

RV2021-027

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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

July 26, 2021

VIA E-MAIL (shpda.online@shpda.alabama.gov)

Emily T. Marsal
Executive Director
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104

**RE: Surgicare of Mobile, Ltd.
Request for Non-Reviewability Determination
Opening and Operation of Previously Constructed Operating Room**

Dear Ms. Marsal:

On behalf of Surgicare of Mobile, Ltd. (“Surgicare”) and pursuant to the Alabama Certificate of Need (“CON”) Program Rules and Regulations (“CON Rules”), including CON Rules 410-1-7-.02 and 410-1-3-.09, and ALA. CODE §§ 22-21-260 *et seq.*, the purpose of this letter is to request a State Health Planning and Development Agency (“SHPDA”) determination that the proposed opening and operation of Surgicare’s previously constructed operating room, which has remained unused and unequipped, is not subject to CON review for the reasons stated below and no CON is required for Surgicare’s proposal (“Proposal”).

INTRODUCTION

Surgicare owns and operates a multi-specialty ambulatory surgery center (“ASC”) located in Mobile, Alabama. On August 4, 2014, Surgicare filed a request for a letter of non-reviewability (“LNR”) for the expansion of its ASC (the “RV 2014-028 Request” or the “2014 Proposal”). The 2014 Proposal involved the expansion of Surgicare’s ASC through renovation of existing space and the construction of a new wing to accommodate the growing demand for its ASC services (the “Project”). The construction of the new wing including the construction of five (5) operating rooms (“ORs”), four (4) of which were to be licensed, certified, fully staffed, and operated upon the completion of construction (these four (4) ORs are referred to herein as the “4 New ORs”). The remaining fifth OR, however, was to be reserved for future use (the reserved fifth OR is referred to herein as the “Reserved Future OR”). The 2014 Proposal also included construction of twenty (20) bays for pre-operative and recovery care; administrative space; equipment processing; a waiting area; restrooms; and storage space.

As detailed in Surgicare’s February 5, 2016 Response to Opposition Letters Dated September 3, 2014 and September 15, 2014, and SHPDA’s October 15, 2014 Request and Surgicare’s March 16, 2016 Response to SHPDA’s Letter Dated March 10, 2016 (collectively, the “Surgicare Response”), attached hereto as **Exhibit 1** and incorporated herein, Surgicare’s primary goal for the 2014 Proposal was to “create a more reasonable patient service and working environment for its ASC patients, physicians, and staff, and to continue to provide optimal, accessible, quality care to

its ASC patients.” The 2014 Proposal was necessitated by the growing demand for Surgicare’s ASC services, with the existing five (5) ORs being used “well in excess of normal hours and capacity in response to patient demand for services.” Prior to the 2014 Proposal, this growing demand for Surgicare’s ASC services had led to the expansion of Surgicare’s hours beyond normal eight-hour work days to significantly longer work days; overtime work for staff; less desirable and inefficient operating schedules for physicians; and the scheduling of procedures at later times in the day, which presented difficulties for patients, including patients undergoing gastrointestinal (“GI”) procedures requiring fasting and bowel cleansing preparation better suited for morning appointment times.

As set forth in detail in the Surgicare Response, the 2014 Proposal did not exceed the applicable statutory thresholds for CON review, including thresholds for major medical equipment, new annual operating costs, and other capital expenditures. In the Surgicare Response, **Surgicare also made representations concerning the Reserved Future OR, including representations that Surgicare would:**

- Not equip the Reserved Future OR; and
- Ensure that the Reserved Future OR would remain unusable, unsurveyed, uncertified, and unstaffed until seeking and obtaining future authority from SHPDA.

SPHDA responded to the 2014 Proposal and Surgicare Response in a letter dated March 16, 2016 (“SHPDA Determination”), attached hereto as **Exhibit 2**, finding that the Project was not subject to CON review. The SHPDA Determination found that the Project did not involve the addition of beds, the conversion of beds from one classification to another, or the offering of new health services not previously provided by the ASC and that the Project’s proposed costs for major medical equipment, new annual operating costs, and other capital expenditures did not exceed the applicable CON review monetary thresholds. The SHPDA Determination also confirmed that **“one (1) of the proposed operating rooms will remain unstaffed, unsurveyed, uncertified, and reserved in an unusable condition, to be marked on the plans ‘for future use,’ until subsequent Agency authority to place the operating room in operation is sought and obtained, and provided, further, that Surgicare will refrain from buying the medical equipment for use in the unstaffed, unusable operating room until it has obtained such authority.”** (emphasis added).

PROPOSAL

Following the SHPDA Determination and completion of Project construction, the addition of the 4 New ORs allowed Surgicare to achieve the 2014 Proposal’s primary goal of “creat[ing] a more reasonable patient service and working environment for [Surgicare’s] ASC patients, physicians, and staff, and . . . continu[ing] to provide optimal, accessible, quality care to [Surgicare’s] ASC patients.” After the opening of the 4 New ORs, Surgicare was better able to meet the demand for its ASC services while maintaining appropriate, reasonable appointment times and quality patient care. More recently, however, the continued growing demand for Surgicare’s ASC services has resulted in a need for additional operating space and time for GI procedures, as discussed further below. **As contemplated in the Surgicare Response and SHPDA Determination, Surgicare now seeks SHPDA authority to place the Reserved Future OR in operation.**

In accordance with the SHPDA Determination, Surgicare affirms the accuracy of all representations made and pertinent information disclosed in its 2014 Proposal and Surgicare Response. Specifically, with respect to the Reserved Future OR, Surgicare affirms that:

- It has **not** equipped, or purchased medical equipment for, the Reserved Future OR; and
- The Reserved Future OR **has remained unstaffed, unsurveyed, uncertified, and reserved in an unusable condition** at all times since its construction.

Surgicare also affirms that the actual costs associated with the 2014 Proposal were consistent with the representations made in its Surgicare Response and were below the applicable CON review monetary thresholds.

Following the Project construction and addition of the 4 New ORs, Surgicare provided and continues to provide ASC services in nine (9) ORs and two (2) treatment rooms. Surgicare's average monthly volume of cases for the twelve (12) month period from May 2020 to April 2021 was 1,232 cases. Case volume increased to 1451 cases in May 2021 and to 1601 cases in June 2021. Surgicare has observed a current and future need for additional OR time and space for GI cases in particular. Surgicare's GI OR utilization from January 2021 to June 2021 is attached hereto as **Exhibit 3**, and its current GI OR block time availability from July 2021 to September 2021 is outlined in the schedule attached hereto as **Exhibit 4**. As indicated in the Exhibit 4 schedule, **there is currently no block time available that would allow for a consistent block time to be assigned for new GI case volume.**

Moreover, two additional GI physicians will join an existing GI practice in Mobile, Mobile Gastroenterology, in July 2021 and September 2022 and will be performing GI procedures at Surgicare's ASC. As detailed in the 2014 Proposal and Surgicare Response, it is also particularly important to have OR availability for GI cases at reasonable times to ensure appropriate patient care. Scheduling GI procedures at times late in the day presents difficulties for patients undergoing GI procedures which require fasting and bowel cleansing preparation.

In accordance with the 2014 Proposal, Surgicare Response, and SHPDA Determination, Surgicare now proposes and seeks SHPDA authority to open, equip, and operate the previously unstaffed, unsurveyed, and uncertified Reserved Future OR in order to meet the need for additional GI OR space and time. As discussed below, the opening and operation of the Reserved Future OR will **not** involve costs above the applicable CON review monetary thresholds.

LEGAL ANALYSIS

This Proposal arises from the 2014 Proposal, Surgicare Response, and SHPDA Determination and is not subject to CON review under ALA. CODE §§ 22-21-263 *et seq.* and CON Rules 410-1-4-.01 *et seq.* The expenditures associated with this Proposal do not exceed the statutory CON review thresholds, as set forth at ALA. CODE § 22-21-263 and CON Rule 410-1-4-.01, and as indexed for inflation and set forth in SHPDA's September 23, 2020 New CON Application Fee and Monetary Threshold for Review Memorandum ("Threshold Memorandum"), attached hereto as **Exhibit 5**. Specifically, the Proposal involves the following expenditures which are below the current applicable CON review monetary thresholds:

1. **Equipment – \$354,043.75**, including, but not limited to, medical equipment, furniture, and technological equipment, as further described in the equipment cost summary attached hereto as **Exhibit 6**.
2. **New Annual Operating Costs – \$522,290.00**, including, but not limited to, staffing expenses, medical supplies, office supplies, and utilities. The new annual operating costs are more fully described in the general and detailed summaries of new annual operating costs attached hereto as **Exhibit 7**.

The currently effective CON review monetary thresholds, as set forth in the Threshold Memorandum, are: \$3,079,347.00 for major medical equipment; \$1,231,738.00 for new annual operating costs; and \$6,158,695.00 for any other capital expenditures. **Thus, the foregoing outlined expenditures considered, the expenditures associated with the Project fall well below the applicable statutory CON review monetary thresholds, as indexed by SHPDA.**

As discussed above, the Reserved Future OR was previously constructed as part of the 2014 Proposal project and has simply remained unused and unequipped since its construction. Thus, the Project does not involve any construction and no construction costs will be incurred. Additionally, this Proposal does not involve the addition of any new health service; rather, the Reserved Future OR will be used to continue providing existing GI services with additional capacity and flexibility to ensure appropriate patient care as the demand for GI services at Surgicare is currently increasing and will continue to increase.

Therefore, the Proposal does not constitute a “new institutional health service” subject to CON Review under ALA. CODE § 22-21-263 and CON Rule 410-1-4-.01, in that 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; or
2. Any expenditure by or on behalf of a health care facility or health maintenance organization, the capital expenditure of which exceeds the CON statutory thresholds for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility; or
3. The addition of any new health care facility beds or stations; or
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 such health care facility within the preceding twelve-month period; or
5. Any relocation of the ASC; or
6. Any other reviewable event under existing CON laws, rules, or regulations of the State of Alabama.

CONCLUSION AND REQUEST

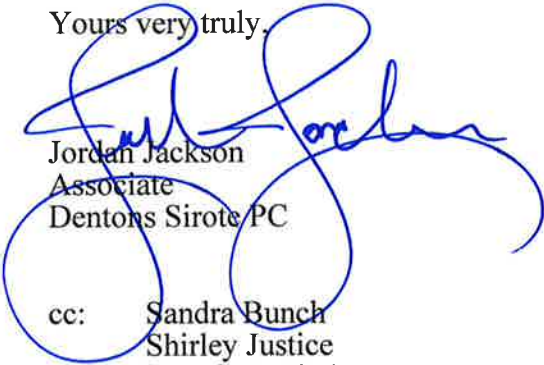
In accordance with the facts and analysis set forth above, this Proposal does not involve a “new institutional health service” subject to CON Review under ALA. CODE §§ 22-21-263 *et seq.* and CON Rules 410-1-4-.01 *et seq.* Rather, as directed by the SHPDA Determination, Surgicare has held the Reserved Future OR in unusable clinical condition since its construction and is now requesting SHPDA approval to open, equip, and operate the previously constructed but unstaffed, unsurveyed, uncertified, and unequipped Reserved Future OR. The opening and operation of the Reserved Future OR will allow Surgicare to meet the current and future demand for Surgicare’s ASC services, including GI services.

Pursuant to the SHPDA Determination, Surgicare now respectfully requests SHPDA’s determination that the proposed opening and operation of the Reserved Future OR is not subject to CON review in that it: does not involve any expenditure in excess of the applicable CON review

monetary thresholds; does not involve any other new institutional health service subject to CON review; does not involve any other reviewable event under the Alabama CON laws, rules, and regulations; and does not involve the relocation of the Surgicare ASC.

In accordance with CON Rule 410-1-3-.09, a pdf text searchable copy of this Proposal is being submitted electronically on July 26, 2021. Additionally, a check from Surgicare in the amount of \$1,000.00 is being sent to SHPDA at the address above for delivery on July 27, 2021, as the filing fee for the above matter.

Yours very truly,



Jordan Jackson
Associate
Dentons Sirote PC

cc: Sandra Bunch
Shirley Justice
Joseph T. Ritchey

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that she, Sandra Bunch, Chief Executive Officer of Surgicare of Mobile, Ltd., has knowledge of the facts in this request, and to the best of her information, knowledge, and belief, such facts are true and correct.

Sandra Bunch

Sandra Bunch

Seal

Subscribed and Sworn to before me this the 26th day of July 2021.

Mandy H. Pugh

Notary Public

My Commission expires: 6/10/23



Exhibit 1

Surgicare Response



Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, AL 35205-2972

PO Box 55727
Birmingham, AL 35255-5727

February 5, 2016

VIA E-MAIL & FEDERAL EXPRESS

Mr. Alva M. Lambert
Executive Director
Alabama State Health Planning and Development Agency (“SHPDA”)
100 North Union Street, Suite 870
Montgomery, AL 36104

Re: Surgicare of Mobile, Ltd.: RV 2014-028 Request
Response to Opposition letters dated September 3, 2014 and September 15, 2014, and SHPDA’s
October 15, 2014 Request (“Response”)

Dear Mr. Lambert:

As you know, our firm represents Surgicare of Mobile, Ltd. (“Surgicare”), which owns and operates a multi-specialty ambulatory surgery center (“ASC”) located in Mobile, Alabama, serving patients in Mobile County. Pursuant to the Alabama Certificate of Need Program Rules and Regulations (the “CON Rules”) § 410-1-7-.02 and Alabama Code § 22-21-260 *et. seq.*, Surgicare filed its pending request for a letter of non-reviewability (“LNR”) regarding a proposed expansion of its ASC, dated August 4, 2014 (the “RV 2014-028 Request”), a copy of which is attached hereto as Exhibit A.¹

INTRODUCTION

Surgicare’s RV 2014-028 Request was consistent with the SHPDA LNR required information as published on SHPDA’s website, attached hereto as Exhibit B. Surgicare is pleased, however, to respond to two (2) opposition letters, the first filed on September 3, 2014 by Providence Hospital and the second filed on September 15, 2014 by Mobile Infirmiry Medical Center (sometimes referred to herein together as the “Opposition” or “Opponents”, or individually, an “Opponent”), and to your letter, dated October 15, 2014 (the “October 15, 2014 SHPDA Request”), which requested the following additional information:

- 1) A breakdown supporting the projected expenditures of \$2,200,000 in major medical equipment, \$3,750,000 in other capital expenditures and \$980,000 in additional annual operating cost. To the extent the project involves one or more leases, please advise whether such lease will be a capital or operating lease.***

¹ The judicial challenge by Springhill Hospital in *Ex parte Springhill Hospitals, Inc., d/b/a Springhill Memorial Hospital*, Petition for Writ of Certiorari (In re: Springhill Hospitals, Inc., d/b/a Springhill Memorial Hospital v. Surgicare of Mobile, Ltd., SHPDA, and Alva Lambert, Executive Director) (Montgomery Circuit Court: CV-14-901553; Civil Appeals : 2140494; Supreme Court: 1141300) (Writ denied on November 13, 2015) (available at <https://acis.alabama.gov/displaydocs.cfm?no=697353&event=4HQ0L76NF>), which has now been dismissed, delayed the filing of this response to the October 15, 2014 SHPDA Request.



2) *If not included in the answer to 1 above, please provide additional detail regarding the proposed expansion to its ASC, specifically, whether it will involve construction, renovation or lease.*

Surgicare's RV 2014-028 Request proposes to expand its ASC through the renovation of its current physical space, and the construction and build out of a new wing (the "OR Wing") to accommodate growing demand for its services. To clarify more fully, Surgicare's pending LNR proposed the construction of five (5) new operating rooms ("ORs") within the OR Wing, four (4) of which will be licensed, certified, fully staffed, and operated immediately upon completion of the construction (these four (4) referred to herein as the "4 New ORs") and one (1) of which will remain unstaffed, unsurveyed, uncertified, and reserved in an unusable condition to be marked on the plans for future use until subsequent SHPDA authority is sought and obtained (this fifth OR referred to herein as the "1 Reserved Future OR"); twenty (20) bays for pre-operative and recovery care; administrative space; equipment processing; a waiting area; restrooms; and storage space (the "Proposal").

Importantly, as described more fully herein, although the Proposal calls for opening four (4) ORs, the net increase in case load and associated new operating costs is approximately equivalent to opening only two (2) new ORs. This effective net increase of only two (2) new ORs is because: (i) one (1) of the 4 New ORs is merely replacing the endoscopy suite (the space labeled "Procedure Room" on the schematic attached hereto as Exhibit C-1) currently in use by Surgicare which will no longer be used for procedures; (ii) both the Procedure Room and the existing five (5) ORs currently in use by Surgicare (the "5 Existing ORs") have been and continue currently to be utilized well in excess of normal hours and capacity in response to patient demand for services and such excess caseload will be allocated among the 4 New ORs; (iii) once the Proposal is complete, Surgicare will be able to return to a normal schedule much preferred by patients and physicians in all of its ORs, with the same staff and costs associated therewith; and (iv) Surgicare will also convert one of its current laser rooms into non-procedural office space.

As demand for the ASC services has grown, Surgicare has found it necessary to expand its hours from its normal eight-hour work days to significantly longer work days; ask staff to work overtime; maintain less desirable and sometimes inefficient operating schedules for physicians; and schedule procedures at later times in the day (which is difficult for patients). Surgicare's primary goal for this Proposal is to create a more reasonable patient service and working environment for its ASC patients, physicians, and staff, and to continue to provide optimal, accessible, quality care to its ASC patients. To that end, morning appointment times are especially important for patients undergoing GI procedures because of the required preparation – including fasting and bowel cleansing.

The following information is hereby submitted for your additional review, consideration, and determination that the Proposal described in the RV 2014-028 Request is non-reviewable under the applicable CON statutory and regulatory thresholds for review.

RESPONSE TO OCTOBER 15, 2014 SHPDA REQUEST AND TO OPPOSITION

1. **Overview of Proposed Clarification.**

1.1 **Modify "Procedure Room" for Non-Procedural Use.** Surgicare currently has five (5) ORs, three (3) Laser Rooms, and one (1) endoscopy suite. As part of this Proposal, Surgicare will convert the endoscopy suite (the space labeled "Procedure Room" on the schematic attached hereto as Exhibit C-1) to a non-procedural "Isolation Room" primarily for patient transition between surgery and a pre-op or



post-op bay in privacy, primarily for separation of pediatric patients when necessary. Surgicare plans to distribute the current GI caseload of the Procedure Room to two (2) of the 4 New ORs. Such transfer is illustrated on Exhibit C-1.

1.2 **Distribute Case Load.** Also, as part of this Proposal, Surgicare will return one (1) of the 5 Existing ORs (labeled “OR1” on the schematic attached hereto as Exhibit C-1) to use for non-GI cases and distribute the current GI caseload of OR1 to two (2) of the 4 New ORs. Such transfer is illustrated on Exhibit C-1.

1.3 **Normalize Schedule.** Surgicare currently uses the endoscopy suite and one (1) of the 5 Existing ORs (labeled “Procedure Room” and “OR1”, respectively, on Exhibit C-1) at approximately two times (2X) normal capacity to meet patient demand for GI procedures, through extended hours and cramped schedules for physicians and professional staff, as well as patients. The Proposal seeks to allocate the overloaded schedule of cases performed currently in the Procedure Room and OR1 among the 4 New ORs. Also, the remaining four (4) of the 5 Existing ORs are currently over-utilized to meet patient demand. Once the Proposal is implemented, Surgicare plans to utilize all active ORs (but not the Procedure Room) with a normal case load and operating schedule, planning approximately a half-day block of procedures each day, and provide appropriate scheduling flexibility for patients.

1.4 **Convert Laser Procedure Room to Office Space.** Surgicare will also convert the Excimer Laser Room (labeled on Exhibit C-1 as Excimer Laser Room 114-Argon) into non-procedural office space for two (2) nurse managers.

2. **Breakdown of Projected Expenditures - Major Medical Equipment.**

2.1 **No new equipment will be purchased for OR1.** Surgicare utilized OR1 for non-GI procedures before it began utilizing OR1 for GI procedures. Surgicare stored the non-GI equipment used in OR1 when it began utilizing OR1 for GI procedures. Once this Proposal is implemented, Surgicare will utilize the stored equipment for non-GI procedures in OR1 (primarily eye and ENT procedures). Accordingly, no new expenditure for Major Medical Equipment will occur with respect to OR1 as a result of this Proposal.

2.2 **No new equipment will be purchased for the Procedure Room.** As part of this Proposal, Surgicare will use the Procedure Room as a non-procedural “Isolation Room.” The equipment required for such use is minimal in nature and is the same equipment used in a pre-op/post-op recovery bay, and is already accounted for in the schedule of Major Medical Equipment attached hereto as Exhibit E-1.

2.3 **No new equipment will be purchased for the Excimer Laser Room.** As part of this Proposal, Surgicare will convert the Excimer Laser Room (currently labeled on Exhibit C-1 as Excimer Laser Room 114-Argon) into office space for two (2) nurse managers. Such conversion will involve the removal and transfer of certain equipment used for treating patients in the Excimer Laser Room to an off-site private physician practice. Patients no longer will be treated in the Excimer Laser Room. Accordingly, no new equipment will be purchased for the Excimer Laser Room.

2.4 **No new equipment will be purchased for two (2) of the 4 New ORs.** As part of this Proposal, the GI equipment currently used in OR1 and the GI equipment currently used in the Procedure Room will be moved to two (2) of the 4 New ORs described in this Proposal, and the non-GI equipment



currently in storage will then be utilized in OR1 for non-GI procedures (primarily eye and ENT procedures). Accordingly, Surgicare does not need and will not purchase equipment for two (2) of the 4 New ORs.

2.5 Conservative Estimate. In an effort to be conservative, however, when Surgicare submitted its LNR in August of 2014, Surgicare included within its estimates the cost of replacing the GI equipment it plans to transfer from OR1 and the Procedure Room to two (2) of the 4 New ORs, in case such equipment required replacement. Surgicare conservatively included such costs because of the difficulty in projecting when equipment will wear out. In any event, Surgicare's LNR included the costs to purchase GI equipment for all four (4) of the 4 New ORs and still did not exceed the applicable LNR threshold. Exhibit E-2 includes the maximum potential expenditure Surgicare expects if it purchased new equipment to outfit all four (4) of the 4 New ORs. Surgicare's actual expectation is to purchase the Major Medical Equipment outlined on Exhibit E-1, which presumes that Surgicare will continue to use the GI equipment it already owns and will transfer from OR1 and the Procedure Room to two (2) of the 4 New ORs. Even if, however, Surgicare must purchase new equipment to fully outfit all four (4) of the 4 New ORs, the total cost, as outlined on Exhibit E-2, would remain more than \$500,000 below the applicable Major Medical Equipment CON statutory threshold for review at the time of LNR submission (\$2,757,204), as noted in SHPDA's Memorandum dated September 23, 2013, attached hereto as Exhibit D-1 hereto and incorporated herein by this reference.

2.6 Major Medical Equipment Threshold. According to the CON Rules, and as described above, Surgicare could purchase much more equipment than it plans to use to operate the 4 New ORs, while remaining well under the applicable CON statutory threshold for review. If SHPDA prefers, however, Surgicare will refrain from purchasing equipment pursuant to the pending RV 2014-028 Request for the 1 Reserved Future OR to be constructed but held and reserved for future use.

2.7 Additional Limitations. Surgicare will not use the 1 Reserved Future OR until seeking subsequent authority from SHPDA. Therefore, Surgicare is willing to delay equipping the 1 Reserved Future OR, if SHPDA desires additional assurances that there will be no use of the 1 Reserved Future OR on the Alabama Department of Public Health ("ADPH") plan submittals. **The 1 Reserved Future OR will remain unusable, unsurveyed, uncertified, and unstaffed until future SHPDA authority is sought and obtained so that the certification process can proceed for the 1 Reserved Future OR at a future time as needed. This is similar to how End Stage Renal Disease ("ESRD") facilities are built with "future" station areas constructed, yet designated as "future" on the ADPH plan submittals, and are left unusable per ADPH requirements, until SHPDA's approval for use is obtained.**² In addition, as noted above, Surgicare will utilize the endoscopy suite labeled as the "Procedure Room" on Exhibit C-1, which is currently used for GI cases, as a non-procedural "Isolation Room" once the Proposal is implemented. Surgicare will designate the current Procedure Room as a non-procedural Isolation Room on the ADPH plan submittal, and is willing to implement physical safeguards to prevent the use of the Procedure Room for surgical procedures if SHPDA desires.

² ADPH, for example, has indicated that a surveyor will permit "future" ORs to be constructed, but remain unusable until surveyed and certified by ADPH, pursuant to subsequent CON authority for such "future" ORs. With respect to the level of construction, "future" ORs should be constructed to a point of completion for the safety of the people in the building while such OR is not in use. For the "future" designation, ADPH will require, however, that the "future" OR remain unusable for clinical purposes, accomplished through such methods as capped off utilities or remaining unequipped. Such limitations would prevent certification and will prevent any clinical use.



3. **Breakdown of Projected Expenditures – Other Capital Expenditures.**

3.1 A detailed breakdown of Surgicare’s Other Capital Expenditures is provided at Exhibit F, attached hereto and incorporated herein by this reference.

3.2 In response to SHPDA’s second specific question in the October 15, 2014 SHPDA Request: Surgicare is a tenant of the space it occupies to operate its business. The landlord of the property is DMJV II, LLC. As part of this Proposal, Surgicare will construct and build out approximately 9,400 square feet of new construction adjacent to its existing ASC space at its current address on the land leased from its landlord. In addition, Surgicare will renovate approximately 2,447 square feet of its current physical facility. **Surgicare will construct and build out the entirety of such new space and bear all costs of new construction, build out, and renovation, and all such costs will be treated as a capital lease as Surgicare has always historically booked its lease payments.** Please see Exhibit G for additional information regarding lease payments. The schematic for the Proposal showing the renovation space and new construction space is attached hereto as Exhibit C-2 and incorporated herein by this reference.

4. **Breakdown of Projected Expenditures – Annual Operating Costs.**

4.1 A detailed breakdown of Surgicare’s projected New Annual Operating Costs is provided at Exhibit G, attached hereto and incorporated herein by this reference.

4.2 **“New Annual Operating Costs”**, as described in CON Rule § 410-1-2-.07 (attached hereto as Exhibit L) are not, by definition, as comprehensive as are “Total Expenses” reported in Section V of the SHPDA Annual Report forms for ASCs, as used by the Opponents to attack Surgicare’s projections of new annual operating costs described in the RV 2014-028 Request. SHPDA’s instructions to ASCs for completing Annual Reports, Form INSASC-1, an example of which is attached hereto as Exhibit M, define “Total Expenses” of the ASC much more broadly, as compared to “new annual operating costs” relating to this Proposal, described by CON Rule § 410-1-2-.07. Accordingly, it is not appropriate to even try to compare Total Expenses reported in SHPDA Annual Reports to proposed new annual operating costs resulting from a capital expenditure. Opposition arguments conflating the two separately defined accounting measures are totally erroneous. See Affidavit of Nathan B. Smith, attached hereto as Exhibit K for specific illustrations.

4.2.1 Both Providence Hospital and Mobile Infirmary make misleading comparisons in their respective opposition letters. Mobile Infirmary’s analysis of Surgicare’s new annual operating costs overlooks the term **“operating”**, while Providence Hospital’s analysis of Surgicare’s new annual operating costs likewise overlooks the term **“operating”**, and overlooks the term **“new”** as well.

4.2.2 Mobile Infirmary misses this key distinction between “Total Expenses” and “new annual operating costs” and attempts to mislead with an apples-to-oranges comparison on page 1 of its letter dated September 15, 2014. Mobile Infirmary recites the Total Expenses reported by Surgicare on its SHPDA Annual Report form in 2010, in the amount of \$5,722,919.00, but calls such amount “operating expenses” – an incorrect categorization. Mobile Infirmary then uses this incorrect categorization to incorrectly conclude that “the operating expenses submitted by Surgicare for this project is [sic] grossly understated.”



4.2.3 The problem with Mobile Infirmary's description is that SHPDA's instructions for completing Annual Reports for Ambulatory Surgery Centers describes "Total Expenses" as "[t]otal expenses incurred related to any and all reasons not covered by Bad Debt or Charity Care, including payroll and benefits, supplies, utilities, etc."³ In contrast, "new annual operating costs", as described in CON Rule § 410-1-2-.07, attached hereto as Exhibit L, are not, by definition, as comprehensive as are "Total Expenses" in SHPDA ASC Annual Reports. SHPDA's current LNR process calls for a projection of "new annual operating costs" during the first year of operations which are the result of a capital expenditure. CON Rule § 410-1-2-.07. (emphasis added) **Total Expenses are a drastically different accounting category than new annual operating costs.**

4.2.4 Providence Hospital makes the same erroneous comparison in its opposition letter dated September 3, 2014. Citing the same 2010 ASC Annual Report as Mobile Infirmary, Providence Hospital states that "Surgicare disclosed that it had total operating expenses of \$5,722,919." Like Mobile Infirmary, Providence Hospital misses the important distinction between "Total Expenses" called for by the SHPDA Annual Report process and "new annual operating costs" which are the result of a capital expenditure called for by the LNR process.

4.2.5 Providence Hospital makes another erroneous comparison when it attempts to support its assertion that "Surgicare's proposed expansion will result in an increase in annual operating expenses in excess of the applicable spending threshold" by describing the annual operating costs that a different company (Gulf Coast Gastroenterology Partners, or "Gulf Coast") projected to incur in 2013 when it filed a CON Application. There are several problems with Providence Hospital's comparison. First, Providence Hospital compares Gulf Coast's costs projected to establish an ASC, to Surgicare's new annual operating costs in expanding its current ASC. Establishing an ASC involves many operating costs, such as costs for administration, accounting, human resources, telecommunications, and many others, which would not be incurred in the context of an expansion. Second, Providence Hospital uses an inherently flawed logic by comparing two different companies with different methods of operations. Although both Surgicare and Gulf Coast are in a similar line of business, that fact has no direct bearing on how efficiently each company can deliver its services. Third, Providence Hospital utilizes faulty logic in concluding that "Surgicare projects increased annual operating costs that are less than 40% of the costs Gulf Coast projected." Providence Hospital stated that Gulf Coast's costs were for four (4) new ORs. As described above, **Surgicare's Proposal constitutes only a net operational addition of two (2) full ORs because it will no longer use the Procedure Room for cases; the GI cases currently scheduled in overloaded morning and afternoon blocks in the current OR1 and the Procedure Room (and the associated current operating costs will not be new) will be transferred to and distributed among the 4 New ORs; all ORs will continue after the Proposal with a normal operating schedule rather than extensive overtime; and Surgicare will close the Excimer Laser Room.**

4.3 **SHPDA Annual Reports, Revenues and Expenses.** Providence Hospital states in its September 3, 2014 opposition letter that revenue and expenses are "required information" which Surgicare has failed to file. Providence Hospital cites Ala. Admin. Code § 410-2-4-.12 as authority for its position that Surgicare's SHPDA Annual Reports are incomplete.

³ SHPDA Form INSASC-1, attached hereto as Exhibit M.



4.3.1 In contrast to Providence Hospital's position, the rule it cites does not require, or even imply, the conclusion that Providence Hospital seeks to draw. Surgicare submits that Providence Hospital incorrectly interpreted the rule it cites in its September 3, 2014 opposition letter, and that SHPDA should disregard such assertions.

4.3.2 Alabama Act 2015-471 states a Legislative finding that "[t]here is no current systematic way...to collect all the health care services information necessary for proper health care planning in Alabama, **because reporting to SHPDA is voluntary.**" See Alabama Act 2015-471, Section 2, page 2, lines 4-8, attached hereto as Exhibit N. Such findings of fact by the Legislature directly contradict Providence Hospital's assertion and demonstrate that SHPDA annual reports have been voluntary prior to the law change.

4.3.3 Furthermore, although not yet finalized, SHPDA developed a new reporting form for Annual Reports of Ambulatory Surgery Centers, submitted January 21, 2016, which does not include reporting sections for financial information desired by Providence Hospital. That a financial information section was removed from the ASC reporting form immediately after the law changed to require the filing of such reporting form is further indication that financial information has never been "required" as Providence Hospital asserts.

4.4 **Full Factual Information.** Both Mobile Infirmery and Providence Hospital claim that Surgicare failed to provide "full factual information" regarding the RV 2014-028 Request. Mobile Infirmery merely states that Surgicare's LNR was "inadequate" and "not in compliance" with CON Rules, but does not cite specific deficiencies or explain by what standard the RV 2014-028 Request is deemed inadequate. Providence Hospital suggests that Surgicare should provide additional information about how the expansion will be accomplished, the types of construction methods, total square footage of the addition, and even wants copies of schematics. In its September 3, 2014 opposition letter, Providence Hospital states that "[t]o the extent that Surgicare anticipates an increase in the number of procedures and cases it will perform, Surgicare should disclose its anticipated caseload, as well as the reasons why it anticipates an increase in its caseload." Providence Hospital fails to support its assertions with legal authority or regulatory guidance. Surgicare maintains that these requests are primarily anti-competitive in nature. **Mobile Infirmery and Providence Hospital appear to attempt to coerce SHPDA to utilize the regulatory process to obtain otherwise private competitive information of their competitor, Surgicare, in what could be construed as an anti-competitive effort.** Surgicare is, of course, happy to provide all information to SHPDA that it has requested. In contrast to the extensive information requested by Mobile Infirmery and Providence Hospital, SHPDA has guidelines for information to be included in an LNR Request, attached hereto as Exhibit B. Further, with this Response, the Exhibits attached hereto, and the RV 2014-028 Request, Surgicare has provided more information than is required by SHPDA's guidelines; more than even was requested by SHPDA's October 15, 2014 Request; and much more information than normally is provided for a LNR Request.

5. **Affidavits: Factual Rebuttal to Opponents' Allegations and Speculations.**

5.1 Attached hereto as Exhibit I, and incorporated herein, is the affidavit of Sandra K. Bunch, Administrator of Surgicare.

5.2 Attached hereto as Exhibit J, and incorporated herein, is the affidavit of Dr. Rollins L. Tindell, Chairman of the Governing Board of Surgicare.



5.3 Attached hereto as Exhibit K, and incorporated herein, is the affidavit of Nathan B. Smith, Director of Financial Operations of Surgical Care Affiliates (“SCA”), in Birmingham, Alabama. SCA is the Manager of Surgicare.

6. **Additional Information.**

6.1 The expenditures associated with this Proposal fall well below the statutory thresholds for CON review as set forth in Alabama Code § 22-21-263, CON Rule § 410-1-4-.01, as indexed and set forth in SHPDA’s September 23, 2013 Memorandum, attached hereto as Exhibit D-1. Surgicare stated in the pending RV 2014-028 Request that its total expenditures for this Proposal would be as follows:

6.1.1 **Major Medical Equipment:** \$2,200,000; more fully described on Exhibit E to this Response.

6.1.2 **New Annual Operating Costs:** \$980,000; more fully described on Exhibit G to this Response.

6.1.3 **Other Capital Expenditure:** \$3,750,000; more fully described on Exhibit F to this Response.

6.2 Thus, the estimated total expenditures related to this Proposal do not trigger the CON statutory financial thresholds for CON review, as indexed by SHPDA, and are well below the indexed amounts for major medical equipment of \$2,757,204; new annual operating costs of \$1,102,881; and any other capital expenditure of \$5,514,408, effective as of October 1, 2013 and in effect at the time this Proposal was initially submitted. The current thresholds for review are even higher. According to SHPDA’s September 17, 2015 Memorandum, attached hereto as Exhibit D-3, effective October 1, 2015, the thresholds are \$2,854,550 for major medical equipment; \$1,141,819 for new annual operating costs; and \$5,709,099 for any other capital expenditure.

7. **Legal Analysis.**

7.1 Therefore, this Proposal does not constitute a “new institutional health service,” subject to CON Review as set forth in Alabama Code § 22-21-263 and CON Rule § 410-1-4-.01, in that the Proposal does **not** include:

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

7.1.2 **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; or

7.1.3 the addition of **any new health care facility beds** or stations; or

7.1.4 **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 twelve-month period; or

7.1.5 **any relocation** of the ASC; or

7.1.6 **any other reviewable event** under the existing CON laws, rules and regulations of the State of Alabama.

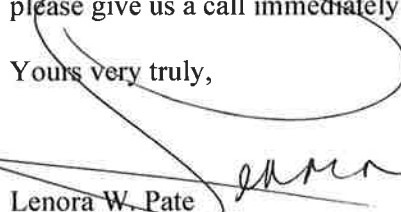
CONCLUSION AND REQUEST

Accordingly, Surgicare's RV 2014-028 Request does not involve a new institutional health service subject to CON Review pursuant to Alabama Code § 22-21-260, *et seq.* and CON Rule § 410-1-4-.01. Surgicare's RV 2014-028 Request enables Surgicare to continue to provide its existing multi-specialty Ambulatory Surgery Center services to better serve the need and demands of its patients and existing medical staff; does not involve any expenditure by or on behalf of a health care facility in excess of the current CON statutory expenditure thresholds; does not involve any other new institutional health service subject to CON review; does not involve any other reviewable event under the Alabama CON laws, rules, and regulations; and does not involve any relocation of the ASC.

Hence, Surgicare's Proposal, as set forth in the pending RV 2014-028 Request and as clarified further with this Response to Opposition letters dated September 3, 2014 and September 15, 2014, and SHPDA's October 15, 2014 Request, is due to be determined as non-reviewable in accordance with the Alabama CON law, rules, and regulations.

We look forward to receiving from you at your earliest opportunity written confirmation that no further regulatory approvals by you, the State Health Planning and Development Agency, or the CON Board are required for Surgicare's RV 2014-028 Request, and the Proposal described therein as further clarified herein, ~~in accordance~~ with the laws and regulations cited herein and therein. If you have any questions, please give us a call immediately.

Yours very truly,


Lenora W. Pate
Bruce "Andy" Andrews
FOR THE FIRM
Enclosures

c: Surgicare of Mobile, Ltd.

Exhibit A

Surgicare's RV 2014-028 Request dated August 4, 2014

(attached)



RECEIVED

AUG 04 2014

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

DORMAN WALKER

t: (334) 269-3138

f: (866) 736-3854

e: dwalker@balch.com

August 4, 2014

VIA HAND DELIVERY

Alva Lambert, Esq.
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36130

Re: Request for a reviewability determination of Surgicare of Mobile, Ltd.

Dear Mr. Lambert:

I represent Surgicare of Mobile, Ltd. and am writing to request your determination, pursuant to CON r. 410-1-7-.02, that the proposed actions described in this letter are non-reviewable.

Surgicare of Mobile, Ltd. ("Surgicare") is an ambulatory surgery center owned by Mobile Surgicare, LLC. and Surgicare of Mobile, LLC. Surgicare is located at 2890 Dauphin Street in Mobile. At present, this ASC facility has

- five operating rooms,
- three laser rooms, and
- one endoscopy suite.

Surgicare wants to

- add five operating rooms, for a total of 10,
- add 20 pre-/post-op bays, for a total of 30,
- expand the waiting room,
- expand the business office, and
- add 4 restrooms, for a total of 10.

These actions are not expected to exceed the CON expenditure thresholds as adjusted for FY2014. See § 22-21-263(a)(2); see also CON r. 410-1-4-.01. Expected expenditures for major medical equipment are \$2,200,000 and \$3,750,000 for other capital expenditures. Additional annual operating costs are expected to be \$980,000. In addition, the project will not involve a change to existing licensed bed capacity through the addition, relocation, or reallocation of beds, and will not result in the provision of a new health service or invoke any other criteria for CON review.

For these reasons, I respectfully request that you determine that neither Surgicare of Mobile, Ltd., Mobile Surgicare, LLC., or Surgical Care Affiliates is required to obtain a CON in order to undertake these actions.

Enclosed is a check for \$1,300 as required by CON r. 410-1-7-.02(7) and 410-1-7-.21.

Please let me know if you need additional information or want to discuss this request.

Very truly yours,



Dorman Walker

DW:bl

Enclosure

Exhibit B

SHPDA Letter of Non-Reviewability List of Required Items

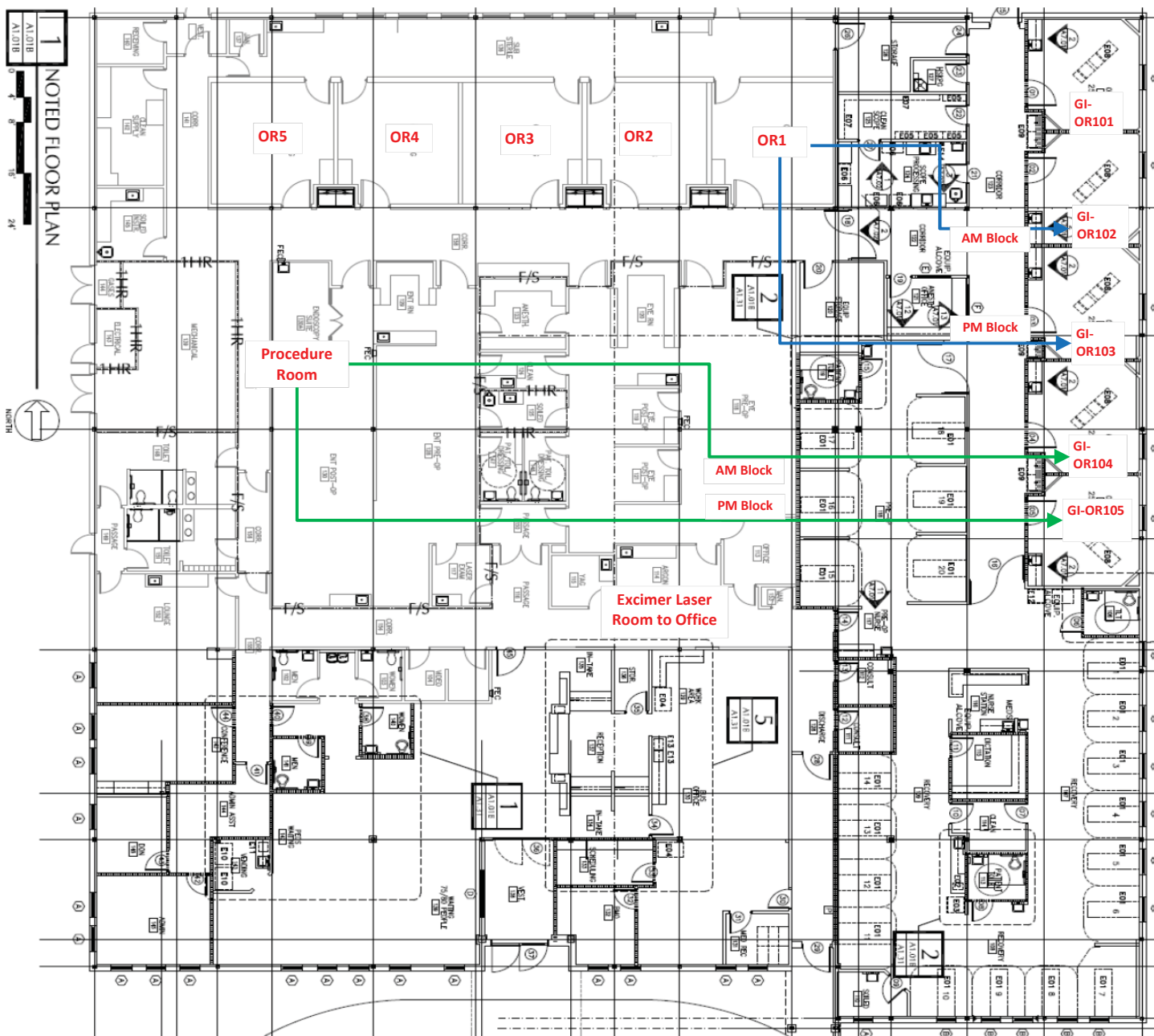
Source: http://www.shpda.state.al.us/condivision/forms.aspx?sm=d_a, Last accessed November 4, 2015.

Letter of Non Reviewability

The following is a minimum list of the required information for a letter of non reviewability.

1. Name of Company applying
2. Address and contact information for company
3. Service area being requested
4. What services will be provided by requestor
5. financial break down:
 - a. Equipment
 - b. 1st year annual operating costs
 - c. Capital Costs
 1. Leases
 2. Land/Building costs
 3. Construction costs
6. Financial interests by any other health care facilities or groups
7. Check or Money Order for \$1,000.00 US Dollars.

Exhibit C-1
Map/Schematic, Procedure Room
(attached)



1 NOTED FLOOR PLAN



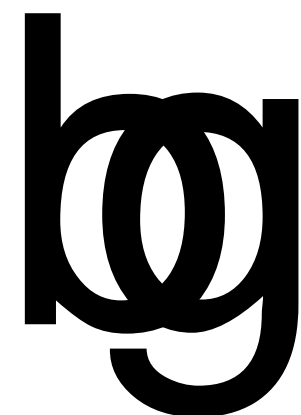
Exhibit C-2

Map/Schematic, Renovation and Addition Space

(attached)

DATE: DECEMBER 9, 2014

the burell group, p.c.
architects ■ planners ■ interiors
300 cahaba park circle, suite 111
birmingham, alabama 35242



ADDITION AND RENOVATIONS
SURGICARE OF MOBILE
2890 DAUPHIN STREET
MOBILE, ALABAMA 36606
TBB# 14503

COLOR CODED FLOOR PLAN

A1.01

- AREA OF ADDITIONS
- AREA OF RENOVATION
- AREA OF EXISTING FACILITY TO REMAIN

NOT FOR CONSTRUCTION
FOR PRICING ONLY

1 COLOR CODED FLOOR PLAN

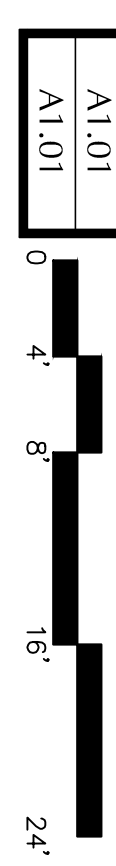
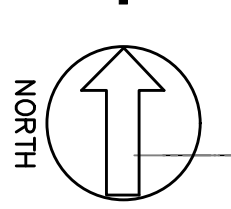
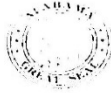



Exhibit D-1

Memorandum dated September 23, 2013 from Alva M. Lambert,
Executive Director of the State Health Planning and Development Agency



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE: September 23, 2013
TO: Interested Parties
FROM: Alva M. Lambert
Executive Director 
SUBJECT: New Certificate of Need Application Fee and
Monetary Threshold for Review
Effective October 1, 2013

Section 22-21-271, Code of Alabama, 1975 and Rule 410-1-7-.06 of the *Alabama Certificate of Need Program Rules and Regulations* require that the maximum application fee be indexed for inflation along with the threshold for new institutional health services listed in §22-21-263, Code of Alabama, 1975. The United States Department of Labor Consumer Price Index (CPI) – All Urban Consumers, Professional Medical Services, averaged an increase of 2.2% for the months of September 2012 through August 2013 (series id CUUR0000SEMC).

The expenditure threshold for major medical equipment will be increased from \$2,697,851 to \$2,757,204; the new annual operating cost will be increased from \$1,079,140 to \$1,102,881; and any other capital expenditure by or on behalf of a healthcare facility or health maintenance organization will be increased from \$5,395,703 to \$5,514,408.

Based on a 2.2% increase in the CPI, the maximum Certificate of Need filing fee will be increased from \$20,543 to \$20,995.

AML/kwm

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

Exhibit D-2

Memorandum dated September 17, 2014 from Alva M. Lambert,
Executive Director of the State Health Planning and Development Agency



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE: September 17, 2014
TO: Interested Parties
FROM: Alva M. Lambert *AML*
Executive Director
SUBJECT: New Certificate of Need Application Fee and
Monetary Threshold for Review
Effective October 1, 2014

Section 22-21-271, Code of Alabama, 1975 and Rule 410-1-7-.06 of the *Alabama Certificate of Need Program Rules and Regulations* require that the maximum application fee be indexed for inflation along with the threshold for new institutional health services listed in §22-21-263, Code of Alabama, 1975. The United States Department of Labor Consumer Price Index (CPI) – All Urban Consumers, Professional Medical Services, averaged an increase of 1.8% for the months of September 2013 through August 2014 (series id CUUR0000SEMC).

The expenditure threshold for major medical equipment will be increased from \$2,757,204 to \$2,806,834; the new annual operating cost will be increased from \$1,102,881 to \$1,122,733; and any other capital expenditure by or on behalf of a healthcare facility or health maintenance organization will be increased from \$5,514,408 to \$5,613,667.

Based on a 1.8% increase in the CPI, the maximum Certificate of Need filing fee will be increased from \$20,995 to \$21,373.

AML/kwm

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

Exhibit D-3

**Memorandum dated September 17, 2015 from Alva M. Lambert,
Executive Director of the State Health Planning and Development Agency**



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE: September 17, 2015
TO: Interested Parties
FROM: Alva M. Lambert *AML*
Executive Director
SUBJECT: New Certificate of Need Application Fee and
Monetary Threshold for Review
Effective October 1, 2015

Section 22-21-271, Code of Alabama, 1975 and Rule 410-1-7-.06 of the *Alabama Certificate of Need Program Rules and Regulations* require that the maximum application fee be indexed for inflation along with the threshold for new institutional health services listed in §22-21-263, Code of Alabama, 1975. The United States Department of Labor Consumer Price Index (CPI) – All Urban Consumers, Professional Medical Services, averaged an increase of 1.7% for the months of September 2014 through August 2015 (series id CUUR0000SEMC).

The expenditure threshold for major medical equipment will be increased from \$2,806,834 to \$2,854,550; the new annual operating cost will be increased from \$1,122,733 to \$1,141,819; and any other capital expenditure by or on behalf of a healthcare facility or health maintenance organization will be increased from \$5,613,667 to \$5,709,099.

Based on a 1.7% increase in the CPI, the maximum Certificate of Need filing fee will be increased from \$21,373 to \$21,736.

AML/kwm

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

Exhibit E-1

Schedule of Major Medical Equipment – Expected Expenditure

Major Medical Equipment – <u>Expected Expenditure</u>			
Quantity	Item	Total Amount	Planned Location of Equipment
16	Stryker Stretchers	\$68,347	6 Pre-op; 10 Recovery
20	Mindray Patient Monitors	\$153,840	6 Pre-op; 14 Recovery
2	Pentax GI Towers	\$411,570	GI-ORs 103, 104
2	Anesthesia Cart	\$800	GI-ORs 103, 104
2	ERBE	\$19,820	GI-ORs 103, 104
1	Medivators	\$39,431	Moved from Existing Soiled Instrument Room to Expansion Scope Processing Room
2	Medivators	\$77,510	Scope Processing Room
2	Blanket Warmer	\$20,164	Pre-op & Recovery
4	Scope Cabinets	\$13,777	Corridor
1	Ott Medical Vacuum Pump	\$30,000	Mechanical Room
	Tax & Freight	\$125,289	15% on total Equipment
	IT Equipment/Phone	\$60,665	Electrical
	Furniture Allowance	\$65,000	Waiting Room/Business Office/Nurse Stations
Subtotal:		\$1,086,213	
Total interest on 5-year acquisition note:		\$108,163	
Contingency		\$1,005,624	
Total:		\$2,200,000	

Exhibit E-2

Schedule of Major Medical Equipment – Maximum Potential Expenditure

Major Medical Equipment – <u>Maximum</u> Potential Expenditure			
Quantity	Equipment/Construction	Total Amount	Planned Location of Equipment
16	Stryker Stretchers	\$68,347	6 Pre-op; 10 Recovery
20	Mindray Patient Monitors	\$153,840	6 Pre-op; 14 Recovery
3	Pentax GI Towers	\$617,354	GI-ORs 102, 103, 104
1	Pentax EUS GI Tower	\$469,809	GI-OR 105
4	Anesthesia Cart	\$1,600	GI-ORs 102, 103, 104, 105
4	ERBE	\$39,640	GI-ORs 102, 103, 104, 105
1	Medivators	\$39,431	Moved from Existing Soiled Instrument Room to Expansion Scope Processing Room
2	Medivators	\$77,510	Scope Processing Room
2	Blanket Warmer	\$20,164	Pre-op & Recovery
4	Scope Cabinets	\$13,777	Corridor
1	Ott Medical Vacuum Pump	\$30,000	Mechanical Room
	Tax & Freight	\$261,661	15% on total Equipment
	IT Equipment/Phone	\$60,665	Electrical
	Furniture Allowance	\$65,000	Waiting Room/Business Office/Nurse Stations
Subtotal:		\$1,918,798	
Total interest on 5-year acquisition note:		\$191,070	
Contingency		\$90,132	
Total:		\$2,200,000	

Exhibit F

Other Capital Expenditure

Other Capital Expenditure	
Estimated cost of new construction, (9,400 sq. ft. x \$290)	\$2,726,000
Estimated cost of renovation, (2,447 sq. ft. x \$95)	\$232,465
Subtotal of Cost of Construction	\$2,958,465
Financing cost	\$734,590
Subtotal cost of constructions, including financing costs	\$3,693,055
Costs for moving IT storage facilities	\$7,000
“Round up” cushion	\$49,945
Total Other Capital Expenditure	\$3,750,000

When Surgicare began considering the proposed expansion in the spring of 2014, it requested a bid on the total cost of construction from an independent general contractor, Building Management Services, based on an architectural rendering by The Burell Group, P.C., an independent architecture firm.

At the time of the quote from Building Management Services, the work was intended to be divided between Surgicare (the tenant) and the landlord of the property, DMJV II, LLC. As such, Building Management Services provided a separate quote for each party’s proposed work. The total of both quotes for Surgicare and its landlord was \$3,743,733. In an effort to be conservative, Surgicare “rounded up” the estimated costs of construction to \$3,750,000 for the RV 2014-028 Request.

Surgicare has been delayed in its project by more than a year due to judicial opposition. In the meantime, Surgicare and its landlord decided that all of the construction costs will be borne by Surgicare. Further, Surgicare has continued to seek other bids for its project and make minor adjustments to its architecture plans. Attached as Exhibit H is a recent proposal from another arm’s-length contractor, White-Spinner Construction, Inc., dated September 4, 2015. After review of the architectural plans prepared by Surgicare’s architect, White-Spinner estimated that the costs for construction would be \$290 per square foot for new construction and \$95 per square foot for renovation work, for a total cost of **\$3,693,055** including the interest cost of financing. The updated modifications and bids lower the projected costs slightly. Even including financing costs, the total for other capital expenditures is over \$1.5 Million below the CON Threshold.

Exhibit G

New Annual Operating Costs

An important preliminary point is that the expenditure threshold relating to new annual operating costs is somewhat different than the thresholds for major medical equipment and other capital expenditures. As SHPDA describes in § 410-1-2-.07 of the Alabama Administrative Code and SHPDA's published guidelines regarding LNRs, attached hereto as Exhibit L and Exhibit B, respectively, this third threshold does not relate to an amount *spent* on the proposed project. Rather, this third threshold focuses on new costs that the applicant projects will be *caused by* a proposed project - specifically, whether a proposed project **will result in new annual operating costs** in excess of the applicable threshold during the first year of operation of the proposed expansion project.

Surgicare has projected its new annual operating costs during the first year of operations which are the result of this Proposal, using conservative assumptions and factoring in certain contingencies. Such projections include all costs of operations of this Proposal within the first year, including but not limited to, major cost categories such as employee salaries and benefits, supplies, uniforms, utilities, maintenance, insurance, property tax, housekeeping, and IT services.

Surgicare projects new annual operating costs of \$971,195 in the first year of operations of the Proposal.

Surgicare's projections are based on actual historic costs incurred and its projected growth in cases. Currently, Surgicare continues to respond to increased demand for its services through extended hours and utilizing unfavorable working schedules – including full morning and afternoon shifts in the ORs, and extended hours for its entire ASC. Once the 4 New ORs described in this Proposal are licensed, certified, and open, Surgicare plans for its entire ASC to return to normal operating schedules – predominantly scheduling procedures in the morning.

Surgicare's projections of new annual operating costs are based on its actual historical experience of costs incurred. Surgicare's projections of new annual operating costs are significantly lower than the Opposition would project primarily because (i) Surgicare will no longer use the Procedure Room for cases, (ii) the GI cases currently scheduled in overloaded morning and afternoon blocks in the current OR1 and the Procedure Room will be transferred to and distributed among the 4 New ORs, (iii) all ORs will continue after the Proposal with a normal operating schedule rather than extensive overtime, and (iv) Surgicare will close the Excimer Laser Room. Even with several very conservative assumptions and additional contingencies built into its projections, Surgicare's new annual operating costs during the first year of operations of this Proposal are below the applicable CON statutory threshold.

- **Staffing Costs.** Surgicare expects that hours worked by many current employees will be transferred to the 4 New ORs described in this Proposal, as the need for additional staff is a function of caseload, not square footage. Projections for salaries and benefits for such newly hired staff are based on current actual wage rates and costs of benefits incurred by Surgicare for the same positions. Surgicare has been delayed in its project by more than a year due to judicial opposition. Due to increasing patient demand for services within the existing facilities, and the unfavorable work schedule that Surgicare requires of its staff due to a lack of space, Surgicare has increased the compensation of current staff and hired new staff since the RV 2014-028 Request. Accordingly, Surgicare's projection for new annual staffing costs in the first year of operations of this Proposal has decreased. Also, at the time of the RV 2014-028 Request, Surgicare had not factored in the reduced annual operating costs associated with closing the Excimer Laser Room. In any event, Surgicare projects new annual staffing costs in the first year of operations of this Proposal totaling are actually \$263,578 when factoring in such changes.

- The salary and benefits of any person hired *prior* to the opening of the proposed OR Wing should not be considered a new annual operating cost for purposes of this Proposal. In an effort to be conservative in its estimates, however, Surgicare attributed the applicable portion of a newly hired employee's annual salary and benefits to the first year of operations of the Proposal if such employee was hired in order to staff the new space described in the Proposal (even if such a person were hired prior to the opening of the proposed OR Wing). Note that, when Surgicare began considering the proposed expansion in the spring of 2014, it estimated that new annual staffing costs would amount to \$316,029. Even if, for the sake of argument, the larger amount were now used for new annual operating costs (which, would incorrectly double-count the cost associated with employees already hired), Surgicare's total projection for new annual operating costs in the first year of this Proposal would amount to \$1,023,646, an amount which is still nearly Eighty Thousand Dollars **below** the 2013 LNR threshold of \$1,102,881 applicable at the time of submission of the RV 2014-028 Request, and over One Hundred Eighteen Thousand Dollars **below** the current LNR threshold of \$1,141,819.
- **Lease Costs.** Surgicare does not expect that its lease cost will increase. Surgicare's landlord is aware of the Proposal. All of the construction costs are being borne by Surgicare, the tenant. Surgicare already is responsible under its lease for taxes and insurance related to the property where its ASC is located, which are accounted for below as a "proportional" expense, described hereinbelow. Surgicare will capitalize the costs of the construction and treat such costs as a capital lease as it has always historically booked lease payments, and the landlord will retain ownership of the constructed buildings at the conclusion of the lease term.
- **Medical Supplies and Drugs.** Surgicare's cost projection for supplies underlying this Proposal was determined based on the actual cost of supplies per case currently incurred. Surgicare projects that operating the 4 New ORs in the first year of the Proposal, at full capacity, will represent a caseload increase of approximately 40% as compared to its caseload of services prior to opening the 4 New ORs described in this Proposal, recalling that the 4 New ORs comprise a net operational addition of approximately two (2) full ORs. Further, Surgicare will no longer incur supply costs associated with the Excimer Laser Room, which will be used as office space once this Proposal is implemented. Surgicare projects that it will incur approximately \$272,050 of new costs for supplies and drugs in the first year of this Proposal.
- **Proportional Expenses.** Arguably, taxes are not a cost of "operations" and reasonably could be left out of a calculation for new annual operating costs. However, certain value-based taxes and costs paid by Surgicare on an annual basis will increase due to this Proposal, related to the size and value of Surgicare's physical space. Such taxes include real property tax, personal property tax, and sales and use tax. Surgicare's costs for insuring its property also will increase based on the property's value. Notwithstanding the argument that such costs could reasonably be left out of the calculation of new annual operating costs, Surgicare included such costs in its projection. The total of such new costs that Surgicare projects it will incur during the first year of operations of the Proposal are \$58,538.
- **Bad Debt Expense.** Based on historical rates, Surgicare projects that its new annual costs for bad debt expense during the first year of operations of the Proposal will be \$45,606.
- **Management Fees.** Based on its fee arrangement with its management company, Surgicare projects that its new costs for management fees during the first year of operations of the Proposal will be \$85,226.
- **Other Costs.** Based on actual costs currently incurred and applicable rates for expenses such as uniforms, linens, utilities, housekeeping/janitorial, office supplies, professional fees, and other services

of outside vendors, Surgicare projects that its other new annual operating costs in the first year of this Proposal will amount to approximately \$246,197.

Exhibit H

Estimate from White-Spinner Construction, Inc., dated September 4, 2015

(attached)



September 4, 2015

Sandy Bunch
Administrator, Surgicare of Mobile
www.surgicareofmobile.com
2890 Dauphin Street, Mobile, Alabama 36606
251.473.2020 (o) | 251.654.9181 (c) | 866.989.2946 (f)
sandy.bunch@scasurgery.com
An Affiliate of SCA

Dear Ms. Bunch;

As requested, below are the budget numbers that White-Spunner Construction Inc. (WSC,) provided on June 17th and 22nd 2015 for the Addition and Renovations to the Surgicare of Mobile's facility located at 2890 Dauphin St Mobile, AL 36606.

These numbers were based on the plans prepared by The Burrell Group, PC dated Oct 31, 2014 on the cover sheet and Dec. 1, 2014 on all remaining sheets. WSC's budget number for the new construction portion of this project would be \$290 a sf excluding any medical equipment. The renovation work would be an additional \$95 a sf.

Please advise if you have any questions.

Thank you,

A handwritten signature in black ink that reads "Travis Deatherage".

Travis Deatherage
Senior Estimator

TEL: 251.471.5189
DIRECT: 251.300.3840
FAX: 251.300.3870
EMAIL: travis.deatherage@white-spunner.com
WEB: www.white-spunner.com



2010 W-I-65 Service Rd. South
Mobile, Alabama 36693

2654 Cameron Street, Mobile, AL 36607
TEL: 251.471.5189 **FAX:** 251.478.3962
www.white-spunner.com

Exhibit I
Affidavit of Sandra K. Bunch
(attached)

AFFIDAVIT OF SANDRA K. BUNCH

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned Notary Public, in and for the County and State aforesaid, personally appeared Sandra K. Bunch, (hereinafter referred to as "Affiant"), who, after first being duly sworn, deposes and states upon personal knowledge as follows:

1. My name is Sandra K. Bunch. I am over the age of nineteen and have personal knowledge of the information set forth herein.

2. I am a resident of the City of Mobile, County of Mobile, State of Alabama.

3. I am currently employed as the Administrator of Surgicare of Mobile, Ltd. ("Surgicare"), which owns and operates a multi-specialty ambulatory surgery center ("ASC") located in Mobile, Alabama, serving patients in the Mobile area. I have been so employed continuously for 31 years, beginning in December, 1984.

4. I participated in the development of and have first-hand knowledge of the information submitted to the State Health Planning and Development Agency ("SHPDA") by Surgicare in its pending request for a letter of non-reviewability ("LNR") dated August 4, 2014, regarding the proposed expansion of its ASC, (the "RV 2014-028 Request"), and in the development of the Response to opposition letters dated September 3, 2014 and September 15, 2014, and SHPDA's October 15, 2014 Request (the "Response"), filed with SHPDA simultaneously herewith. I hereby attest that all of the representations made in the RV 2014-028 Request and in the Response filed simultaneously with this Affidavit on behalf of Surgicare are truthful and accurate, to the best of my knowledge and belief.

5. **Maximum Total Expenditures.** Projections in the RV 2014-028 Request and in the Response underlying the maximum total expenditures for the "Proposal" (as defined and detailed in the Response), are true and correct to the best of my knowledge.

6. **Future Operations.** Surgicare intends to open only four (4) new operating rooms ("ORs") pursuant to the RV 2014-028 Request. These four (4) new ORs are referred to herein and in the Response as the "4 New ORs". However, these 4 New ORs will constitute an approximate net operational addition of only two (2) ORs, and represent the additional new annual operating costs of only two (2) ORs, because Surgicare will no longer use the endoscopy suite (the space labeled "Procedure Room" on the schematic attached to the Response as Exhibit C-1) for cases, the GI cases currently scheduled in overloaded morning and afternoon blocks in the current OR1 and the Procedure Room (as labeled on Exhibit C-1 to the Response) will be spread out with a normal operating schedule in the 4 New ORs, and Surgicare will close the Excimer Laser Room. Although Surgicare has "made do" during the short term, Surgicare's professional and administrative staff cannot maintain the extended schedules in the long term. Time of day is also important. Morning procedure times are especially important in the context of GI cases because of the required preparation patients must undergo – including fasting and bowel cleansing. If Surgicare does not provide adequate space to schedule procedures at reasonable times, it will either lose talented staff that it has trained, or patients will have even more difficulty scheduling procedures. More likely is that some combination of these adverse outcomes will take place.

7. **Reserved OR** Surgicare intends to open the 4 New ORs pursuant to the RV 2014-028 Request, and will comply fully with all requirements of the Alabama Department of Public Health

(“ADPH”) and/or SHPDA to delay the equipping of the 1 Reserved Future OR and render the Procedure Room unusable for surgical procedures, accomplished through such methods as capped off utilities or removing all surgical equipment and necessary hookups, until Surgicare files a subsequent request with SHPDA for authority to open such rooms, either via a request for a letter of non-reviewability or application for a certificate of need, depending on the costs involved at that future time, and subject to future survey by ADPH and certification for such future time.

8. **Square Footage.** Providence Hospital asserts in its September 3, 2014 opposition letter that Surgicare “proposes to more than **double the size** of its ambulatory surgery center.” Such statement is false. Surgicare’s current ASC facility is over 13,000 square feet. The RV 2014-028 Request proposed an expansion of 9,400 square feet.

9. **Reason for Expansion.** Providence Hospital faults Surgicare by stating in its September 3, 2014 opposition letter that “Surgicare provides no information of any kind regarding the reason for the proposed expansion.” Since the LNR process is not need based, Surgicare did not describe the need for the Proposal; however the Response does describe the rationale for the expansion.

[The remainder of this page is left intentionally blank. Signature pages follow.]

I swear under penalty of perjury that the foregoing is correct to the best of my knowledge.

FURTHER, AFFIANT SAITH NOT.

Sandra K Bunch

Sandra K. Bunch
AFFIANT

STATE OF ALABAMA)

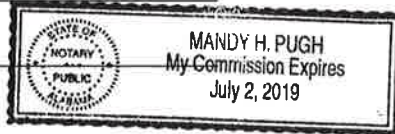
COUNTY OF MOBILE)

I, the undersigned Authority, a Notary Public, in and for said County and said State hereby certify that **Sandra K. Bunch**, whose name is signed to the foregoing document, and who is known to me, acknowledges that before me on this day that, being informed of the contents of the document, swears and affirms that the facts contained herein are true and correct to the best of her personal knowledge.

Given under my hand and official seal, this the 2nd day of February, 2016.

Mandy H Pugh
Notary Public

My Commission Expires: _____



ACKNOWLEDGEMENT AND AGREEMENT:

I, the undersigned physician, have read the foregoing Affidavit of Sandra K. Bunch and hereby attest that the representations made therein are truthful and accurate to the best of my knowledge.

Rollins L. Tindell

Rollins L. Tindell, M.D.
Chairman of Governing Board
Surgicare of Mobile, Ltd.

Sworn to and subscribed before me this the 2nd day of February, 2016.

Mandy H. Pugh

Notary Public
My Commission Expires: _____



Exhibit J

Affidavit of Rollins L. Tindell, M.D.

(attached)

AFFIDAVIT OF ROLLINS L. TINDELL, M.D.

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned Notary Public, in and for the County and State aforesaid, personally appeared Rollins L. Tindell, M.D., (hereinafter referred to as "Affiant"), who, after first being duly sworn, deposes and states upon personal knowledge as follows:

1. My name is Rollins L. Tindell, M.D. I am over the age of nineteen and have personal knowledge of the information set forth herein.

2. I am a resident of the City of Mobile, County of Mobile, State of Alabama.

3. I am currently the Chairman of the Governing Board of Surgicare of Mobile, Ltd ("Surgicare"), which owns and operates an ambulatory surgery center ("ASC") located in Mobile, Alabama, serving patients in Mobile County. I have been a practicing physician and Chairman of the Governing Board of Surgicare (or its predecessor entities) since 1984.

4. I have first-hand knowledge of the information submitted to the State Health Planning and Development Agency ("SHPDA") by Surgicare in the pending request for a letter of non-reviewability ("LNR") dated August 4, 2014, regarding the proposed expansion of its ASC, ("RV 2014-028 Request"), as well as the Response to Opposition letters dated September 3, 2014 and September 15, 2014, and SHPDA's October 15, 2014 Request ("Response") filed with SHPDA simultaneously herewith. I hereby attest that all of the representations made in the RV 2014-028 Request and the Response filed simultaneously with this Affidavit on behalf of Surgicare, are truthful and accurate, to the best of my knowledge and belief.

5. The RV 2014-028 Request does **not** include the construction, development, acquisition or involvement of any new health care facility; nor any capital expenditure by or on behalf of a health care facility which as a capital expenditure exceeds the CON statutory thresholds for review; nor does it involve the addition of any health care facility beds; nor the offering of any inpatient health services; nor any new institutional health services subject to CON review under the Alabama CON laws and regulations.

[The remainder of this page is left intentionally blank. Signature pages follow.]

I swear under penalty of perjury that the foregoing is correct to the best of my knowledge.

FURTHER, AFFIANT SAITH NOT.

Rollins L. Tindell
Rollins L. Tindell, M.D.

AFFIANT

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned Authority, a Notary Public, in and for said County and said State hereby certify that **Rollins L. Tindell, M.D.**, whose name is signed to the foregoing document, and who is known to me, acknowledges that before me on this day that, being informed of the contents of the document, swears and affirms that the facts contained herein are true and correct to the best of his personal knowledge.

Given under my hand and official seal, this the 2nd day of February, 2016.

Mandy H. Pugh
Notary Public
My Commission Expires: _____



Exhibit K

Affidavit of Nathan B. Smith

(attached)

AFFIDAVIT OF NATHAN B. SMITH

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public, in and for the County and State aforesaid, personally appeared Nathan B. Smith, (hereinafter referred to as "Affiant"), who, after first being duly sworn, deposes and states upon personal knowledge as follows:

1. My name is Nathan B. Smith. I am over the age of nineteen and have personal knowledge of the information set forth herein.

2. I am a resident of the City of Alabaster, County of Shelby, State of Alabama.

3. I am currently the Director of Financial Operations of Surgical Care Affiliates ("SCA"), in Birmingham, Alabama. SCA is the Manager of Surgicare of Mobile, Ltd. ("Surgicare"), which owns and operates an ambulatory surgery center ("ASC") located in Mobile, Alabama, serving patients in Mobile County.

4. I participated in the development of and have first-hand knowledge of the information submitted to the State Health Planning and Development Agency ("SHPDA") by Surgicare in the pending request for a letter of non-reviewability ("LNR") dated August 4, 2014, regarding the proposed expansion of its ASC, ("RV 2014-028 Request"), as well as the Response to opposition letters dated September 3, 2014 and September 15, 2014, and SHPDA's October 15, 2014 Request (the "Response") filed with SHPDA simultaneously herewith. I hereby attest that all of the representations made in the RV 2014-028 Request and in the Response filed simultaneously with this Affidavit on behalf of Surgicare, are truthful and accurate to the best of my knowledge and belief.

5. **Major Medical Equipment.** Costs for major medical equipment contained in the RV 2014-028 Request and in the Response, which is all equipment related to the Proposal (as defined in the Response), are based on fair market value prices from arm's-length third party providers.

6. **New Annual Operating Costs.** Projections of new annual operating costs in the first year of operations of the Proposal include all new costs of operations of the Proposal, and are based on actual, historical costs incurred by Surgicare for the relevant expense categories. Such projections were determined utilizing conservative assumptions, where assumptions were appropriate, as well as Surgicare's actual contemplated operating schedule for the New ORs it plans to open pursuant to the Proposal.

7. **Other Capital Expenditures.** Costs contained in the RV 2014-028 Request for other capital expenditures are based on arm's length third-party quotes for estimated costs of construction of the Proposal. Such costs also include applicable financing costs, as well as a contingency amount.

8. **Total Expenses vs. New Annual Operating Costs – A Faulty Comparison.** As described more fully in the Response, both Providence Hospital and Mobile Infirmary fail to appreciate the important distinction between "Total Expenses" called for in SHPDA Annual Reports¹ and "new annual operating costs" during the first year of operations called for by the LNR process.

¹ Form INSASC-1, attached as Exhibit M to the Response filed contemporaneously herewith.

8.1 In Providence Hospital's letter of opposition dated September 3, 2014, Providence Hospital questions Surgicare's projection for new annual operating costs for the Proposal outlined in the RV 2014-028 Request, by creating arguments based on the "Total Expenses" reported by Surgicare in its 2010 SHPDA Annual Report.

8.2 Mobile Infirmiry makes a similarly misleading factual comparison regarding operating costs in its opposition letter dated September 15, 2014. Citing Surgicare's 2010 SHPDA Annual Report, Mobile Infirmiry states that "[t]he total operating expenses in the 2010 Annual Report submitted to SHPDA is \$5,722,919.00." Mobile Infirmiry's factual allegation is incorrect. The amount cited by Mobile Infirmiry from Surgicare's 2010 Annual Report constitutes Surgicare's Total Expenses, consistent with SHPDA's instructions for ASC Annual Reports, not Surgicare's operating expenses. Operating expenses are a much narrower category than Total Expenses.

8.3 As described more fully in the Response, the similar faulty comparisons by Providence Hospital and Mobile Infirmiry fail to appreciate the distinctions between, on one hand, SHPDA's instructions to include Total Expenses in Annual Reports, and, on the other hand, SHPDA's guidelines for preparing LNRs to project new annual operating costs which result from a proposed project. Total Expenses reported to SHPDA by Surgicare include many costs that generally are not considered operating costs, as well as many operating costs that may not increase as a result of the Proposal and therefore would not be considered in the Proposal described in the RV 2014-028 Request.

8.4 In preparing the RV 2014-028 Request, I utilized actual historical costs incurred by Surgicare in operating this same facility to inform projections of new annual operating costs relating to the Proposal. New annual operating costs that will be incurred due to the Proposal outlined in the RV 2014-028 Request were included in Surgicare's estimates, such as new costs of additional clinical staff salaries and benefits, housekeeping services, waste removal, utilities, insurance, and property tax, among others. In the Response, Surgicare described the relevant categories in more detail than is required by SHPDA's guidelines.

9. Surgicare will comply fully with all requirements of the Alabama Department of Public Health ("ADPH") and/or SHPDA and delay the equipping of the 1 Reserved Future OR described in the RV 2014-028 Request and as clarified in the Response, until Surgicare files a subsequent request to SHPDA for authority to open it, either via a request for a letter of non-reviewability or application for a certificate of need, depending on the costs involved at that future time, and all to be subject to future survey by ADPH and certification at such future point in time.

10. The RV 2014-028 Request does not include the construction, development, acquisition, or involvement of any new health care facility; nor any capital expenditure by or on behalf of any health care facility which as a capital expenditure exceeds the CON statutory thresholds for review; nor does it involve the addition of any health care facility beds; nor the offering of any inpatient health services; nor any new institutional health services subject to CON review under the Alabama CON laws and regulations.

[The remainder of this page is left intentionally blank. Signature pages follow.]

I swear under penalty of perjury that the foregoing is correct to the best of my knowledge.

FURTHER, AFFIANT SAITH NOT.



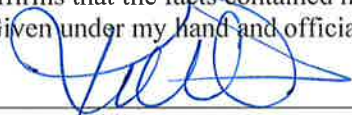
Nathan B. Smith
AFFIANT

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned Authority, a Notary Public, in and for said County and said State hereby certify that **Nathan B. Smith**, whose name is signed to the foregoing document, and who is known to me, acknowledges that before me on this day that, being informed of the contents of the document, swears and affirms that the facts contained herein are true and correct to the best of his personal knowledge.

Given under my hand and official seal, this the 2nd day of February, 2016.



Notary Public

My Commission Expires: 9/22/2018



Exhibit L

Alabama Administrative Code § 410-1-2-.07

410-1-2-.07 Capital Expenditure. An expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by the health care facility at its own contractor), which, under generally accepted accounting principles, is not properly chargeable as expense of operation and maintenance, and which

(a) exceeds \$2,000,000.00 indexed annually for inflation for major medical equipment; **results in \$800,000.00 indexed for inflation for new annual operating costs**; or \$4,000,000.00 indexed annually for inflation for any capital expenditures;

(b) changes the bed capacity of the facility with respect to which such expenditure is made, or

(c) substantially changes the health services of the facility with respect to which such expenditure is made.

Author: State Health Planning and Development Agency

Statutory Authority: Code of Ala. 1975, §22-21-260(7), Act 2003-331.

History: Amended: Filed February 26, 1991; effective April 2, 1991. Amended: Filed September 26, 2003; effective October 31, 2003.

Source: <http://www.alabamaadministrativecode.state.al.us/docs/hp/410-1-2.pdf>, Last accessed April 27, 2015. (emphasis added) See also Ala. Code § 22-21-260(3) for the similar statutory definition.

Exhibit M

SHPDA's instructions to ASCs for completing Annual Reports, Form INSASC-1 (2012)

(attached)

INSTRUCTIONS FOR COMPLETING THE 2012 ANNUAL REPORTS FOR AMBULATORY SURGERY CENTERS



STATE HEALTH PLANNING AND DEVELOPMENT
AGENCY

100 NORTH UNION STREET, SUITE 870

MONTGOMERY, AL 36104

(334) 242-4109

www.shpda.alabama.gov

**INSTRUCTIONS FOR COMPLETION OF THE
2012 ANNUAL REPORT FOR AMBULATORY SURGERY CENTERS
*Form ASC-1***

These instructions for the 2012 Annual Report for Ambulatory Surgery Centers are intended to assist in the completion and submission of accurate data reported. To ensure data integrity, and determine utilization rates of services provided by ambulatory surgery centers, information reported must be consistent from all facilities throughout the state. These instructions are intended to assist in the collection of data, minimizing the number of errors experienced in previous years. Selected verification procedures for reported information are also outlined, and are indicated by (**). Should these instructions fail to address a particular concern, please request additional assistance by contacting the State Health Planning and Development Agency (SHPDA), Bradford L. Williams, Data/Planning Director, at (334) 242-4109 or bradford.williams@shpda.alabama.gov.

Page 1

The identification number as indicated on the mailing label is assigned by SHPDA.

Verify the name of the facility identified on the mailing label is the name of the facility as indicated on the license issued by the Alabama Department of Public Health (ADPH). Make any necessary changes to the label.

Mailing Address: Provide the complete mailing address to be used by SHPDA for the mailing of annual reports, data, and requests for additional information. This address may be different from the mailing/physical address of the facility.

Physical Address: Provide the complete physical address of this facility as indicated on the ADPH license.

County of Location: Provide the county of physical location of the facility.

Facility Telephone: Provide the general telephone number of the facility, including the area code.

Facility Fax: Provide the general fax telephone number of the facility, including the area code.

The signatures and requested identifying information must be provided by two separate individuals. The primary preparer of the annual report will be contacted first for additional/corrected information. If the primary preparer is not available at the time of attempted contact, the administration official will be contacted to provide additional/corrected information, and to answer any questions.

Page 2

Section I - Ownership:

Check the type of ownership that is applicable to this agency. If the type of ownership is not listed on the report, please check 'Other' and specify on the line below the exact type of ownership of the agency.

Section II – Facilities:

PLEASE NOTE: THE TOTAL NUMBER OF OPERATIONS (CASES) AND THE TOTAL NUMBER OF PROCEDURES SHOULD EQUAL THE TOTAL NUMBERS FROM SECTION III ON PAGE 2.

Total number of operating rooms: List the total number of operating rooms available for surgeries, regardless of whether or not they are for a specific service only.

Number of operating rooms for general anesthesia: List the total number of operating rooms that are set up to utilize general anesthesia during surgery.

Number of beds available for extended recovery: List the total number of beds on-site that are available for post-surgical recovery for any period less than 24 hours.

Total number of operations: List the total number of operations (cases) performed at this center during the reporting period.

Total number of procedures performed: List the total number of procedures performed at this center during the reporting period. As one operation can contain more than one procedure, this number could be larger than the total number of operations listed in the previous step.

Is this facility a designated separate/organized outpatient surgical unit of a hospital?: Indicate whether this ambulatory surgery center is a separate and

distinct outpatient surgical unit of an acute care hospital.

Section III –Services Provided:

PLEASE NOTE: THE TOTAL NUMBER OF OPERATIONS (CASES) AND THE TOTAL NUMBER OF PROCEDURES SHOULD EQUAL THE TOTAL NUMBERS FROM SECTION II ON PAGE 2.

List the total number of operations (cases) and procedures performed for each of the separately defined categories listed in this section. Please note that since one operation can contain more than one procedure, the number of procedures could be larger for each defined service than the total number of operations.

General Surgery: List the total number of operations (cases) and the total number of procedures performed under the category of general surgery.

Dentistry: List the total number of operations (cases) and the total number of procedures performed under the category of dentistry.

Dermatology: List the total number of operations (cases) and the total number of procedures performed under the category of dermatology.

Ear, Eye, Nose & Throat: List the total number of operations (cases) and the total number of procedures performed under the category of ear, eye, nose, and throat.

Gastroenterology: List the total number of operations (cases) and the total number of procedures performed under the category of gastroenterology.

Gynecology: List the total number of operations (cases) and the total number of procedures performed under the category of gynecology.

Neurosurgery: List the total number of operations (cases) and the total number of procedures performed under the category of neurosurgery.

Ophthalmology: List the total number of operations (cases) and the total number of procedures performed under the category of Ophthalmology.

Orthopedic: List the total number of operations (cases) and the total number of procedures performed under the category of orthopedic surgery.

Pain Management: List the total number of operations (cases) and the total number of procedures performed under the category of pain management.

Plastic Surgery: List the total number of operations (cases) and the total number of procedures performed under the category of plastic surgery.

Podiatry: List the total number of operations (cases) and the total number of procedures performed under the category of podiatry.

Urology: List the total number of operations (cases) and the total number of procedures performed under the category of urology.

Other: List the total number of operations (cases) and the total number of procedures performed under any other category not listed. Please specify in the blank provided the category under which this additional surgery was performed.

Page 3

Section IV – Principal Source of Payment

List the total number of admissions for each payment source category listed on this page.

Self Pay: List the total number of patients whose primary source of payment was not reimbursed by a third party.

Workman's Compensation: List the total number of patients whose primary source of payment was workman's compensation reimbursement.

Medicare: List the total number of patients whose primary source of payment was Medicare reimbursement.

Medicaid: List the total number of patients whose primary source of payment was Medicaid reimbursement.

Tricare: List the total number of patients whose primary source of payment was Tricare reimbursement.

Blue Cross: List the total number of patients whose primary source of payment was Blue Cross/Blue Shield reimbursement.

Other Insurance Companies: List the total number of patients whose primary source of payment was insurance company reimbursement not otherwise specified.

No Charge (charity & others): List the total number of patients whose primary source of care was provided without expectation of reimbursement.

Health Maintenance Organization (HMO): List the total number of patients whose primary source of payment was through an HMO reimbursement.

All Kids: List the total number of patients whose primary source of payment was All Kids reimbursement.

Other: List the total number of patients whose primary source of payment was any other reimbursement not specified.

Section V – Revenues and Expenses
(Please note that these amounts do not have to be audited)

Total Expenses: Total expenses incurred by the agency related to any and all reasons not covered by Bad Debt or Charity Care. This should include payroll and benefits, supplies and utilities, etc.

Total Revenues: Total reimbursements for care received by the center during the reporting period

Bad Debt: Total expenses incurred by the agency related solely due to bad debt. Bad debt is defined by the *Alabama State Health Plan*, section 410-2-2-.06 as "the unpaid charges/rates for services rendered from a patient and/or third party payer, for which the provider reasonably expected payment".

Charity: Total expenses incurred by the agency related solely due to the provision of charity care to patients. Charity is defined by the *Alabama State Health Plan*, section 410-2-2-.06 as "health services for which a provider's policies determine that a patient is unable to pay. Charity Care could result from a provider's policies to provide health care services free of charge to individuals who meet certain pre-established criteria. Charity Care is measured as revenue foregone, at full-established rates or charges. Charity Care would not include contractual write-offs, but could include partial write-offs for persons unable to pay the full amount of a particular patient's bill".

*****REMINDER*****

The annual report MUST be signed by both the preparer and an administrative official.

Exhibit N
Alabama Act 2015-471
(attached)

ACT No. 2015 - 471

1 HB500
2 167118-5
3 By Representative Weaver
4 RFD: Health
5 First Read: 16-APR-15



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ENROLLED, An Act,

Relating to the State Health Planning and Development Agency (SHPDA); to provide for certain mandatory health care reporting to SHPDA; to designate the SHPDA as the agency to collect, compile, and analyze the collected reports; to establish and provide for the membership of the Health Care Information and Data Council; to require that the SHPDA, after receiving advice and guidance from the council, adopt rules to implement this act; to provide for penalties for failure make the required reports; and to require the SHPDA to meet certain deadlines or lose its authority to require the reporting.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be cited and known as the "Alabama Health Planning Facilitation Act."

Section 2. The Legislature does hereby set out the following findings and reasons for passage of this act.

Alabama has adopted a system of health planning and development administered by the State Health Planning and Development Agency (SHPDA).

In addition, the Statewide Health Coordinating Council (SHCC) is charged with reviewing Alabama's health planning needs and writing the State Health Plan to assist the Certificate of Need Review Board.

1 The Certificate of Need Review Board is responsible
2 for reviewing and approving certificate of need applications
3 in Alabama.

4 There is no current systematic way for the SHPDA,
5 SHCC, or the Certificate of Need Review Board to collect all
6 the health care services information necessary for proper
7 health care planning in Alabama, because reporting to SHPDA is
8 voluntary.

9 The Legislature hereby finds and determines that
10 collection of additional health care information is necessary
11 for informed statewide health planning. The purpose of this
12 law is to give SHPDA authority to require the reporting of
13 certain information to SHDPA by the legal entities covered in
14 this act.

15 Section 3. For purposes of this act, the following
16 terms shall have the following meanings:

17 (1) CERTIFICATE OF NEED REVIEW BOARD. The board
18 which reviews all certificate of need applications as provided
19 in Section 22-21-260(14) Code of Alabama 1975.

20 (2) COVERED HEALTH CARE REPORTER. The term includes
21 health care facilities as that term is defined in Section
22 22-21-260(6), Code of Alabama 1975; new institutional health
23 services subject to review as defined in Section 22-21-263,
24 Code of Alabama 1975; a facility or institution for the care
25 or treatment of any kind of mental or emotional illness or

1 substance abuse or for providing services to persons with
2 intellectual disabilities as defined in Section 22-50-17, Code
3 of Alabama 1975; and facilities and distinct units as defined
4 in Section 22-21-263(c), Code of Alabama 1975.

5 (3) HEALTH CARE REPORTS. The written reports to
6 SHPDA which are required to be submitted by this act

7 (4) HEALTH CARE INFORMATION AND DATA ADVISORY
8 COUNCIL. The body created by this act which is charged with
9 advising and participating in the writing of rules necessary
10 to implement this act and reviewing reports prior to
11 dissemination by SHPDA.

12 (5) SHPDA. The State Health Planning and Development
13 Agency.

14 (6) STATE HEALTH COORDINATING COUNCIL. The council
15 which is defined in Section 22-21-260(15), Code of Alabama
16 1975.

17 Section 4. (a) There is established the Health Care
18 Information and Data Advisory Council to give advice and
19 guidance to SHPDA in adopting rules necessary to implement
20 this act, to review and serve as consultants to SHPDA on
21 matters related to any reports or publications prior to a
22 report or publication release, and to serve as consultants to
23 SHPDA on matters relating to the protection, collection, and
24 dissemination of health care reports.

1 (b) The council shall consist of the following
2 members:

3 (1) Two members appointed by the Alabama Hospital
4 Association.

5 (2) Two members appointed by the Alabama Nursing
6 Home Association.

7 (3) One member appointed by the Assisted Living
8 Association of Alabama.

9 (4) ~~One member~~ Two members appointed by the Alabama
10 Hospice and Palliative Care Association.

11 (5) One member appointed by the Home Care
12 Association of Alabama.

13 (6) One member appointed by the Chair of the SHCC.

14 (7) ~~One member~~ Two members appointed by the Alabama
15 Ambulatory Surgery Center Association.

16 (8) One member appointed by the Commissioner of
17 Mental Health.

18 (9) The Chair of the Certificate of Need Review
19 Board, or his or her designee.

20 (c) The council membership shall be inclusive and
21 reflect the racial, gender, geographic, urban/rural, and
22 economic diversity of the state.

23 (d) The terms of the appointed members shall be
24 staggered as follows: The Chair of the Certificate of Need
25 Review Board or his or her designee shall divide the members

1 into two equal groups. The members of the first group shall be
2 appointed for an initial term of two years. The members of the
3 second group shall be appointed for an initial term of four
4 years. Thereafter, the term of office of each member shall be
5 for four years. A member may serve two consecutive terms. A
6 member shall serve until a successor is appointed. If a
7 vacancy occurs, the original appointing authority shall fill
8 the vacancy for the remainder of the unexpired term.

9 (e) The council shall meet within 30 days after the
10 appointment of the council membership, elect a chair and
11 establish procedures and other policies necessary to carry on
12 the business of the council. A quorum shall be a majority of
13 the appointed members. Notice of meetings of the council shall
14 be given pursuant to the Alabama Open Meetings Act.

15 Section 5. The SHPDA, following advice and guidance
16 from the Health Care Information and Advisory Council, shall
17 adopt rules providing the specific information which shall be
18 submitted and the method of submission to SHPDA. All covered
19 health care reporters shall provide written reports as
20 required by SHPDA, at least annually. Within one year of the
21 adoption of rules pursuant to the Administrative Procedure
22 Act, covered health care reporters shall make the first report
23 due under this act. The first report due under this act
24 submitted by a covered health care reporter shall cover the
25 immediately preceding six months. Reporting to SHPDA under

1 this act shall be mandatory. Reporting to SHPDA shall be
 2 required at least annually after the initial report and shall
 3 cover the one-year period from the previous report as provided
 4 by rules of SHPDA.

5 Section 6. (a) A covered health care reporter shall
 6 submit the required reports directly to SHPDA. The reports may
 7 be submitted electronically after SHPDA has the capability to
 8 accept the reports in an electronic format. SHPDA shall
 9 provide for the acceptance of the electronic filing of the
 10 mandatory reports within six months of the effective date of
 11 rules adopted to carry out this act.

12 (b) If SHPDA is unable to electronically accept the
 13 mandatory reports within 12 months of adoption of the rules
 14 necessary to carry out this act, this act shall be null and
 15 void.

16 Section 7. ~~The SHPDA may not use or release any~~
 17 ~~information obtained from the reports provided under this act~~
 18 ~~which would enable any person to determine any covered health~~
 19 ~~care reporter's~~ The SHPDA may not request any information from
 20 a healthcare reporter that requires the submission of
 21 proprietary or confidential matters, such as negotiated
 22 discounts with specific insurers, health service corporations,
 23 or health benefit plans. The SHPDA may not require any
 24 reporting that could be used to identify a patient of a
 25 covered health care reporter.

1 Section 8. SHPDA shall impose an administrative
2 penalty against a covered health care reporter that fails to
3 comply with this act in an amount not to exceed five thousand
4 dollars (\$5,000) if the covered health care reporter is a
5 rural health care provider or ten thousand dollars (\$10,000)
6 for all covered health care reporters and the covered health
7 care reporter may not participate in the CON review process
8 either as an applicant for a CON or in opposition to a CON
9 application until the covered health care reporter is in
10 compliance with this act. Within one year after the effective
11 date of this act, SHPDA, following advice and guidance from
12 the Health Care Information and Data Council, shall adopt
13 rules pursuant to the Administrative Procedure Act necessary
14 to implement this section.

15 Section 9. Nothing in this act shall prohibit a
16 purchaser from obtaining information from a covered health
17 care reporter. The obligation of providing the purchaser, on
18 terms consistent with past practices, data or information
19 previously provided, or additional data or information not
20 currently provided to a purchaser by the covered health care
21 reporter pursuant to any existing or future arrangement,
22 agreement, or understanding shall not be affected by this act.

23 Section 10. (a) SHPDA shall utilize the data and
24 information received from covered health care reporters for
25 the benefit of the public and public officials. The data and

1 information obtained by SHPDA pursuant to this act, including
2 a summary, shall be reported to the SHCC and the Certificate
3 of Need Review Board at least annually.

4 (b) SHPDA shall follow the advice and guidance of
5 the Health Care Information and Data Council as to what
6 reports, publications, or studies may be compiled using the
7 data required to be collected in this act.

8 (c) All approved reports, publications, or studies
9 prepared by SHPDA shall be public records and shall be made
10 available to the public for a reasonable fee.

11 (d) Covered health care reports from individual
12 providers shall continue to be available to the public and the
13 SHPDA may charge a reasonable fee for copies of these reports.

14 Section 11. SHPDA may bring civil actions in any
15 court of competent jurisdiction to enforce compliance with
16 this act or any requirement or appropriate request of SHPDA
17 made pursuant to this act.

18 Section 12. This act shall not affect any current
19 law or laws which provide authority or jurisdiction for the
20 SHPDA, the Certificate of Need Review Board, or the SHCC
21 except as provided herein, or which provide requirements to
22 obtain a certificate of need in this state. This act shall be
23 supplemental to any existing laws.

24 Section 13. The information collected pursuant to
25 this act shall be used to assist the SHPDA, the Certificate of

1 Need Review Board, and the SHCC to provide health planning and
2 development services for the citizens of Alabama. The
3 information generated by these reports may not be used by
4 SHPDA or any other agency or unit of state government for any
5 other purpose.

6 Section 14. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.

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[Handwritten Signature]

Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 14-MAY-15, as amended.

Jeff Woodard
Clerk

Senate

04-JUN-15

Passed

APPROVED

6-11-2015

TIME

9:00 AM

[Handwritten Signature: Robert Bentley]
GOVERNOR

Alabama Secretary Of State

Act Num....: 2015-471
Bill Num....: H-500

Recv'd 06/11/15 01:31pmSLF

Weaver

O-SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 500

YEAS 101 NAYS 1

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION

DATE: 5-19 2015

RD 1 RFD Health

This Bill was referred to the Standing Committee of the Senate on

HEALTH

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 0 w/sub 0 by a vote of

yeas 6 nays 0 abstain 0

this 2 day of JUNE 2015

Paul Hill Chairperson

DATE: 5-19 2015

RF SAU RD 2 CAL

DATE: _____ 20__

RE-REFERRED RE-COMMITTED
Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB _____

YEAS _____ NAYS _____

PATRICK HARRIS,
Secretary

FURTHER SENATE ACTION (OVER)

RECEIVED

MAR 11 2016

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

Lenora W. Pate
Attorney at Law
lpate@sirote.com
Tel: 205-930-5162
Fax: 205-212-3801

Bruce "Andy" Andrews
Attorney At Law
bandrews@sirote.com
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Fax: 205-212-2945



Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, AL 35205-2972

PO Box 55727
Birmingham, AL 35255-5727

March 11, 2016

VIA E-MAIL & HAND DELIVERY

Mr. Alva M. Lambert
Executive Director
Alabama State Health Planning and Development Agency ("SHPDA")
100 North Union Street, Suite 870
Montgomery, AL 36104

Re: Surgicare of Mobile, Ltd.: RV 2014-028 Request
Response to SHPDA's letter dated March 10, 2016

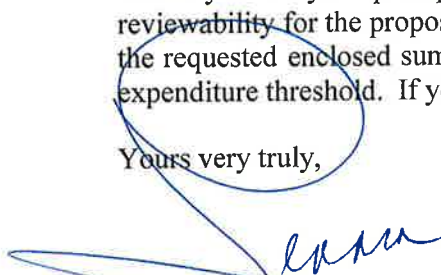
Dear Mr. Lambert:

Thank you for considering our response and supporting documents dated February 5, 2016 ("Response"). In your letter dated March 10, a copy of which is enclosed for your convenience, you requested a summary line item breakdown and total for the new annual operating costs associated with the expansion described in the Response.

Enclosed is a summary with the requested information, attached to an unchanged copy of Exhibit G filed with the Response on February 5, 2016, so that this can be substituted and made a part of the filed Response for clarity.

Thank you for your prompt attention to this matter. We look forward to receipt of the letter of non-reviewability for the proposed expansion referenced in your March 10, 2016, letter once you confirm that the requested enclosed summary line item breakdown is in compliance with the applicable CON review expenditure threshold. If you have any questions, please give us a call immediately.

Yours very truly,



Lenora W. Pate
Bruce "Andy" Andrews
FOR THE FIRM

Enclosures

c: Surgicare of Mobile, Ltd.

Birmingham Huntsville Mobile Fort Lauderdale Orlando Pensacola

DOCSBHM2111332\1

sirote.com

Summary Page to Exhibit G – New Annual Operating Costs	
Staffing Costs	\$263,578
Lease Costs (Capital Lease)	\$0
Medical Supplies and Drugs	\$272,050
Proportional Expenses	\$58,538
Bad Debt Expense	\$45,606
Management Fees	\$85,226
Other Costs	\$246,197
“Round up” cushion	\$8,805
Total New Annual Operating Costs	\$980,000

Exhibit G

New Annual Operating Costs

An important preliminary point is that the expenditure threshold relating to new annual operating costs is somewhat different than the thresholds for major medical equipment and other capital expenditures. As SHPDA describes in § 410-1-2-.07 of the Alabama Administrative Code and SHPDA's published guidelines regarding LNRs, attached hereto as Exhibit L and Exhibit B, respectively, this third threshold does not relate to an amount *spent* on the proposed project. Rather, this third threshold focuses on new costs that the applicant projects will be *caused by* a proposed project - specifically, whether a proposed project will result in new annual operating costs in excess of the applicable threshold during the first year of operation of the proposed expansion project.

Surgicare has projected its new annual operating costs during the first year of operations which are the result of this Proposal, using conservative assumptions and factoring in certain contingencies. Such projections include all costs of operations of this Proposal within the first year, including but not limited to, major cost categories such as employee salaries and benefits, supplies, uniforms, utilities, maintenance, insurance, property tax, housekeeping, and IT services.

Surgicare projects new annual operating costs of \$971,195 in the first year of operations of the Proposal.

Surgicare's projections are based on actual historic costs incurred and its projected growth in cases. Currently, Surgicare continues to respond to increased demand for its services through extended hours and utilizing unfavorable working schedules – including full morning and afternoon shifts in the ORs, and extended hours for its entire ASC. Once the 4 New ORs described in this Proposal are licensed, certified, and open, Surgicare plans for its entire ASC to return to normal operating schedules – predominantly scheduling procedures in the morning.

Surgicare's projections of new annual operating costs are based on its actual historical experience of costs incurred. Surgicare's projections of new annual operating costs are significantly lower than the Opposition would project primarily because (i) Surgicare will no longer use the Procedure Room for cases, (ii) the GI cases currently scheduled in overloaded morning and afternoon blocks in the current OR1 and the Procedure Room will be transferred to and distributed among the 4 New ORs, (iii) all ORs will continue after the Proposal with a normal operating schedule rather than extensive overtime, and (iv) Surgicare will close the Excimer Laser Room. Even with several very conservative assumptions and additional contingencies built into its projections, Surgicare's new annual operating costs during the first year of operations of this Proposal are below the applicable CON statutory threshold.

- **Staffing Costs.** Surgicare expects that hours worked by many current employees will be transferred to the 4 New ORs described in this Proposal, as the need for additional staff is a function of caseload, not square footage. Projections for salaries and benefits for such newly hired staff are based on current actual wage rates and costs of benefits incurred by Surgicare for the same positions. Surgicare has been delayed in its project by more than a year due to judicial opposition. Due to increasing patient demand for services within the existing facilities, and the unfavorable work schedule that Surgicare requires of its staff due to a lack of space, Surgicare has increased the compensation of current staff and hired new staff since the RV 2014-028 Request. Accordingly, Surgicare's projection for new annual staffing costs in the first year of operations of this Proposal has decreased. Also, at the time of the RV 2014-028 Request, Surgicare had not factored in the reduced annual operating costs associated with closing the Excimer Laser Room. In any event, Surgicare projects new annual staffing costs in the first year of operations of this Proposal totaling are actually \$263,578 when factoring in such changes.

- The salary and benefits of any person hired *prior* to the opening of the proposed OR Wing should not be considered a new annual operating cost for purposes of this Proposal. In an effort to be conservative in its estimates, however, Surgicare attributed the applicable portion of a newly hired employee's annual salary and benefits to the first year of operations of the Proposal if such employee was hired in order to staff the new space described in the Proposal (even if such a person were hired prior to the opening of the proposed OR Wing). Note that, when Surgicare began considering the proposed expansion in the spring of 2014, it estimated that new annual staffing costs would amount to \$316,029. Even if, for the sake of argument, the larger amount were now used for new annual operating costs (which, would incorrectly double-count the cost associated with employees already hired), Surgicare's total projection for new annual operating costs in the first year of this Proposal would amount to \$1,023,646, an amount which is still nearly Eighty Thousand Dollars below the 2013 LNR threshold of \$1,102,881 applicable at the time of submission of the RV 2014-028 Request, and over One Hundred Eighteen Thousand Dollars below the current LNR threshold of \$1,141,819.
- **Lease Costs.** Surgicare does not expect that its lease cost will increase. Surgicare's landlord is aware of the Proposal. All of the construction costs are being borne by Surgicare, the tenant. Surgicare already is responsible under its lease for taxes and insurance related to the property where its ASC is located, which are accounted for below as a "proportional" expense, described hereinbelow. Surgicare will capitalize the costs of the construction and treat such costs as a capital lease as it has always historically booked lease payments, and the landlord will retain ownership of the constructed buildings at the conclusion of the lease term.
- **Medical Supplies and Drugs.** Surgicare's cost projection for supplies underlying this Proposal was determined based on the actual cost of supplies per case currently incurred. Surgicare projects that operating the 4 New ORs in the first year of the Proposal, at full capacity, will represent a caseload increase of approximately 40% as compared to its caseload of services prior to opening the 4 New ORs described in this Proposal, recalling that the 4 New ORs comprise a net operational addition of approximately two (2) full ORs. Further, Surgicare will no longer incur supply costs associated with the Excimer Laser Room, which will be used as office space once this Proposal is implemented. Surgicare projects that it will incur approximately \$272,050 of new costs for supplies and drugs in the first year of this Proposal.
- **Proportional Expenses.** Arguably, taxes are not a cost of "operations" and reasonably could be left out of a calculation for new annual operating costs. However, certain value-based taxes and costs paid by Surgicare on an annual basis will increase due to this Proposal, related to the size and value of Surgicare's physical space. Such taxes include real property tax, personal property tax, and sales and use tax. Surgicare's costs for insuring its property also will increase based on the property's value. Notwithstanding the argument that such costs could reasonably be left out of the calculation of new annual operating costs, Surgicare included such costs in its projection. The total of such new costs that Surgicare projects it will incur during the first year of operations of the Proposal are \$58,538.
- **Bad Debt Expense.** Based on historical rates, Surgicare projects that its new annual costs for bad debt expense during the first year of operations of the Proposal will be \$45,606.
- **Management Fees.** Based on its fee arrangement with its management company, Surgicare projects that its new costs for management fees during the first year of operations of the Proposal will be \$85,226.
- **Other Costs.** Based on actual costs currently incurred and applicable rates for expenses such as uniforms, linens, utilities, housekeeping/janitorial, office supplies, professional fees, and other services

of outside vendors, Surgicare projects that its other new annual operating costs in the first year of this Proposal will amount to approximately \$246,197.



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

March 10, 2016

Lenora W. Pate, Esquire
Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, Alabama 35205-2972

RE: RV2014-028
Surgicare of Mobile, Ltd.

Dear Ms. Pate:

This is written in further response to your correspondence of February 5, 2016, providing the information requested by the Agency on October 15, 2014, regarding Surgicare of Mobile, Ltd.'s ("Surgicare") request for a reviewability determination for the addition of five (5) operating rooms, twenty (20) pre/post-op bays, and four (4) restrooms and the expansion of the waiting room and business office at its existing multi-specialty ambulatory surgery center ("ASC") in Mobile, Alabama.

According to your letter, the estimated cost for major medical equipment, first year annual operating costs and other capital expenditures will be less than the Certificate of Need ("CON") review expenditure thresholds for these expenses. You have provided a detailed breakdown of the major medical equipment costs and other capital expenditures associated with the proposed project; however, the summary document provided to explain the new annual operating expenses associated with the project is less clear. Please provide a line item breakdown and total for the new annual operating costs based on the new operating costs associated with the expansion, as discussed in your letter.

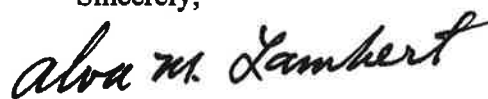
Your letter further clarifies that Surgicare proposes to expand its ASC through the renovation of its current physical space, and the construction and build out of a new wing to accommodate the additions, including five (5) new operating rooms, four (4) of which will be licensed, certified, fully staffed, and operated immediately upon completion of the construction, and one (1) of which will remain unstaffed, unsurveyed, uncertified, and reserved in an unusable condition to be marked on the plans for future use until subsequent Agency authority is sought and obtained.

Lenora W. Pate, Esq.
February 24, 2016
Page Two

The Agency agrees, as Surgicare has offered to commit, that Surgicare should be precluded from buying the medical equipment for use in the unstaffed, unusable operating room until it seeks additional authority from SHPDA to place the operating room in operation. Upon receipt of the additional information requested and compliance with the applicable CON review expenditure threshold, the Agency will issue the requested letter of non-reviewability for Surgicare's proposed expansion.

Should you have any questions regarding this letter, please contact the Agency at (334) 242-4103.

Sincerely,

A handwritten signature in black ink that reads "Alva M. Lambert". The signature is written in a cursive, flowing style.

Alva M. Lambert
Executive Director

Exhibit 2

SHPDA Determination



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

March 16, 2016

Lenora W. Pate, Esquire
Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, Alabama 35205-2972

RE: RV2014-028
Surgicare of Mobile, Ltd.

Dear Ms. Pate:

This is written in further response to your letter of August 4, 2014, and additional correspondence dated February 5, 2016, and March 11, 2016, regarding Surgicare of Mobile, Ltd.'s ("Surgicare") request for a reviewability determination for the addition of five (5) operating rooms, twenty (20) pre/post-op bays, and four (4) restrooms and the expansion of the waiting room and business office at its existing multi-specialty ambulatory surgery center ("ASC") in Mobile, Alabama.

Your previous correspondence clarifies that Surgicare proposes to expand its ASC through the renovation of its current physical space and the construction and build out of a new wing to accommodate the additions, including five (5) new operating rooms, four (4) of which will be licensed, certified, fully staffed, and operated immediately upon completion of the construction, and one (1) of which will remain unstaffed, unsurveyed, uncertified, and reserved in an unusable condition, to be marked on the plans "for future use," until subsequent Agency authority is sought and obtained.

You estimate that the cost of the proposed major medical equipment to be purchased for the four (4) new operating rooms is \$2,200,000.00; new annual operating costs are proposed to be \$980,000.00; and other capital expenditures are estimated to be \$3,750,000.00, all below the current Certificate of Need review thresholds. You have confirmed that the project does not involve the addition of beds, the conversion of beds from one classification to another or the offering of new health services not previously provided by the ASC.

According to the facts that have been provided, a Certificate of Need would not be required under Alabama law and the *Alabama Certificate of Need Program Rules and Regulations* for the proposed expansion; provided, however, that as stated above, one (1) of the proposed operating

Lenora W. Pate, Esq.
March 16, 2016
Page Two


rooms will remain unstaffed, unsurveyed, uncertified, and reserved in an unusable condition, to be marked on the plans "for future use," until subsequent Agency authority to place the operating room in operation is sought and obtained, and provided, further, that Surgicare will refrain from buying the medical equipment for use in the unstaffed, unusable operating room until it has obtained such authority.

Pursuant to ALA. ADMIN. CODE r. 410-1-7-.02 (2014), this opinion is for informational purposes only and is based on the representations expressly stated herein. This letter is also specifically conditioned upon the continuing accuracy of the representations contained in your request and the assumption that you have disclosed all pertinent information relative to this request. Nothing in this letter shall be construed as authorizing the use of the four remaining new operating rooms to be constructed under the proposed project.

Should there be any deviations from the facts and premises which you provided to this Agency, and should circumstances prove to be other than represented, this letter will become null and void.

Should you have any questions regarding this letter, please contact the Agency at (334) 242-4103.

Sincerely,

A handwritten signature in black ink that reads "Alva M. Lambert". The signature is written in a cursive, flowing style.

Alva M. Lambert
Executive Director

AML/nh

Enclosure as stated

cc: Kristin Norman, ADPH
David E. Belser, Esquire
David M. Hunt, Esquire
James E. Williams, Esquire

Exhibit 3

GI Utilization

Exhibit 4

GI Block Time Schedule

JULY GI Availability

Day	Date	GI 1 AM	GI 1 PM	GI 2 AM	GI 2 PM	GI 3 AM	GI 3 PM	GI 4 AM	GI 4 PM
Thurs	1	Fleet		<i>Parker</i>		Siegel	Siegel	Grevenitis	Grevenitis
Fri	2			Siegel	Siegel		Alnoah	Lerner	Lerner
Mon	5	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
Tues	6	Parker	Alnoah	Johnson	Johnson	Fleet		Siegel	Siegel
Wed	7	Parker	Parker			Carnes		Barnett	Barnett
Thurs	8	Fleet		Johnson	Johnson	Siegel	Siegel	<i>Parker</i>	
Fri	9	<i>Parker</i>		Siegel	Siegel	Orleans	Alnoah		
Mon	12	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	13	Orleans	Alnoah	Johnson	Johnson	Fleet		Siegel	Siegel
Wed	14	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	15	Fleet		<i>Parker</i>		Siegel	Siegel	Grevenitis	Grevenitis
Fri	16	<i>Parker</i>		Siegel	Siegel	Orleans	Alnoah		
Mon	19	Sanders	Alnoah	Barnett	Barnett	<i>Parker</i>		Grevenitis	Grevenitis
Tues	20	Orleans	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	21	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	22	Fleet	Hooks	Johnson	Johnson	Siegel	Siegel	Grevenitis	Grevenitis
Fri	23	Sanders	Sanders	Siegel	Siegel	<i>Parker</i>	Alnoah	Lerner	Lerner
Mon	26	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	27	Parker	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	28	Parker	Parker	Lerner	Lerner	Carnes		<i>Bernard</i>	
Thurs	29	Fleet	Hooks	<i>Parker</i>		Siegel	Siegel	Grevenitis	Grevenitis
Fri	30	Sanders	Sanders	Siegel	Siegel	<i>Parker</i>	Alnoah	Lerner	Lerner

AUGUST GI Availability

Day	Date	GI 1 AM	GI 1 PM	GI 2 AM	GI 2 PM	GI 3 AM	GI 3 PM	GI 4 AM	GI 4 PM
Mon	2	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	3	Orleans	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	4	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	5	Fleet	Hooks	Parker		Siegel	Siegel	Grevenitis	Grevenitis
Fri	6	Sanders	Sanders	Siegel	Siegel	Parker	Alnoah	Lerner	Lerner
Mon	9	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	10	Orleans	Alnoah	Johnson	Johnson	Parker		Siegel	Siegel
Wed	11	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	12	Parker		Johnson	Johnson	Siegel	Siegel	Grevenitis	Grevenitis
Fri	13	Sanders	Sanders	Siegel	Siegel	Orleans	Alnoah	Lerner	Lerner
Mon	16	Sanders	Alnoah	Barnett	Barnett	X		Grevenitis	Grevenitis
Tues	17	Orleans	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	18	Parker	Parker	Bercier		Carnes		Barnett	Barnett
Thurs	19	Fleet	Hooks	Parker		Siegel	Siegel	Grevenitis	Grevenitis
Fri	20	Sanders	Sanders	Siegel	Siegel	Orleans	Alnoah	Parker	
Mon	23	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	24	Parker	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	25	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	26	Fleet	Hooks	Johnson	Johnson	Siegel	Siegel	Grevenitis	Grevenitis
Fri	27	Sanders	Sanders	Siegel	Siegel	Parker	Alnoah	Bercier	
Mon	30	Sanders	Alnoah	Barnett	Barnett	Parker	Lerner	Grevenitis	Grevenitis
Tues	31	Orleans	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel

SEPTEMBER GI Availability

Day	Date	GI 1 AM	GI 1 PM	GI 2 AM	GI 2 PM	GI 3 AM	GI 3 PM	GI 4 AM	GI 4 PM
Wed	1	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	2	Fleet	Hooks	Parker		Siegel	Siegel	Grevenitis	Grevenitis
Fri	3	Sanders	Sanders	Parker Siegel	Siegel	Orleans	Alnoah	Lerner	Lerner
Mon	6	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
Tues	7	Parker Surgical	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	8	Parker	Parker	Lerner	Lerner	Carnes		Barnett	
Thurs	9	Fleet	Hooks	Johnson	Johnson	Siegel	Siegel	Grevenitis	Grevenitis
Fri	10	Sanders	Sanders	Siegel	Siegel	Orleans	Alnoah	Lerner	Lerner
Mon	13	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	14	Orleans	Alnoah	Johnson	Johnson	Barnett	Hooks	Siegel	Siegel
Wed	15	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	16	Parker	Hooks	Barnett		Siegel	Siegel	Grevenitis	Grevenitis
Fri	17	Sanders	Sanders	Siegel	Siegel	Parker	Alnoah	Lerner	Lerner
Mon	20	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	21	Orleans	Alnoah	Johnson	Johnson	Fleet		Siegel	Siegel
Wed	22	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	23	Fleet		Johnson	Johnson	Siegel	Siegel	Parker	
Fri	24	Sanders	Sanders	Siegel	Siegel	Orleans	Alnoah	Lerner	Lerner
Mon	27	Sanders	Alnoah	Barnett	Barnett	Lerner	Lerner	Grevenitis	Grevenitis
Tues	28	Orleans	Alnoah	Johnson	Johnson	Fleet	Hooks	Siegel	Siegel
Wed	29	Parker	Parker	Lerner	Lerner	Carnes		Barnett	Barnett
Thurs	30	Fleet	Hooks	Parker		Siegel	Siegel	Grevenitis	Grevenitis

Exhibit 5

Threshold Memorandum



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE: September 23, 2020

TO: Interested Parties

FROM: Emily T. Marsal 
Executive Director

SUBJECT: New Certificate of Need Application Fee and
Monetary Threshold for Review
Effective October 1, 2020

Section 22-21-271, Code of Alabama, 1975 and Rule 410-1-7-.06 of the *Alabama Certificate of Need Program Rules and Regulations* require that the maximum application fee be indexed for inflation along with the threshold for new institutional health services listed in §22-21-263, Code of Alabama, 1975. The United States Department of Labor Consumer Price Index (CPI) – All Urban Consumers, Professional Medical Services, averaged an increase of 1.8% for the months of September 2019 through August 2020 (series id CUUR0000SEMC).

The expenditure threshold for major medical equipment will be increased from \$3,024,899.00 to \$3,079,347.00; the new annual operating cost will be increased from \$1,209,958.00 to \$1,231,738.00; and any other capital expenditure by or on behalf of a healthcare facility or health maintenance organization will be increased from \$6,049,799.00 to \$6,158,695.00.

Based on a 1.8% increase in the CPI, the maximum Certificate of Need filing fee will be increased from \$23,033.00 to \$23,448.00.

ETM/kwm

Exhibit 6

Equipment Cost Summary

Surgicare of Mobile
GI OR 5-Projected Equip Needs

Equipment/Construction	Quote	Date Ordered	CER#	Notes	
Stryker Stretcher x3	\$15,000.00				
Mindray-Patient Monitors x1	\$9,000.00				
Pentax X 1	\$212,935.00				
IT Equipment/Phone	\$2,000.00				
Anesthesia Cart	\$500.00				
ERBE	\$10,000.00				
Rolling storage cabinets	\$1,000.00			Sams	
Scope Cabinets	\$4,000.00			May not need	
Ott Medical Vacuum Pump	\$25,000.00			Projected-Partially piped	
Misc Items	\$3,000.00			Stools, Trash cans, narcotic cabinet, IV pole, etc (Medline)	
Sub Total:	\$282,435.00				
Contingency (10%)	\$28,243.50				
Tax & Freight 15%	\$43,365.25				
Total:	\$354,043.75				

Exhibit 7

**New Annual Operating Cost
Summaries**



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

July 30, 2021

Jordan Jackson, Esquire
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, Alabama 35205-2972

RE: RV2021-027
Surgicare of Mobile, Ltd.

Dear Ms. Jackson:

This letter is written in response to the above referenced Request for a Reviewability Determination received on July 26, 2021, on behalf of Surgicare of Mobile, Ltd. regarding the proposed opening and operation of the previously constructed operating room (OR) for the provision of existing gastrointestinal (GI) services in Mobile, Alabama. This proposed OR, which has remained unused and unequipped, was constructed through the prior expansion of the ambulatory surgery center, which received a Letter of Non-Reviewability (RV2014-028) on March 16, 2016.

Additional information is required on behalf of this request.

1. Provide the Agency with a disclosure of financial interests in the entity requesting the reviewability determination held by any other healthcare facilities or groups.
2. Provide in narrative form the specific service area for the proposed project. ALA. ADMIN. CODE r. 410-1-2-.03 defines the service area as the county in which the service will be provided in the absence of a designated geographical service area.

Additional review will be conducted upon receipt of the requested information.

Pursuant to ALA. ADMIN. CODE r. 410-1-3-.09, all documents to be filed must be submitted electronically to shpda.online@shpda.alabama.gov in text searchable, PDF format.

Should you have any questions, please contact the Agency at (334) 242-4103.

Sincerely,

Emily T. Marsal
Executive Director

ETM:mst

August 12, 2021

VIA E-MAIL (shpda.online@shpda.alabama.gov)

Emily T. Marsal
Executive Director
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, Alabama 36104

**RE: Surgicare of Mobile, Ltd. – RV2021-027
Response to SHPDA July 30, 2021 Additional Information Request (“Response”)**

Dear Ms. Marsal:

On behalf of Surgicare of Mobile, Ltd. (“Surgicare”), this letter is written in response to the State Health Planning and Development Agency (“SHPDA”) July 30, 2021 letter request for additional information (“Additional Information Request”), attached hereto as **Exhibit 1**, regarding Surgicare’s request for a non-reviewability determination for the opening and operation of its previously constructed operating room (“RV2021-027 Request”). Surgicare’s responses to SHPDA’s Additional Information Request are set forth below:

1. Provide the Agency with a disclosure of financial interests in the entity requesting the reviewability determination held by any other healthcare facilities or groups.

Surgicare is owned by Mobile Surgicare, LLC and Surgicare of Mobile, LLC.

2. Provide in narrative form the specific service area for the proposed project. ALA. ADMIN. CODE r. 410-1-2-.03 defines the service area as the county in which the service will be provided in the absence of a designated geographical service area.

Surgicare owns and operates a multi-specialty ambulatory surgery center (“ASC”) located in Mobile, Alabama and provides ASC services in Mobile County.

In accordance with ALA. ADMIN. CODE r. 410-1-3-.09, a text searchable, PDF copy of this Response is being submitted electronically on August 12, 2021.

Please let us know if we can provide any additional information.

Yours very truly,



Jordan Jackson
Associate
Dentons Sirote PC

RV2021-027
RECEIVED

Aug 12 2021

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

Enclosure

cc: Sandra Bunch
Shirley Justice
Joseph T. Ritchey

Exhibit 1

**SHPDA July 30, 2021 Additional
Information Request**



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

July 30, 2021

Jordan Jackson, Esquire
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, Alabama 35205-2972

RE: RV2021-027
Surgicare of Mobile, Ltd.

Dear Ms. Jackson:

This letter is written in response to the above referenced Request for a Reviewability Determination received on July 26, 2021, on behalf of Surgicare of Mobile, Ltd. regarding the proposed opening and operation of the previously constructed operating room (OR) for the provision of existing gastrointestinal (GI) services in Mobile, Alabama. This proposed OR, which has remained unused and unequipped, was constructed through the prior expansion of the ambulatory surgery center, which received a Letter of Non-Reviewability (RV2014-028) on March 16, 2016.

Additional information is required on behalf of this request.

1. Provide the Agency with a disclosure of financial interests in the entity requesting the reviewability determination held by any other healthcare facilities or groups.
2. Provide in narrative form the specific service area for the proposed project. ALA. ADMIN. CODE r. 410-1-2-.03 defines the service area as the county in which the service will be provided in the absence of a designated geographical service area.

Additional review will be conducted upon receipt of the requested information.

Pursuant to ALA. ADMIN. CODE r. 410-1-3-.09, all documents to be filed must be submitted electronically to shpda.online@shpda.alabama.gov in text searchable, PDF format.

Should you have any questions, please contact the Agency at (334) 242-4103.

Sincerely,

Emily T. Marsal
Executive Director

ETM:mst