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STATE HEALTH PLANNING AND  
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December 1, 2017

**VIA EMAIL, ORIGINAL TO FOLLOW VIA U.S. MAIL**

Mr. Alva M. Lambert  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, Alabama 36104  
[shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov)

**Re: Request for Determination of Non-Reviewability  
Southern Alabama Surgery Center d/b/a Surgery Center South**

Dear Mr. Lambert:

This firm represents Southern Alabama Surgery Center d/b/a Surgery Center South ("Surgery Center South"), a physician-owned, Medicare-certified ambulatory surgery center ("ASC") located in Dothan, Alabama that serves patients in Houston County and surrounding areas.<sup>1</sup> Pursuant to Alabama Certificate of Need Program Rules and Regulations ("CON Rules(s)") § 410-1-7-.02, Surgery Center South requests a determination that the proposed expansion of the ASC by four (4) fully-constructed operating rooms ("ORs") is not subject to certificate of need ("CON") review under *Ala. Code* § 22-21-260 *et. seq.*, and the CON Rules. Pursuant to CON Rule § 410-1-7-.02, a check in the amount of \$1000.00 made payable to the Alabama State Health Planning and Development Agency ("SHPDA") is enclosed for the filing fee. To assist with your determination, we submit the following information:

By way of background, by letters dated February 26, 2015 and June 23, 2015, Surgery Center South requested approval from SHPDA that Surgery Center South's then expansion of its facility would not be subject to CON review. The request was designated RV 2015-020, and was granted

<sup>1</sup> Contact information for Surgery Center South is as follows: 2800 Ross Clark Circle, Suite 3, Dothan, Alabama, 35601, Attn: Sharron Sullivan, Administrator.

by SHPDA by letter dated July 6, 2015.<sup>2</sup> The expansion involved the lease of an additional 7,569 square feet of shelled space in which the following would be constructed and equipped: six (6) additional ORs, sixteen (16) bays for pre-op and recovery care, counseling space, cleaning stations, a waiting area, restrooms, and a small physician's lounge. Two (2) of the six (6) new ORs would be licensed and placed into operation immediately following construction. The four (4) remaining ORs would be constructed but not yet licensed or placed into operation, being reserved for future use. Surgery Center South informed SHPDA that when it was ready to equip and place those four (4) ORs into operation, it would seek additional permission to do so from SHPDA. Surgery Center South successfully opened the first two ORs on July 18, 2016, and is now ready to equip and place the four (4) remaining, fully-constructed ORs into operation.

The four (4) remaining ORs have been fully constructed (after receiving approval pursuant to RV 2015-020) and can be placed into operation without significant additional construction costs. The ORs are located in space currently being leased by Surgery Center South; thus, no additional lease costs will be incurred.<sup>3</sup> Existing support staff will be utilized to perform support services for the remaining ORs (*e.g.*, billing, registration, scheduling, management, etc.); thus, new annual operating expenses related to salaries and benefits will be minimized. The four (4) additional ORs will be utilized to provide ambulatory surgery services, which Surgery Center South currently has CON authority to provide.

The total cost of construction is anticipated to be approximately \$480,000.00; the total cost for the purchase and/or lease of major medical equipment is anticipated to be approximately \$1,048,000.00<sup>4</sup>; other capital costs are anticipated to be less than \$5,000.00; and new first year annual operating costs are estimated to be approximately \$821,000.00<sup>5</sup>; none of which will exceed the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 15, 2017). Thus, the entire

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<sup>2</sup> In RV 2015-020, Surgery Center South estimated that its expenditures for major medical equipment would be \$485,000, new annual operating costs would be \$1,001,000 (including leasing, staffing, supply, and other costs), and other capital expenditures (including construction and financing) would be \$2,121,284. The actual costs associated with the expansion were below the estimations set forth in RV 2015-020 and the CON-authorized thresholds.

<sup>3</sup> The lease costs were included in RV 2015-020.

<sup>4</sup> Although equipment for the four (4) ORs was included in the equipment cost estimations contained in RV 2015-020, the equipment for the four (4) remaining ORs has not yet been purchased by Surgery Center South, as requested in the July 6, 2015 approval letter from SHPDA. Thus, the revised, conservative cost estimation associated with the equipment for the four (4) ORs is being included in this LNR proposal.

<sup>5</sup> First year annual operating costs include all new operating costs associated with opening the four (4) ORs. New first year annual operating costs have been estimated using conservative assumptions and contingencies, and are based on actual and historical costs.

project will be less than the capital expenditure thresholds set forth in *Ala. Code* § 22-21-263 and CON Rule § 410-1-4-.01 (as adjusted in SHPDA's Memorandum dated September 15, 2017). All expenditures will be incurred by Surgery Center South.

This proposal does not constitute a "new institutional health service" subject to CON Review, as the proposal does not include:

- (1) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization;
- (2) 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;
- (3) any change in the existing licensed bed capacity of a health care facility;
- (4) any health service which is proposed to be offered in or through a health care facility which was not offered on a regular basis in or through a health care facility within the preceding 12-month period; or
- (5) any other reviewable event under the existing CON Rules.

In addition, this proposal does not involve the relocation of the ASC or any change in ownership of the ASC.

Accordingly, based on the above, Surgery Center South requests your determination that the expansion of the ASC by four (4) fully-constructed ORs is not subject to CON review under *Ala. Code* § 22-21-260 *et seq.* and the CON Rules, and is permissible without further filings or requests to SHPDA. We appreciate your response to this matter, and please do not hesitate to contact us should you need additional information.

Sincerely,

  
KCF  
Jim Hoover

JAH/caj  
Enclosure (\$1,000 Filing Fee)

cc: Sebastian Heersink, M.D., Medical Director  
Sharron Sullivan, Administrator

Sincerely,

  
Kelli C. Fleming

**Affirmation of Requesting Party:**

The undersigned, being first duly sworn, hereby make oath or affirm that she is the Administrator of Southern Alabama Surgery Center d/b/a Surgery Center South, has knowledge of the facts in this request, and to the best of her information, knowledge, and belief, such facts are true and correct.

Affiant: *Sharon Sullivan* (SEAL)

SUBSCRIBED AND SWORN to before me this 29<sup>th</sup> day of November, 2017.

*[Signature]*  
Notary Public

**MY COMMISSION EXPIRES:**  
**July 22, 2018**

My Commission Expires: \_\_\_\_\_