

**BEFORE THE STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY**

DR-158

RECEIVED

Jun 10 2021

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

**MONTGOMERY CARDIOVASCULAR )  
ASSOCIATES, P.C. )  
)  
)  
)  
**Petition for Declaratory Ruling of )  
SOUTHEASTERN CARDIOLOGY )  
CONSULTANTS, PC )****

**Petition for Declaratory Ruling**

Pursuant to §§ 410-1-7-.02 and 410-1-9-.01 of the *Alabama Certificate of Need Program Rules and Regulations* (the “CON Rules”), Southeastern Cardiology Consultants, PC (“SCC”) hereby respectfully petitions the Certificate of Need Review Board (the “Board”) to reverse a reviewability determination previously issued by an Executive Director of the State Health Planning and Development Agency (“SHPDA”) regarding a request by Montgomery Cardiovascular Associates, P.A. (“MCA”) to operate a cardiac catheterization laboratory on the campus of Baptist Medical Center South (BMC)<sup>1</sup> pursuant to the physician's office exemption (“POE”).

**Parties and Jurisdiction**

(1) SCC is a comprehensive cardiology medical practice located in Montgomery, Alabama, owned by Dr Ralph Redd (Redd). The primary office of SCC is on the campus of Baptist Medical Center South.

(2) MCA is a comprehensive cardiology medical practice located in Montgomery, Alabama. The primary office of MCA is near Baptist Medical Center East, although MCA currently operates a cardiac catheterization laboratory on the campus of Baptist Medical Center South.

(3) Baptist Medical Center South (“BMCS”) is a 492-bed licensed acute care hospital located in Montgomery, Alabama.

---

<sup>1</sup> At the time the request was made, Baptist Medical Center South was the only hospital in Montgomery County that was operated by Baptist Health.

(4) Section 410-1-7-.02 of the CON Rules provides a methodology for the issuance by SHPDA of determinations as to the reviewability of certain proposals under the Certificate of Need (“CON”) law. Such determinations are commonly referred to as Letters of Non-Review (“LNR”).

(5) Section 410-1-9-.01 of the CON Rules provides that any person substantially affected by a rule, or the applicability of any rule or statute enforceable by SHPDA to any person, property or state of facts, or the meaning and scope of any order of SHPDA may seek a declaratory ruling from the Board, under procedures found within this rule.

### **Factual and Procedural Background**

(6) SCC is seeking a declaratory ruling regarding the legality of the LNR (OP-0135) issued by SHPDA to MCA on January 24th, 1995, as set forth hereafter. Dr Redd also owns 2LR Healthcare Holdings, LLC, d/b/a Heart and Vascular Institute of Alabama (“HVIA”) which is currently seeking a CON to construct and operate an ambulatory surgery center (“ASC”) to provide cardiac catheterization services in Montgomery County. The HVIA CON Application is opposed by BMCS, Baptist Medical Center East (“BMCE”), Montgomery Surgery Center (“MSC”), Jackson Hospital (“Jackson”) and Jackson Surgery Center (“JSC”). A contested case hearing has been held, but no recommendation has yet been rendered by the Administrative Law Judge.

(7) On July 23, 1993, counsel for BMC wrote SHPDA requesting an LNR regarding plans for the construction and equipment of a new office for an unnamed group of Montgomery physicians on the campus of BMC. The building would be constructed at a cost of approximately \$5 million by a not-for-profit subsidiary of Baptist Health Services Corporation (“BHSC”) and would be leased to the physicians. The letter expressly stated that a cardiac catheterization laboratory would be purchased and installed in the building, at an additional cost of approximately \$2 million, and that this cost would be shared on a joint venture basis between the physicians (51%) and the BHSC subsidiary (49%).

(8) On August 4, 1993, Derrell Fancher, then Executive Director at SHPDA, issued an LNR finding that the proposal as described in the July 23, 1993 letter was not subject to CON review.

(9) On November 1, 1993, William T. (Mike) Carlson, Jr. (“Carlson”), the Chief Executive Officer of MCA wrote SHPDA requesting an LNR for an outpatient surgery center in which MCA physicians would perform cardiac catheterization services, basing the request on the exemption from CON review for the offices of private physicians that is found in Alabama Code §22-21-260(5).

(10) On November 24, 1993, Walter Smith (“Smith”), then Executive Director at SHPDA, wrote Carlson requesting additional information.

(11) On December 20, 1994, Carlson again wrote SHPDA, requesting an LNR for MCA to “operate a mobile cath lab adjacent to the Baptist Surgery Center on the campus of [BMC].” Carlson expressly referenced the LNR granted in 1993, although he referred to the letter as having been granted to Baptist Outreach Services Corporation.

(12) On January 24, 1995, Smith issued the LNR requested, but expressly stated that Carlson had represented that “all equipment, etc. is wholly owned and operated by [MCA].” This was apparently the first letter that bore the SHPDA designation of OP-0135.

(13) On February 27, 1995, Carlson wrote Smith regarding the LNR issued the previous month. Carlson stated that, prior to issuance of the LNR, counsel for SHPDA, Peggy Schmitz (“Schmitz”), had inquired of Carlson as to whether there was any hospital involvement with the cath lab, and that Carlson stated that the lab would be owned, operated and staffed by MCA. Schmitz then had asked whether the hospital would be providing billing services, and that Carlson had responded that the hospital would be providing billing services since it was a requirement of “Blue Cross and Blue Shield of Alabama” [sic]. In this most recent letter, Carlson related that he had since learned that it would appear on the bills that would be issued as if the patients treated in the cath lab were hospital patients. There was a later letter from Carlson to Smith on March 1, 1995, apparently referencing the February 27 letter and a meeting to held later on March 1 regarding the issue.

(14) The February 27, 1995 letter included as an attachment a letter from Blue Cross Blue Shield of Alabama (“Blue Cross”) which proposed that MCA and BMC “enter into a pilot project to be reviewed and updated every six months. BMC would bill for the heart cath procedure and any related supplies. [MCA] physicians would continue to bill [Blue Cross] separately for their professional billings. . . . The key to this proposal [is] that the billing and reimbursement for the technical component must come through BMC.”

(15) On March 3, 1995, Smith wrote Carlson stating “Upon reconsidering this project in light of all circumstances and arrangements, we must rescind our Opinion-0135. We feel this project is reviewable under CON law.”

(16) On March 21, 1995, Carlson wrote Schmitz, the SHPDA counsel seeking reconsideration of the withdrawal of the LNR.

(17) On March 27, 1995, Smith wrote Carlson reinstating the LNR due to the provision of unspecified additional information.

(18) On April 26, 1995, Schmitz wrote an internal SHPDA memorandum stating, in part, “Initially Baptist Hospital requested the opinion and the lab was a joint venture. When Carlson resubmitted it was no longer a joint venture and was supposedly all to be done by the doctors. It turns out that Baptist is constructing the building to house the cath lab at a cost of \$5.5 million or more.”

(19) On June 26, 1995, the then Executive Director of SHPDA, Elbert Peters, wrote Carlson. In addition to restating the procedural background set forth above, in material part, Peters’ letter stated:

An inquiry has been made concerning the above referenced letter of non-reviewability for the installation of a cardiac catheterization laboratory in the offices of physicians DBA Montgomery Cardiovascular Associates. . . .

**If the patient’s bill gives the impression that a health care facility as defined in the Certificate of Need statute is receiving a direct benefit or could be a party to the project, questions arise as to the reviewability of the project. Based upon the documentation in the file, this project does not appear to be solely that of a group of physicians, but it appears that a joint venture with a hospital may have developed. Please submit documentation that your client will be the sole provider of care and that a healthcare facility has no financial interest in this proposal. [Emphasis added].**

(20) There appear to be no other documents in SHPDA’s file indicating that MCA ever responded to SHPDA’s letter of June 26, 1995.

(21) During the contested case hearing regarding the HVIA CON Application, it was learned that according to SHPDA files there are three CON authorized cardiac catheterization

units on the campus of BMCS. These are reflected on the annual hospital reports filed with SHPDA by BMCS.

(22) However, during the contested case hearing, testimony was provided by Peter Selman (“Selman”), CEO of BMCS about an additional cath lab located on the BMCS campus. Selman testified as follows:

Q. And is there another cath lab on that campus that actually belongs to Montgomery Cardiovascular?

A. Yes, there is. On campus in a different building but attached to the hospital on the Baptist South campus, yes.

Q. And does Baptist South have any role in any of the operations related to the MCA cath lab?

A. Not the day to-day operations, not that I'm aware of, no.

Q. Are you aware of whether y'all do any billing for it, or are you just the landlord?

A. We do have an arrangement that I'm honestly not that familiar with. But it was - my understanding was the - the MCA's, Montgomery Cardiovascular Associates, Cath Lab was one of the first sort of pilot office-based labs in the State. And so there is an arrangement that we have, sort of a triad arrangement, with Blue Cross where we are able to bill it through the hospital and then we have a compliant type of arrangement where we then pay MCA a portion of that reimbursement.

[HVIA transcript pages 1943-1944]

(23) After the conclusion of the contested case hearing and Selman’s revelation, petitioner requested from SHPDA any and all documents relating to or concerning the LNR or ability of MCA and BMCS to offer a pilot program and provide cardiac catheterization services on the campus of BMCS and allowing BMCS to bill for certain MCA services. On May 22, 2021 petitioner received the attached documents marked as exhibit "A" from SHPDA which represented all documents on file with SHPDA. (There were several duplicate documents provided to petitioner and those documents are not included in the attached exhibit A).

### **Argument**

With the documents provided in SHPDA's file and the testimony of Selman, the petitioner alleges that the triad arrangement between MCA, BMC and Blue Cross Blue Shield violates the physician's office exemption. The petitioner alleges that the LNR should be ruled null and void because the facts do not meet the requirements of the physician's office exemption.

As set forth by the Supreme Court of Alabama in Ex Parte Sacred Heart Health System, Inc., 155 So.3d 981 (Ala. 2012), there is a modified four-part test to be used to determine

whether a proposed medical facility or project qualifies for the physician's office exemption, as follows:

1. The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physician's practice for the care of their patients.
2. The proposed services are to be provided, and related equipment used, at any office of the physicians.
3. All patient billings related to services are through, or expressly on behalf of, the physicians' practice.
4. The equipment shall not be used for inpatient care, nor by, through, or on behalf of a health care facility.

As this board is keenly aware SHPDA has reviewed very closely and scrutinized LNR's requested by physicians throughout the state and more particularly LNR's relating to cardiovascular procedures being performed in a physician's office. SHPDA scrutinizes the use of the physician's office exemption which is established by statutory authority and augmented by Alabama case law.

The thrust of this petition is to seek the Board's review of the legality of the operation of the MCA catheterization laboratory by MCA and BMCS as set forth herein, particularly concerning the "triad arrangement" between MCA, BMC and Blue Cross Blue Shield of Alabama as described by Selman, and whether this arrangement violates the standards set forth by the Alabama Supreme Court, and should therefore be subject to full CON review.

The petitioner respectfully requests the Board to require MCA, BMCS and Blue Cross Blue Shield to provide this board with all documents, correspondence, emails, or other communication or documentation of whatever type that relate, directly or indirectly, to the operation of MCA's cath lab on the campus of BMCS, in an effort to determine the exact mode of operation, since the BMCS Chief Executive Officer was unable to completely explain it.

Respectfully submitted this 10<sup>th</sup> day of June, 2021.

/s/ David E. Belser

Law Office of David E. Belser, LLC  
2865 Zelda Road  
Montgomery, AL. 36106  
Phone (334) 676-1314  
[dbelser@davidbelserlaw.com](mailto:dbelser@davidbelserlaw.com)

/s/ Peck Fox

The Fox Law Firm, LLC  
250 Commerce Street, Suite 200-A  
Montgomery, AL 36104  
Phone: (334) 676-3404  
[peck@foxlawfirmllc.com](mailto:peck@foxlawfirmllc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on each of the following by sending each a copy of same by U.S Mail or electronic mail, properly addressed, on June 10, 2021:

Cullen Smith

Registered Agent for MCA  
2119 Eastern Boulevard  
Montgomery, AL. 36116-2409

Jim Williams

Melton, Espy & Williams  
PO Drawer 5130  
Montgomery, AL 36103  
[jwilliams@mewlegal.com](mailto:jwilliams@mewlegal.com)

# EXHIBIT A



# BALCH & BINGHAM

ATTORNEYS AND COUNSELORS

POST OFFICE BOX 78

MONTGOMERY, ALABAMA 36101

(205) 834-6500

WRITER'S OFFICE

THE WINTER BUILDING

2 DEXTER AVENUE

MONTGOMERY, ALABAMA 36104

FACSIMILE (205) 269-3115

DIRECT DIAL TELEPHONE:

S. EASON BALCH  
JOHN BINGHAM  
M. ROLAND NACHMAN, JR.  
FRANK H. HAWTHORNE  
HAROLD WILLIAMS  
MAURY D. SMITH  
WILLIAM J. WARD  
HAROLD A. BOWRON, JR.  
CAREY J. CHITWOOD  
A. KEY FOSTER, JR.  
JOHN S. BOWMAN  
THOMAS W. THAGARD, JR.  
CHARLES M. CROOK  
STERLING G. CULPEPPER, JR.  
JOHN DAVID SNOODGRASS  
EDWARD S. ALLEN  
WARREN H. GOODWYN  
ROBERT A. BUETTNER  
JAMES O. SPENCER, JR.  
H. HAMPTON BOLES  
C. WILLIAM GLADDEN  
MICHAEL L. EDWARDS  
MARSHALL TIMBERLAKE  
WALTER V. BEALE, JR.  
RODNEY O. HUNDT  
JAMES F. HUGHEY, JR.  
S. EASON BALCH, JR.  
JOHN P. SCOTT, JR.  
S. ALLEN BAKER, JR.  
J. FOSTER CLARK  
STANLEY M. BROCK

RANDOLPH H. LANIER  
DAVID R. ROYD  
JOHN RICHARD CARRIGAN  
WILLIAM E. SHANKS, JR.  
T. DWIGHT SLOAN  
S. REVELLE GWYN  
JAMES H. MILLER, III  
WILLIAM H. SATTERFIELD  
STEVEN G. MCKINNEY  
STEVEN F. CASEY  
MALCOLM N. CARMICHAEL  
MARK J. RIEDY  
RICHARD L. PEARSON  
JAMES A. BRADFORD  
DAN H. MCRRARY  
WILLIAM P. COBB, II  
ALAN T. ROGERS  
JAMES A. BYRAM, JR.  
WILLIAM S. WRIGHT  
SUSAN B. BEVILL  
JOHN J. COLEMAN, III  
JOHN F. MANDT  
M. STANFORD BLANTON  
T. KURT MILLER  
J. THOMAS FRANCIS, JR.  
TIMOTHY J. TRACY  
CLARK R. HAMMOND  
VIRGINIA S. BOLEK  
W. JOSEPH MCCORKLE, JR.  
KARL R. MOOR  
WILL HILL TANKERSLEY, JR.

SUZANNE ASHE  
MARA A. CROSSWHITE  
ANDREW J. SINOR, JR.  
EDWARD C. TILLMAN  
DORVAN WALKER  
ALEX B. LEATH, III  
CAVENDER C. KIMBLE  
DANIEL M. WILSON  
JULIA S. MCINTYRE  
LOIS S. WOODWARD  
KAREN K. HUNSICKER  
DAVID B. CHAMPLIN  
MICHAEL D. FREEMAN  
PATRICIA A. HAMILTON  
JAMES H. HANCOCK, JR.  
ROBIN G. LAURIE  
JESSE S. VOGTLE, JR.  
DONALD R. JONES, JR.  
CHRISTIE C. MORGAN  
JOHN S. BOWMAN, JR.  
GREGORY S. CURRAN  
KELLY KING KELLEY  
DANA L. THRASHER  
JOHN D. BUCHANAN  
SINA B. COX  
VICTORIA FRANKLIN-SISSON  
YANCY K. LADD  
FELTON W. SMITH  
GLENN G. WADDELL  
JOHN M. WOOD  
SUZANNE ALLOREDGE

LESLIE M. ALLEN  
JAMES E. BRIDGES  
DEBRA R. CARTER  
GREGORY C. COOK  
MARCEL L. DEBRUGE  
DAVID L. DENSON  
LYLE D. LARSON  
COLIN H. LUKE  
PHILLIP A. NICHOLS  
EDWINA C. ROGERS  
R. BRUCE BARZE, JR.  
DAVID B. BLOCK  
MATTHEW W. BOWDEN  
COURTNEY L. DODGE  
CINDY A. HOLLAND  
LARRY S. LOGSDON  
RANDALL D. McCLANAHAN  
C. GRADY MOORE III  
LISA J. SHARP  
TERRI ELENA WILSON

COUNSEL

JOSEPH M. FARLEY  
EDWARD M. ROGERS, JR.

SCHUYLER A. BAKER  
1915-1990

\* ADMITTED TO PRACTICE  
IN D.C. ONLY  
\*\* ADMITTED TO PRACTICE IN  
PENNSYLVANIA AND D.C. ONLY

July 23, 1993

*By Hand*

Mr. Derrell Fancher  
State Health Planning Agency  
307 Montgomery Street  
7th Floor  
Montgomery, AL 36130

Re: Request for Determination of Nonreviewability

Dear Derrell:

We request a determination whether, under the facts provided, a Certificate of Need is required to construct and equip a new office for a group of Montgomery physicians on the Baptist Medical Center (BMC) campus. We believe this undertaking, which will be the private office of duly licensed physicians, does not require a CON. The facts are as follows:

1. A building would be constructed on BMC's campus for use by a group of duly licensed physicians as a private physician's office.
2. The building will be constructed at a cost of approximately five million dollars (\$5,000,000.00). The building would be constructed by a not-for-profit subsidiary of Baptist Health Services Corporation (BHSC) and would be leased to the physicians at rates comparable to those charged for other office space on the BMC campus.
3. The building would be furnished by the physicians at their expense.
4. The group of physicians have proposed to purchase and install a Cardiac Catheterization Lab in the building. The approximate cost of the unit would be two million dollars (\$2,000,000.00). The physicians and a BHSC for-profit subsidiary would enter into



BALCH & BINGHAM

Mr. Derrell Fancher  
July 23, 1993  
Page 2

a joint venture whereby the physicians would contribute fifty-one percent (51%), or one million twenty thousand dollars (\$1,020,000.00), of equipment costs and the BHSC subsidiary would contribute forty-nine percent (49%), or nine hundred eighty thousand dollars (\$980,000.00), of those costs. The respective parties would own fifty-one percent (51%) and forty-nine percent (49%) of the unit. Additional cardiac care equipment may subsequently be purchased in the future by the joint venture based upon the same ratio of ownership and capital investment.

5. Annual operation cost for the building would not exceed \$500,000.00.
6. The building and its equipment would be used as a private physician office. It is not contemplated that the hospital's inpatients would be treated.
7. This project would not require a capital expenditure by or on behalf of any health care facility, and would not change the number of licensed beds at BMC.

If you have any questions, please contact us. We are enclosing with this letter the required \$500.00 check.

Cordially,



Charles M. Crook



Dorman Walker  
Counsel for Baptist Medical Center

Enclosure



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

August 4, 1993

Mr. Charles M. Crook  
Balch & Bingham  
P. O. Box 78  
Montgomery, AL 36101

Dear Mr. Crook:

This is in response to your letter of July 23, 1993 requesting a determination as to whether a Certificate of Need is required for a group of physicians to construct and equip a new office on the Baptist Medical Center campus.

At this point in time and strictly according to the facts as stated in your letter, it is my opinion that a Certificate of Need is not required for this proposal. This opinion is for informational purposes only and based on circumstances as they currently exist. It is made with a clear understanding that this proposal will not result in the addition of any health care facility beds, or the offering of any inpatient health services. Further, I understand this center is completely independent of any health care facility involvement, operational, fiscal, or otherwise, and there will be no capital expenditure by or on behalf of a health care facility in connection with this project. Should there be any deviations from the facts and premises set out above, you should notify this office.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Derrell O. Fancher  
Executive Director

DPF/ec

cc: Mr. O'Neal Green  
Mr. Jim Sanders

C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Forrest Flemming, MD, FACC  
David N. George, MD, FACC

  
MONTGOMERY  
CARDIOVASCULAR  
ASSOCIATES, P.A.

Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD

William T. Carlson, Jr., Esq.  
Chief Executive Officer

November 1, 1993

DEC 1

Walter C. Smith  
Executive Director  
State Health Planning Agency  
312 Montgomery Street  
7th Floor  
Montgomery, AL 36104



Dear Walter:

This letter is to formally request a letter of nonreviewability pursuant to Rule 410-1-7-.02 of the Alabama Certificate of Need Program Rules and Regulations. The letter of nonreviewability is for an outpatient surgical center in which we intend to perform cardiac catheterization services.

Montgomery Cardiovascular Associates, P.A. is a professional association of private cardiologists located in Montgomery, Alabama. Within the next 15 months, MCA will occupy a new medical office building. These cardiologists intend to equip their offices and related examination and diagnostic areas themselves. The equipment will include the furnishing of an outpatient cardiac catheterization laboratory.

We are aware that a physician-owned cardiac catheterization laboratory does not require a Certificate of Need. Instead of requesting a letter confirming that fact, however, for reimbursement purposes we are requesting that our cardiac catheterization lab be denominated as an outpatient surgery center.

MCA is strictly a practice of cardiologists and not cardiovascular surgeons. MCA has no intention whatsoever in doing surgery in its cath lab or allowing surgeons to perform any type of outpatient surgery whatsoever in this cath lab. However, Blue Cross of Alabama has taken the position that it will only reimburse outpatient cardiac cath labs which have a letter of nonreviewability for an outpatient surgery center. The Agency has previously provided such a letter of nonreviewability for an outpatient surgical center as indicated in the letters which I have previously provided you.

We believe that the Agency's action in previously providing such a

Walter C. Smith  
November 1, 1993  
Page 2

nonreviewability determination can be read as consistent with the Alabama Code. First, Alabama Code Section 22-21-260(5) states that "reviewable healthcare facilities shall not include the offices of private physicians..., whether for individual or group practices..." Since this cath lab will be owned and operated by private physicians within their offices, the CON law clearly does not apply. Second, the term "healthcare facility" includes within its definition "facilities for surgical treatment of patients not requiring hospitalization." Id. We are not seeking a letter of nonreviewability to perform such surgical treatment. Instead, we are seeking a letter of nonreviewability for a cardiac cath lab which, for reimbursement purposes only, will be denominated an outpatient surgery center.

Thank you for your review of this matter. I have enclosed the requisite \$500.00 fee and look forward to your favorable response in this matter. If I may provide further information, do not hesitate to contact me.

Sincerely,



William T. Carlson, Jr.

WTC/mkt

File



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

November 23, 1993

Mr. William T. Carlson, Jr.  
Montgomery Cardiovascular Associates  
1400 Narrow Lane Parkway  
Montgomery, AL 36111-2600

Dear Mr. Carlson:

We are in receipt of your request for non-reviewability status on a proposed project by Montgomery Cardiovascular Associates. In order to process your request, we will need additional information as follows: financial details of construction, MCA's arrangement to occupy the building (lease, etc.), details on who will purchase equipment and cost, what arrangements MCA has with the hospital for treatment of its patients, and any other information which defines the terms of this proposal in detail.

Upon receipt of the additional details requested, we will issue a response.

Sincerely,

A handwritten signature in cursive script that reads "Walter C. Smith".

Walter C. Smith  
Executive Director

PS/lh

PS

C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Forrest Flemming, MD, FACC  
David N. George, MD, FACC



MONTGOMERY  
CARDIOVASCULAR  
ASSOCIATES, P.A.

December 20, 1994

Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD

William T. Carlson, Jr., Esq.  
Chief Executive Officer



Mr. Walter C. Smith  
Executive Director  
State Health Planning Agency  
312 Montgomery St.  
Montgomery, AL 36104

Dear Mr. Smith:


Please accept this as a request by Montgomery Cardiovascular Associates, P.A. ("MCA") for a letter of non-reviewability to operate a mobile cath lab adjacent to the Baptist Surgery Center on the campus of Baptist Medical Center in Montgomery.

MCA is a Professional Association wholly-owned by Alabama-licensed physicians. The 10 physicians at MCA are all board-certified cardiologists who practice at Montgomery Regional Medical Center, Jackson Hospital, and Baptist Medical Center as well as the hospitals in Greenville, Troy, Selma, and Alexander City.

MCA has agreed to lease an office building from Baptist Outreach Services Corporation, a non-hospital subsidiary of Baptist Health Services Corporation. This building will house MCA's physician practice and will contain a cardiac cath lab which will be wholly-owned and -operated by MCA. Baptist Outreach Services Corporation obtained a letter of non-reviewability in 1993 concerning the construction of this office building.

In the time period before the office building is completed (March 1996), MCA wishes to begin operating its cath lab by placing a mobile cath lab adjacent to the Baptist Surgery Center, an ASC wholly-owned by Central Alabama Surgical Center, Inc., a non-hospital, wholly-owned subsidiary of Baptist Outreach Services Corporation. Again, the mobile cath lab will be wholly-owned and -operated by MCA, but for the 14-month period before moving into our office building, MCA will lease patient prep and recovery areas from Central Alabama Surgical Center, Inc.

Enclosed is the fee required by SHPA for this letter of non-reviewability. If you have any questions concerning this matter, do not hesitate to let me know.

Sincerely,  
  
William T. Carlson, Jr.

WTC/ko

PS

C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Forrest Flemming, MD, FACC  
David N. George, MD, FACC



MONTGOMERY  
CARDIOVASCULAR  
ASSOCIATES, P.A.

December 20, 1994

Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD

William T. Carlson, Jr., Esq.  
Chief Executive Officer



Mr. Walter C. Smith  
Executive Director  
State Health Planning Agency  
312 Montgomery St.  
Montgomery, AL 36104

1-23-95

Dear Mr. Smith:

Please accept this as a request for a letter of non-reviewal Surgery Center on the campus

MCA is a Professional Association of 10 physicians at MCA are at Regional Medical Center, Jacksonville hospitals in Greenville, Troy

MCA has agreed to lease and operate a non-hospital subsidiary of MCA's physician practice and is owned and operated by MCA. Background on reviewability in 1993 concerning

In the time period before the beginning of operating its cath lab at the Surgery Center, an ASC wholly-owned subsidiary of MCA, a wholly-owned subsidiary of MCA, a cath lab will be wholly-owned and operated by MCA. Background on reviewability in 1993 concerning

Enclosed is the fee required for review. Please call if you have any questions concerning this matter.

*no hosp. money? none  
straightforward lease  
only connection? yes  
before & after no  
hosp. involvement?  
billing? may let hosp  
ask for pay. exemption?  
not office? just  
this practice?  
how much cost?  
doing cath cath?  
No lab  
body work  
Const - for  
phys -  
have done in hosp.  
lease whole body.*

MCA")  
Baptist

The  
omery  
as the

ation,  
house  
owned  
f non-

yes to  
urgery  
spital,  
obile  
efore  
from

e any

Sincerely,  
*William T. Carlson, Jr.*  
William T. Carlson, Jr.

WTC/ko





ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

January 24, 1995

Mr. William T. Carlson, Jr.  
Montgomery Cardiovascular Associates  
1400 Narrow Lane Parkway  
Montgomery, AL 36111-2600

Re: OP-0135  
Mobile Cardiac Cath Lab  
Montgomery Cardiovascular Assoc.

Dear Mr. Carlson:

We have received your recent request for the reviewability status of Montgomery Cardiovascular Associates' proposal for cardiac cath lab service. This request is made pursuant to the physicians' practice exception [§ 22-21-260(5)] which removes offices of private physicians from the definition of "health care facility".

The group is requesting authorization to operate a cardiac cath lab. While new office space is under construction, they plan to provide this service in a mobile unit to be placed adjacent to Baptist Surgery Center to facilitate the base of patient prep and recovery areas from the Surgery Center. You represent that all equipment, etc. is wholly owned and operated by Montgomery cardiovascular.

Based upon the information provided, these physicians are not subject to CON review to operate the cath lab as part of their physician office practice.

This opinion is solely for informational purposes and is based upon facts represented by you. Should these facts prove to be in error, this opinion becomes null and void.

Sincerely,

Walter C. Smith  
Executive Director

WCS/at

c: O'Neal Green  
Jim Sanders

**MONTGOMERY REGIONAL MEDICAL CENTER  
ADMINISTRATIVE OFFICES****FACSIMILE TRANSMITTAL COVER LETTER****FAX NO. (334) 269-8571****CONFIDENTIALITY NOTE**

The information contained in the facsimile message is confidential information intended only for the use of the individual or entity named below. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the address below.

DATE: 2/21/95TO: James Sanders

LOCATION: \_\_\_\_\_

FAX NO. 242-4113FROM: Ron O'Neal

Montgomery Regional Medical Center  
301 South Ripley Street  
Montgomery, Al 36104-4495

NUMBER OF PAGES: 2  
(Including Cover Sheet)MESSAGE: As per our discussion

FEB 1995

IF THERE ARE ANY PROBLEMS RECEIVING A TRANSMISSION  
PLEASE CALL (334) 269-8650. THANK YOU

201 South Ripley Street  
Montgomery, Alabama 36104  
Telephone: 205/269-3000

**Montgomery Regional  
Medical Center**

**February 21, 1995**

**Mr. James E. Sanders  
Director  
Division of CON Review and Operations  
312 Montgomery Street - 7th Floor  
Montgomery, Alabama 36104**

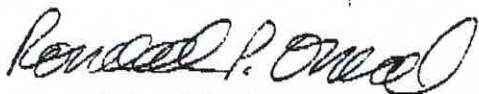
**RE: Montgomery Cardiovascular Associates Letter of Non-Reviewability**

**Dear Mr. Sanders:**

**In followup to our conversation today, I would like to formally request a copy of the letter issued by your office for the Non-Reviewability of the proposed Cath Lab by Montgomery Cardiovascular Associates. You may send it to me via fax, 269-8571.**

**Thank you for your assistance.**

**Sincerely,**



**Ronald P. O'Neal  
Chief Operating Officer**

**RO:sj**

**FEB 1995**

C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Forrest Flemming, MD, FACC  
David N. George, MD, FACC



Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD, FACC  
Mohamed S. Jasser, MD, FACC  
Michael F. Salvia, MD, FACC

William T. Carlson, Jr., Esq.  
Chief Executive Officer

February 27, 1995

Mr. Walter C. Smith  
Executive Director  
State Health Planning Agency  
312 Montgomery Street  
Montgomery, AL 36104

Dear Mr. Smith:

On December 20, 1994, Montgomery Cardiovascular Associates, P.A. ("MCA") requested a letter of non-reviewability from the State Health Planning Agency ("Agency") to operate a mobile cath lab for its patients adjacent to the Baptist Surgery Center on the campus of Baptist Medical Center in Montgomery (letter attached). Baptist Outreach Services Corporation is constructing a professional office building adjacent to Baptist Medical Center which MCA will occupy and in which MCA will own and operate a permanent cath lab for its patients. The mobile cath lab will permit MCA to begin offering its patients outpatient cath lab services until the professional office building and permanent cath lab is ready.

On January 24, 1995, the Agency issued a letter of non-reviewability to MCA for operation of the mobile cath lab (letter attached). Prior to the letter's issuance, an attorney for the Agency, Peggy Schmitz, telephoned me and asked whether there was any hospital involvement with this mobile cath lab. I reiterated to her that the cath lab would be owned, operated and staffed by MCA and that any profits or losses sustained would belong solely to MCA. Ms. Schmitz then asked whether the hospital would be providing any billing services for the cath lab. I responded that the hospital would be providing such a billing service due to a requirement by Blue Cross and Blue Shield of Alabama requiring us to make such an arrangement (see attachment). Ms. Schmitz did not seem concerned about the billing arrangement and our conversation ended with her estimate of when she would conclude her consideration of the matter.

Upon receipt of the letter of non-reviewability, we at MCA began to make the necessary arrangements for securing and operating the mobile cath lab. In fact, a contract for the mobile cath lab was signed and it is scheduled to be here and ready for operation on March 15, 1995. In making arrangement for the billing of these cath, I learned that, because of the design of the UB-82's, it will appear on the hospital bills as if these were hospital patients.

Mr. Walter C. Smith  
February 27, 1995  
Page 2

For purposes of clarity, allow me to explain the path that the patients and the patient's bill will follow. An MCA patient will be seen by one of our physicians in one of our private offices. As the result of the physician's examination and preliminary tests, our physician will determine that the patient needs a cath to determine whether one or more of the patient's coronary arteries is so occluded that further treatment or intervention is required. The patient would be scheduled by an MCA employee for a cath in the MCA cath lab within the next 2-3 days. Prior to the cath, an MCA employee will seek and receive insurance verification for the cath procedure.

On the day of the cath, the patient will report to MCA at approximately 5:30 a.m. All patient information will have been gathered by MCA employees prior to the cath and made available to our staff the day before the cath. The patient is taken by MCA employees and prepped for the cath. MCA employees take the patient to the MCA cath lab and, using MCA employees, supplies and equipment, the physician performs the cath procedure. MCA employees then return the patient to MCA recovery space and, after a 3-4 hour recovery period, the patient is sent home.

After the patient is sent home, information necessary for the hospital to bill the patient's cath will be delivered to the hospital. The information will be entered in the hospital's computer system and the computer system is programmed to automatically assign a patient billing number and a medical record number. If Blue Cross requires that the hospital maintain a medical record since it is billing the MCA patient's cath, we will either allow the hospital access to our medical records for Blue Cross audits or we will make a copy of our medical record information for them. The hospital will use the information provided by MCA and complete the UB-82. Someone looking at the UB-82 would recognize that the bill was for an outpatient cath, but the UB-82 does not provide a mechanism to distinguish where the cath was performed. As a result, as mentioned previously, it will appear as if these are hospital patients when, in fact, they are MCA patients from the time they come in until the time they are sent home.

As stated previously, the MCA cath lab is only for outpatients (except in that very rare circumstance in which a patient is experiencing a life-threatening emergency medical condition and for some reason the hospital's inpatient cath lab is unavailable) who are seen in the normal course of our physician practice or another private cardiology practice. These patients will not be hospital patients and will not be admitted as an inpatient or outpatient (again, except in that rare circumstance that their outpatient cardiac cath reveals an emergency medical condition which requires such an admission). During their entire patient visit, they will be within MCA space, cared for exclusively by MCA staff, and the cath procedure will be performed using MCA equipment and supplies.

I do not believe that the CON statute is implicated by the mandated billing arrangement since our cath lab is part of our office practice. Just as other physician practices use CPA firms and even banks to perform billing services for them, the physician practice does not assume the nature of its billing organization; it remains a private physician practice. However, out of an

Mr. Walter C. Smith  
February 27, 1995  
Page 3

abundance of caution, I wanted to make full disclosure of all the facts as they are known so that there is not even an appearance of impropriety in the actions we are undertaking.

After your review of the information contained in this letter, I would appreciate your confirmation that a hospital billing for services provided by a physician with equipment, staff, supplies and space wholly-owned and -operated by the physicians does not convert those services into reviewable hospital services. These services are part of our private physician practice and we do not believe that the character of the billing organization affects that in any way.

Thank you for your consideration of this matter. If you have any questions concerning this issue, do not hesitate to let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "William T. Carlson, Jr.", written in black ink.

William T. Carlson, Jr.

cc: Ms. Peggy Schmitz  
SHPDA Legal Counsel

*Cath Lab*



**BlueCross BlueShield  
of Alabama**

**Joseph B. Bolen, III  
Vice President  
Provider Affairs**

December 22, 1993

Mr. Mike Carlson, Chief Executive Officer  
Montgomery Cardiovascular Associates  
1400 Narrow Lane Parkway  
Montgomery, Alabama 36111-2600

Re: Montgomery Cardiovascular Heart Institute

Dear Mike:

We enjoyed meeting with you and your associates regarding the heart cath lab that will be located in the Professional Office Building adjacent to Baptist Medical Center Montgomery (BMC). I can appreciate the need for an additional heart cath lab once BMC open heart surgical unit has opened the latter part of next year. We would prefer that the technical component be billed by Baptist Medical Center Montgomery through their outpatient department. However, we do understand the certificate of need issue.

A major concern we have is the scenario where a patient has a heart cath as an outpatient, but after the procedure needs to be admitted to BMC. Presently our arrangement with BMC would require that the charges for the outpatient heart cath become part of the first day's hospital admission. Therefore, we pay BMC their per diem payment and there is no claim for the technical component of the outpatient heart cath.

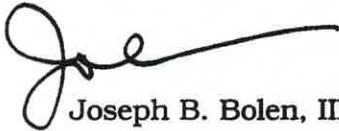
The scenario we discussed with your associates would require us to pay your facility and then pay BMC once they are admitted. The patient would be subject to two deductibles and two copays if their contract allowed. Our present arrangement with BMC would allow for one deductible and copay only. Also, it should be pointed out that we have a good financial arrangement with BMC and sometimes a patient can stay in the hospital two or three days for the cost of what one outpatient procedure would be reimbursed.

We would like to propose that your physician group and BMC enter into a pilot project to be reviewed and updated every six months. BMC would bill for the heart cath procedure and any related supplies. Your physicians would continue to bill us separately for their professional billings. In other words, BMC would send us a claim on the UB-92 form and your physicians would send us a claim on the HCFA-1500 form. If, for some reason, the patient had to be admitted, then BMC would put those

charges on the first day's admission as part of the per diem and it would be included in their actual costs per day. The key to this proposal that the billing and reimbursement for the technical component must come through BMC.

I would appreciate your reviewing this pilot proposal and providing any feedback you deem necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe', with a long horizontal flourish extending to the right.

Joseph B. Bolen, III.  
Vice President  
Provider Affairs

JBB/rf

cc: Dr. Mac Porter  
Dr. Robert Robichaux  
Dr. Forrest Flemming  
Dr. John Finklea  
Mr. Frank Wells



C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Forrest Flemming, MD, FACC  
David N. George, MD, FACC



Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD, FACC  
Mohamed S. Jasser, MD, FACC  
Michael F. Salvia, MD, FACC  
William T. Carlson, Jr., Esq.  
Chief Executive Officer

March 1, 1995

Mr. Walter C. Smith  
Executive Director  
State Health Planning Agency  
312 Montgomery St.  
Montgomery, AL 36104

Dear Walter:

I am faxing you a copy of the letter which is the subject of our meeting this afternoon at 2 p.m. I discussed the contents of this letter yesterday afternoon with Peggy Schmitz so that she would be aware of my effort to be completely forthcoming with information concerning our cath lab. As the letter mentions, I am also under something of a time constraint, but in an effort to avoid any misunderstanding at some later date, I am providing an explanation of the billing question which Peggy asked about.

I look forward to seeing you at 2:00.

Sincerely,

William T. Carlson, Jr.  
Chief Executive Officer

WTC/ko



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

RF

March 3, 1995

Mr. William T. Carlson, Jr.  
Montgomery Cardiovascular Assoc.  
1400 Narrow Lane Parkway  
Montgomery, AL 36111-2600

Re: OP-0135  
Issued Under Date  
of January 24, 1995

Dear Mr. Carlson:

We appreciate your providing us with additional information regarding the project contemplated in your original request.

Upon reconsidering this project in light of all circumstances and arrangements, we must rescind our Opinion-0135. We feel this project is reviewable under CON law.

It may be that your project can qualify for a modified review under SHPDA Rule 410-1-10-.02. We will be glad to assist you in the application process and expedite the process to the extent we can.

We appreciate very much your candor and cooperation in this matter.

Sincerely,

Walter C. Smith  
Executive Director

WCS/at

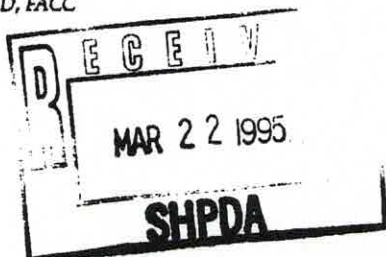
cc: O'Neal Green  
Jim Sanders

C. McGavock Porter, MD, FACP, FACC  
John L. Finklea, MD, FACC  
Robert P. Robichaux, MD, FACC  
Furrest Flemming, MD, FACC  
David N. George, MD, FACC



MONTGOMERY  
CARDIOVASCULAR  
ASSOCIATES, P.A.

Paul B. Moore, MD, FACC  
Wynne Crawford, MD, FACP, FACC  
R. Eric Crum, MD, FACC  
Mohamed S. Jasser, MD, FACC  
Michael F. Salvia, MD, FACC  
William T. Carlson, Jr., Esq.  
Chief Executive Officer



March 21, 1995

Ms. Peggy Schmitz  
Counsel  
Alabama State Health Planning Agency  
312 Montgomery St.  
7th Floor  
Montgomery, AL 36104



RE: Reconsideration of Non-Reviewability for Physician Cath Lab

Dear Ms. Schmitz:

It is my understanding that the Agency's decision to withdraw the letter of non-reviewability for the cath lab of Montgomery Cardiovascular Associates, P.A. ("MCA") substantially was due to concern over MCA receiving a facility fee for its cath lab. The purpose of this letter is to request the Agency reconsider this issue in light of the fact that physicians routinely receive a facility fee for diagnostic procedures they perform.

For example, if one of our physicians performed a TGXT (nuclear treadmill test), MCA receives \$185.00, but if that test is performed in our office we receive an additional \$385.00, or a total of \$570.00. Similarly, for an EKG, our physicians receive \$14.00, but if the EKG is performed in our office using our equipment, we receive an additional \$35.00 or a total of \$49.00 for the test. As a third example, if one of our physicians performs an echocardiogram, that physician receives \$110.00, but if that echo is performed in our office, the practice receives an additional \$135.00 for a total of \$245.00.

In other words, receiving a facility fee is a standard method of reimbursement for activities that we have performed and we receive this facility fee from all insurers. The purpose of the facility fee is to reimburse the cost of the office, equipment, and staff necessary to perform the diagnostic testing. I am aware of cardiology groups which have their primary practice inside a hospital, and therefore do not receive this separate facility fee. As we have discussed, however, MCA's cardiac cath lab will be completely owned, operated, and staffed by this physician practice and operated as an integral part of our private offices. As such, I would respectfully suggest that this outpatient cardiac cath lab is non-reviewable, especially in light of the fact that facility fee payments are part of a longstanding method of physician reimbursement. As a consequence, I

Ms. Peggy Schmitz

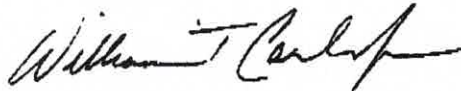
March 21, 1995

Page 2

am requesting that the Agency reaffirm that this cath lab is non-reviewable under Alabama's CON laws.

I trust this information will be helpful to you. We have expended a great deal of effort in planning for our cath lab and we would appreciate your earliest consideration of this matter.

Sincerely,



William T. Carlson, Jr.

WTC/ko

March 22, 1995

Mr. William T. Carlson, Jr.  
Chief Executive Officer  
Montgomery Cardiovascular Associates, P.A.  
1400 Narrow Lane Pkwy.  
Montgomery, AL 36111

Re: OP-0135 - Outpatient Cardiac Cath Lab - Montgomery Cardiovascular Associates

Dear Mr. Carlson:

We have received your request for reconsideration concerning the reviewability status of Montgomery Cardiovascular Associates proposal to provide cardiac cath lab service. This service is to be provided initially through operation of a mobile unit placed adjacent to the Baptist Surgery Center to facilitate the prep and recovery of patients using areas leased from the Surgery Center. You then intend to establish a permanent cath lab site in professional offices on the Baptist Medical Center campus which you will occupy on or about June 1996. You have represented that the cath lab equipment is wholly-owned by Montgomery Cardiovascular Associates and the cath lab will be operated by Montgomery Cardiovascular staff.

We understand that Blue Cross/Blue Shield of Alabama has required that these cath be billed through a hospital with an existing cath lab. You have made arrangements with Baptist Medical Center to provide this billing service to you. Receipt of this "facility fee" is consistent with existing physician reimbursement methodology in that physicians now receive separate reimbursement for their equipment, staff, and other office expenses.

We understand that your request is made pursuant to the physicians' practice exception to Alabama's CON Law [Section 22-21-260(5)].

Based upon the representations made by you on behalf of Montgomery Cardiovascular Associates, the Agency has determined that Montgomery Cardiovascular is not subject to CON review concerning the operation of its cath lab as part of their private physician offices. This opinion is solely for informational purposes. Should the facts on which this opinion is based prove to be in error, this opinion becomes null and void.

Sincerely,

Walter C. Smith  
Executive Director



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

March 27, 1995

Mr. William J. Carlson, Jr.  
Chief Executive Officer  
Montgomery Cardiovascular Associates  
1400 Narrow Lane Parkway  
Montgomery, Alabama 36111-2600

RE: OP-0135

Dear Mr. Carlson:

On January 24, 1995, we issued opinion OP-0135 which stated that your proposal to install a cardiac cath lab in the offices of physicians d/b/a/ Montgomery Cardiovascular Associates was not subject to CON review.

By letter of March 3, 1995, we rescinded that opinion in light of additional information which had been previously unknown. Since that time you have provided additional information and we have further reviewed the circumstances of this project.

We are hereby reinstating our opinion, OP-0135, dated January 24, 1995, that the project is not presently subject to review under CON law.

Sincerely,

Walter C. Smith  
Executive Director

WCS:jr

cc: O'Neal Green  
Jim Sanders



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

April 26, 1995

MEMORANDUM

TO: Jim Sanders  
FROM: Peggy Schmitz *PS*  
RE: Cardiac Cath  
Baptist Montgomery

The attached letter relates to the Mike Carlson request for non-reviewable status on the cardiac cath lab in the doctors' offices.

Initially Baptist Hospital requested the opinion and the lab was a joint venture. When Carlson resubmitted it was no longer a joint venture and was supposedly all to be done by the doctors. It turns out that Baptist is constructing the building to house the cath lab at a cost of \$5.5 Million or more. The only thing in the building will be the lab and the doctors when they are performing lab procedures and/or any other practice.

This letter does not protect the hospital on this expenditure because the facts have now changed. I informed Charlie Crook of this. The question now is whether the hospital needs to be reviewed. The letter from Blue Cross in the Carlson file indicates that they recognize there is a benefit to the hospital in having the cath lab there on the campus. The hospital will likely argue there is no direct benefit.

Let me know if you have any thoughts on this.

jr

cc: J. Elbert Peters



ALABAMA  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
312 Montgomery Street  
7th Floor  
MONTGOMERY, ALABAMA 36104

June 26, 1995

Mr. William J. Carlson, Jr.  
Chief Executive Officer  
Montgomery Cardiovascular Associates  
1400 Narrow Lane Parkway  
Montgomery, Alabama 36111-2600

RE: OP-0135

Dear Mr. Carlson:

An inquiry has been made concerning the above-referenced letter of non-reviewability for the installation of a cardiac catheterization laboratory in the offices of physicians d/b/a Montgomery Cardiovascular Associates.

In reviewing Agency files, it was noted that a letter from you dated November 1, 1993 was initially filed with the Agency on November 5, 1993. The former executive director requested additional information by letter dated November 23, 1993. By letter dated January 24, 1995, the former executive director issued an opinion that Montgomery Cardiovascular Associates is not subject to Certificate of Need review to operate the cardiac catheterization laboratory as part of their physician office practice. This letter reflected that while new office space was under construction, Cardiovascular Associates planned to provide this service in a mobile unit to be placed adjacent to Baptist Surgery Center to facilitate the base of patient preparation and recovery areas from the Surgery Center.

A letter dated February 27, 1995 was found in the Agency files, but was not date stamped as received. Among other things, this letter disclosed that while making arrangements for the billing of the proposed catheterizations, it was learned that because of the design of the UB-82s, it will appear on the hospital bills as if these were hospital patients. This letter acknowledged the letter of non-reviewability to Montgomery Cardiovascular Associates dated January 24, 1995 from the former executive director, but wanted confirmation that a hospital billing for services provided by a physician with equipment, staff, supplies, and space wholly-owned and operated by the physicians does not convert those services into reviewable hospital services.



Mr. William J. Carlson, Jr.

June 26, 1995

Page 2

Attached to the letter dated February 27, 1995 was a letter dated December 22, 1993 signed by Joseph B. Bolen, Vice President of Provider Affairs of Blue Cross Blue Shield of Alabama. The letter stated that he would prefer that the technical component be billed by Baptist Medical Center Montgomery through their outpatient department. The letter acknowledged the Certificate of Need issue. The letter proposed that Montgomery Cardiovascular Associates (MCA) and Baptist Medical Center Montgomery (BMC) enter into a pilot project to be reviewed and updated every six months. BMC would bill for the heart catheterization procedure and any related supplies. MCA would continue to bill separately for their professional billings. BMC would send a claim on the UB-92 form and MCA would send a claim on HCFA-1500 form. If the patient had to be admitted, then BMC would put those charges on the first day's admission as part of the per diem, and it would be included in their actual costs per day. The key to this proposal is that the billing reimbursement for the technical component must come through the hospital.

By letter dated March 3, 1995, the former executive director rescinded the previous opinion OP-0135 letter issued January 24, 1995. Upon reconsidering this project in light of all the circumstances and arrangements, it was felt that the project is reviewable under CON law.

In your letter dated March 21, 1995 to Ms. Peggy Schmitz, former counsel for the Agency, you requested that the Agency reconsider the non-reviewability of the proposed physician catheterization lab. The letter stated that the decision to withdraw the letter of non-reviewability for the catheterization lab by CVA was due to the concern over (MCA) receiving a facility fee for its catheterization lab.

By letter dated March 27, 1995, the former executive director again reversed his previous decision and stated that your proposal to install a cardiac catheterization lab in the offices of physicians d/b/a Montgomery Cardiovascular Associates was not subject to CON review.

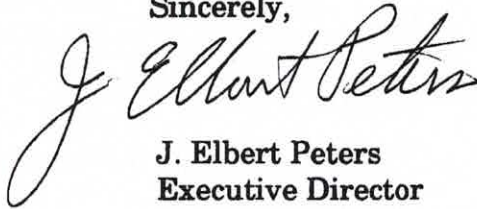
If the patient's bill gives the impression that a health care facility as defined in the Certificate of Need statute is receiving a direct benefit or could be a party to the project, questions arise as to the reviewability of the project. Based upon the documentation in the file, this project does not appear to be solely that of a group of physicians, but it appears that a joint venture with a hospital may have developed.

Mr. William J. Carlson, Jr.  
June 26, 1995  
Page 3

Please submit documentation that your client will be the sole provider of care and that a health care facility has no financial interest in this proposal.

If you have comments or questions, you may contact Jim Sanders at (334) 242-4103.

Sincerely,

A handwritten signature in cursive script that reads "J. Elbert Peters". The signature is written in black ink and is positioned to the left of the typed name and title.

J. Elbert Peters  
Executive Director

JEP:km