



**TENTATIVE AGENDA  
CERTIFICATE OF NEED  
REVIEW BOARD**

**October 15, 2014**

**10:00 a.m.**

**CAPITOL AUDITORIUM,  
UNION STREET ENTRANCE  
MONTGOMERY, ALABAMA**

PRESIDING:

NEAL G. MORRISON  
CHAIRMAN

TENTATIVE AGENDA

- |      |   |                 |
|------|---|-----------------|
| I.   | CALL TO ORDER   | CHAIRMAN        |
| II.  | ADOPTION OF AGENDA  | CHAIRMAN        |
| III. | MINUTES OF September 17, 2014   | CHAIRMAN        |
| IV.  | CHAIR'S REPORT  | CHAIRMAN        |
| V.   | SHPDA ADMINISTRATIVE REPORT   | ALVA M. LAMBERT |
| VI.  | CERTIFICATE OF NEED PROGRAM   | ALVA M. LAMBERT |
| A.   | <b><u>AL2014-029, Baptist Health System, Inc. d/b/a Shelby Baptist Medical Center, Alabaster, AL:</u></b> Proposes to acquire, relocate and operate four (4) psychiatric inpatient beds for the expansion of the existing thirty-six (36) bed Geriatric Psychiatric and Adult Psychiatric Service.<br><b>Opposition: None</b> |                 |

**For Informational Purposes Only:**

**Reviewability Determinations:**

**RV2014-029**, Rehab Associates, LLC, requests to provide outpatient physical therapy only. **Status: Non-Reviewable**

**Pending Reviewability Determinations:**

**RV2014-028**, Surgicare of Mobile, Ltd., requests to add five (5) operating rooms, twenty (20) pre-/post-op bays, four (4) restrooms and expand the waiting room and business office. **Status: Pending**

**Opposition: Providence Hospital filed a letter opposing the Reviewability Determination Request. Mobile Infirmiry Association d/b/a Mobile**

**Infirmiry Medical Center filed a letter opposing the Reviewability Determination Request.**

**RV2014-030**, Jackson Hospital and Clinic, requests to renovate the Labor & Delivery Department. **Status: Pending**

**RV2014-031**, Fresenius Medical Care Anniston Home, requests to establish and operate a new ESRD center consisting of four (4) home training stations in Calhoun County. **Status: Pending**

**RV2014-032**, Marion Regional HomeCare, LLC d/b/a Marion Regional HomeCare, requests to relocate the home health administrative office from 1186 Military St. South, Hamilton, AL to 234 1st Avenue SW, Ste 2, Hamilton, AL. **Status: Pending**

**RV2014-033**, Restore Therapy Services Outpatient, requests to provide outpatient physical therapy services only, in Covington County. **Status: Pending**

VII. OLD BUSINESS

CHAIRMAN

VIII. NEW BUSINESS

CHAIRMAN

**A. Declaratory Ruling 145:**

Pleasant Properties, LLC has submitted a Petition for Declaratory ruling requesting that the CON Review Board review the attached facts and legal arguments. After doing so, and hearing from the affected parties concerning their respective positions, petitioner asks that a Declaratory Ruling be issued which will make it unquestionably clear that the CONRB took its actions on May 15, 2013 on the basis of a good faith belief that the parties would keep their agreement and that the decision made by the full Board would bring an end and a finality to the dispute on "SCALF" bed authority between these parties.

**B. Declaratory Ruling 146:**

Martin Glen, LLC and Martins, LTD have submitted a Petition for Declaratory ruling requesting that the CON Review Board issue a Declaratory Ruling stating as follows:

- (i) In order to satisfy the 92% Rule, an applicant must, as stated in *Ala. Admin. Code* § 410-2-4-.04 (2)(d)(6)(ii), use the "census data in the last two (2) most recent full year 'Annual Report(s) for Specialty Care Assisted Living Facilities (Form DM-1)' published by or filed with SHPDA" and with respect to the Project, the most recent two (2) years would be 2013 and 2014, and the use of 2012 and 2013 reporting data in the CON application is inconsistent with the SHP;

- (ii) Pleasant Properties has de-licensed and suspended operation of the previously-operated 16 SCALF beds (and without a license, has not been capable of providing SCALF services) for an uninterrupted period of 12 months or longer, and thus, is deemed to have abandoned the previously-granted CON pursuant to *Ala. Admin. Code* § 410-1-11-.08;
- (iii) The filing of a CON application does not resume operation of the facility or the provision of the service once de-licensed;
- (iv) The tolling language contained in *Ala. Admin. Code* § 410-1-11-.01 only applies to the initial 12-month period (or an extension of the 12-month period thereof) following receipt of a CON (i.e., to an executor CON), and not to the 12-month period stated in *Ala. Admin. Code* § 410-1-11-.08, which concerns a vested CON;
- (v) *Ala. Code* § 22-21-263(a)(4) requires a new CON when the health services proposed were not offered or capable of being offered on a regular basis within the 12 month period prior to the time such services would be offered, and that the authorizing statutory language does not allow for the tolling of this 12-month time period by filing a relocation CON application; and
- (vi) At the time the Project's CON application was filed, the SHP in effect showed Tuscaloosa County to be over-bedded with SCALF beds.

IX. ADJOURNMENT

CHAIRMAN