indexed.

1.15 This Proposal is necessary to alleviate existing space shortage at the Children’s Hospital Third Avenue South Location, and to provide the unique environment for children and adolescents with physical disabilities at the new proposed leased Children’s Lakeshore Location.

**2. Legal Analysis.**

2.1 This Proposal does not involve a “new institutional health service”, by or on behalf of a healthcare facility, subject to CON Review as set forth in § 22-21-263 of the Alabama Code and CON Rule § 410-1-4-.01, in that the Proposal does not include:

(a) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization; or

(b) any expenditure by or on behalf of a health care facility which as a capital expenditure exceeds the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility;

(c) the addition of any new healthcare facility beds or stations; or

(d) any health service which is proposed to be offered in or through Children’s Hospital which was not offered on a regular basis in or through Children’s Hospital within the preceding twelve (12) month period;

(e) any other reviewable event under the existing CON Laws, Rules, or Regulations of the State of Alabama.

2.2 This Proposal merely involves new leased space by Children’s Hospital for a new proposed Children’s Lakeshore Location to alleviate space shortage at the Children’s Third Avenue South Location for the provision of Children’s existing hospital Outpatient PT/OT/SH/Rehab Center Services at

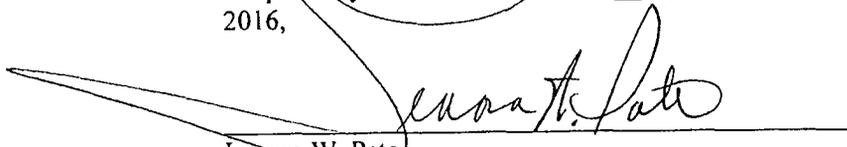
both locations, using the same Children's Hospital Medical Services Staff and Children's Hospital outpatient clinical therapy staff.

**3. Conclusion and Request.**

3.1 This Proposal does not involve a new institutional health service subject to CON Review pursuant to CON Rules § 410-1-4.01 *et. seq.* and § 22-21-260, *et. seq.* of the Alabama Code. Children's Hospital is merely proposing: to open and operate a new proposed Children's Lakeshore Location to alleviate existing space shortage at Children's Third Avenue South Location; to provide existing hospital outpatient PT/OT/SH/ Rehab Center Services at both Children's Hospital locations; to use existing Children's Hospital Medical Services Staff and existing Children's Hospital outpatient clinical therapy staff for both the Children's Third Avenue South Location and the new proposed Children's Lakeshore Location; to bill under the Children's Hospital provider number all PT/OT/SH/ Rehab Services at both locations; without any expenditure in excess of the current CON expenditure thresholds or any other new institutional health service or reviewable event under the existing CON Rules or Regulations.

3.2 Therefore, this Proposal is ~~due to be determined~~ as non-reviewable in accordance with the Alabama CON Laws, Rules, and Regulations.

Respectfully submitted this the \_\_\_ day of November,  
2016,



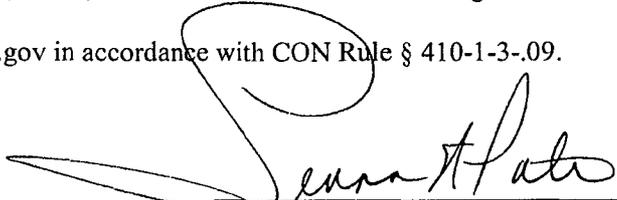
Lenora W. Pate  
Attorney for The Children's Hospital of Alabama

**OF COUNSEL:**

Sirote & Permutt, P.C.  
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Birmingham, Alabama 35205  
205.930.5162

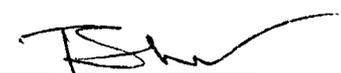
**CERTIFICATE OF SERVICE**

I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the 10<sup>th</sup> day of November, 2016, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with CON Rule § 410-1-3-.09.

  
\_\_\_\_\_  
Of Counsel

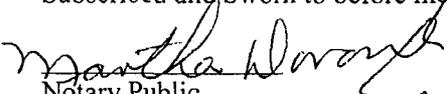
Affirmation of Requesting Party:

The Undersigned, being first duly sworn, hereby makes oath or affirms that he, **TOM SHUFFLEBARGER**, the Chief Operating Officer of the Children's Hospital of Alabama, has knowledge of the facts in this Request, and to the best of his information, knowledge and belief such facts are true and correct.

  
\_\_\_\_\_  
Tom Shufflebarger

Seal

Subscribed and Sworn to before me this the 10<sup>th</sup> day of November, 2016

  
Notary Public  
My Commission Expires: Sept 17, 2017

