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**DEC 08 2016**

**STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY**

**Chad N. Eckhardt**

Member

513.651.6876 (t)

513.651.6981 (f)

CEckhardt@fbtlaw.com

December 7, 2016

Alva M. Lambert, Executive Director  
Alabama State Health Planning and Development Agency  
100 N. Union Street - Suite 870  
Montgomery, Alabama 36104

**Re: Request for a Letter of Non-Reviewability Regarding a Substance Abuse  
Treatment Center of Pathway Healthcare - Alabama, LLC**

Dear Mr. Lambert:

Our firm represents Pathway Healthcare - Alabama, LLC, a Delaware limited liability company ("Pathway") qualified to do business in Alabama. Pathway intends to operate an addiction and substance abuse treatment center at 20 Hughes Road, Suite 101, Madison, AL 35758. We write to request that the State Health Planning and Development Agency ("SHPDA") issue a Letter of Non-Reviewability stating that Pathway is not required to obtain a Certificate of Need ("CON") under Ala. Code 22-21-265 (a) as it meets the Physician's Office Exemption.

Pathway is a wholly owned subsidiary of Pathway Healthcare, LLC, a Delaware limited liability company, which, in turn, is wholly owned by Pathway Partners, LLC, a Delaware limited liability company. Brent Boyett, M.D., a physician licensed to practice medicine in Alabama, and his wife, Sandra Boyett, own more than 5% of Pathway Partners, LLC through their holdings in Addiction Medicine Consultants Incorporated, an Alabama corporation.

Pathway intends to provide addiction and substance abuse treatment services in Madison, Alabama. Pathway intends to employ physicians and medical staff, who will strictly provide outpatient services to patients in need of such services. The physicians will be employed on a full-time or part-time basis. Further, physicians will treat patients primarily by prescribing opioid substitutes and remedies (e.g. suboxone, vivitrol). For Pathway's financial breakdown of equipment, first -year operating, and capital costs, please see Exhibit A which is enclosed.

We respectfully submit that the Alabama Code does not require Pathway to obtain a CON pursuant to Ala. Code 22-21-265 (a). The Alabama Code forbids persons from operating a new institutional health service in or through health care facilities unless the person obtains a CON from the SHPDA. *See* Ala. Code 22-21-265 (a); Ala. Code 22-21-260 (9). However, "health services" do not include the lawful practice of any profession conducted independent of a health care facility. *See* Ala. Code 22-21-260 (8). Further, a "health care facility" does not include the offices of private physicians whether for individual or group practice and regardless of ownership. *See* Ala. Code 22-21-260 (6).

The Physician's Office Exemption ("POE") test, articulated by the Supreme Court of Alabama, determines whether an office is a "health care facility" and, if not, whether it is exempt from the CON requirement. The POE is available when:

- "(1) The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients;
- (2) The proposed services are to be provided, and related equipment used, at any office of such physicians;
- (3) All patient billings related to such services are through, or expressly on behalf of, the physicians' practice;

(4) The equipment shall not be used for inpatient care, nor by, through, or on behalf of a health-care facility.”

*See Ex parte Sacred Heart Health Sys., Inc.*, 155 So. 3d 980 (Ala. 2012). The medical group in *Sacred Heart* leased office space for their physicians. *Sacred Heart Health Sys., Inc. v. Infirmary Health Sys.*, 155 So. 3d 989, 991 (Ala. Civ. App. 2013). Only physicians employed by the medical group could use the office equipment in the proposed offices to treat their patients. *Id.* at 998. Non-physicians would not be permitted to use the equipment. *Id.* All equipment used by the physicians was housed in the physicians’ office space within the building. *Id.* at 999. The medical group’s own billing department completed billing for all physician patients. *Id.* Finally, the equipment in the office space would be used exclusively by the physicians for inpatient care of their patients. *Id.* at 1000.

In this case, Pathway’s facility will solely consist of physician offices. Additionally, Pathway employs physicians to practice their profession at the facility. Pathway physicians will exclusively use office equipment and perform treatment services. The offices will not be used for any secondary purpose. Pathway will not operate in connection with other hospitals or public health centers. Further, Pathway, whether through Pathway Healthcare, LLC or a third party, will complete the billing for the physicians’ services. In addition, Pathway will only offer outpatient services. If the need for inpatient or residential services arises, Pathway patients will be referred to the nearest hospital or residential facility to receive inpatient services.

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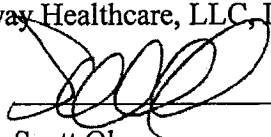
Consequently, Pathway's offices meet the POE test created in *Ex parte Sacred Heart Health Sys., Inc.* Further, Pathway's structure and organization is consistent to that of Sacred Heart Medical Group in *Sacred Heart Health Sys., Inc.* Thus, we respectfully request that the SHPDA issue a Letter of Non-Reviewability stating that Pathway meets the exemption and a CON is not required to operate in the manner described herein.

Sincerely,

Pathway Healthcare - Alabama, LLC

By: Pathway Healthcare, LLC, Its Sole Member

By:

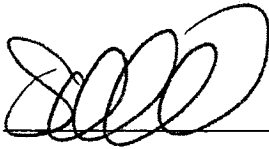
  
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Scott Olson  
Manager

December 7, 2016

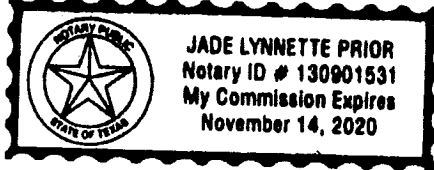
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**Affirmation**

The undersigned, being first duly sworn, hereby make oath or affirm that he is a member of Pathway Healthcare, LLC, has knowledge of the facts in this request, and to the best of his information, knowledge and belief, such facts are true and correct.

Affiant 

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of December.



Notary Public

My commission expires: Nov. 14, 2020

# Exhibit A

## Equipment Costs

Equipment Rental (furniture, etc.). @\$2psf	\$ 4,806
<b>Total Equipment Costs</b>	<b>\$ 4,806</b>

## First Year Operating Costs

TV Radio Add	\$ 12,000
CAM	\$ 7,200
Telephone @\$150/ month	\$ 1,800
Shredder	\$ 200
Salaries	
Physicians	\$ 85,025
RN @ \$20.00/hr.	\$ 30,680
Addiction Coordinator/Med Asst. @\$14.50/hr.	\$ 22,243
Office Manager @ \$21.00/hr.	\$ 32,214
Front Desk/Med Assistant @ \$14.50/hour	\$ 22,243
Rental Insurance	\$ 702
Supplies	\$ 720
Business License	\$ 180
Outsourced Billing	\$ 40,381
Training	\$ 12,000
Malpractice Insurance	\$ 12,500
Contingency @1%	\$ 31,199
<b>Total Operating Costs</b>	<b>\$ 311,288</b>

## Capital Costs

Rent (2403 sf x \$16)	\$ 39,600
<b>Total Capital Costs</b>	<b>\$ 39,600</b>

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<b>Total Annual Costs</b>	<b>\$ 355,694</b>
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