

April 10, 2019

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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

**VIA EMAIL (shpda.online@shpda.alabama.gov)
AND FEDERAL EXPRESS**

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

Re: Non-Reviewability Determination Request for Cardiology Consultants, P.C.

Dear Ms. Marsal:

On behalf of Cardiology Consultants, P.C. ("CCPC"), I am writing to submit a reviewability determination request in accordance with the rules and regulations of the Alabama State Health Planning and Development Agency's Certificate of Need ("CON") program. CCPC plans to add an office-based laboratory (the "OBL") to its practice in order to provide its patients with convenient and safe access to peripheral angiography and endovascular procedures within the offices of CCPC. This letter provides an overview of the scope of procedures to be performed and the costs associated with establishing the OBL. In addition, this letter will demonstrate that the OBL will meet the criteria for the Physician Office Exemption from CON review set forth by the Alabama Supreme Court in *Ex parte Sacred Heart Health System, Inc.*, 155 So. 3d 980 (Ala. 2012).

CCPC is an Alabama professional corporation founded in 1983 by William A. Hill, Jr., M.D. and currently owned by Dr. Hill, John A. Mantle, M.D., Jeffrey K. Anderson, M.D., L. Anne Lewis, M.D., Amit K. Shah, M.D., Edward A. Carraway, M.D. and J. Bradley Proctor, M.D., all of whom are actively engaged in the practice of cardiology through CCPC. There are no outside investors in CCPC and no hospital involvement in CCPC. CCPC's offices are located at the DCH Medical Tower, 701 University Boulevard, East, Suites 400 and 608, Tuscaloosa, Alabama 35401. CCPC serves patients in Tuscaloosa County and numerous other counties in Alabama, through its offices in Tuscaloosa and through monthly travel clinics in Bibb, Fayette, Marengo and Pickens Counties.

CCPC physicians currently perform low-risk outpatient peripheral angiography and endovascular procedures (including renal interventions, iliac interventions, tibial/peroneal interventions, femoral/popliteal interventions, and atherectomy procedures with or without stents and with or without percutaneous transluminal angioplasty) (collectively, and together with

similar low-risk outpatient procedures, "Vascular Procedures") at DCH Medical Center. CCPC believes that it can provide these Vascular Procedures at greater convenience to patients and with equal or higher quality within its own offices through the development of the OBL. CCPC does not intend to provide any cardiac or coronary interventions or procedures requiring general anesthesia at the OBL, and no inpatient services will be provided at the OBL.

The criteria established by the Supreme Court for the Physician Office Exemption from CON review are:

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

CCPC will meet these criteria with respect to the proposed OBL:

1. The services to be provided by the OBL will be provided, and related equipment used, exclusively by physicians who are owners, employees or contractors of CCPC and only for the care of such physicians' patients. Initially, the services will be provided by Drs. Hill, Anderson, Carraway and Proctor, who are all owners of CCPC, and by W. Ford Simpson, Jr., M.D., who will work for CCPC on a regularly scheduled, part-time basis as a contractor treating CCPC patients. The independent contractor arrangement between CCPC and Dr. Simpson will provide that Dr. Simpson will provide his services at CCPC on a regularly scheduled basis, that all patients treated by Dr. Simpson at CCPC are patients of CCPC and not of Dr. Simpson individually, that CCPC will bill for all services provided by Dr. Simpson at CCPC and retain all collections therefrom, and that Dr. Simpson will be compensated by CCPC for his services to CCPC on a basis consistent with the compensation paid to CCPC owners and employee with respect to OBL services. If any additional physicians provide services at the OBL in the future, such physicians will be owners, employees or contractors of CCPC.
2. All OBL procedures will be performed, and all related equipment will be used, at the offices of CCPC. CCPC is adding an additional 1,950 square feet to its current office space to accommodate the OBL.

3. All patient billings relating to services provided at the OBL will be done through CCPC under provider agreements and billing numbers assigned to CCPC, and all collections resulting from such billings will be the property of CCPC, just as is the case for all other physician services provided by CCPC.
4. The equipment at the OBL will not be used for inpatient care nor by, through or on behalf of a healthcare facility; rather, such equipment will be used only for office-based, outpatient Vascular Procedures provided by CCPC physicians.

Although the Physician Office Exemption provides a bar to the application of the CON laws and regulations, we provide the following additional information for the benefit of the Agency in reviewing this request for a determination of non-reviewability:

- CCPC will expand its leased space at its current offices by 1,950 square feet to accommodate the OBL, at a rental rate of \$16.50 per square foot. This will add an additional \$2,681.00 per month to CCPC's current office lease expense, representing an increase of approximately 15.45% in office lease expense. CCPC will incur construction costs of approximately \$355,724 to build out the additional leased space.
- CCPC will acquire a Philips Medical Mobile Verdius Unity Flat Panel C-Arm, Full Screen collimation, vascular configuration with video paper/transparency printer, which comes with an Aspect 100-4T G3 Complete Table and Package, including a black anti-fatigue Mat, and a Core M2 Vascular Imaging System – IVUS for arterial and venous procedures, as well as related equipment. The total equipment cost for purchased equipment will be approximately \$351,717; CCPC also has a rental agreement with Philips Medical for a Spectranics Laser – CV 300P Excimer Laser system to be used as needed.
- CCPC anticipates incurring additional miscellaneous start-up costs of approximately \$142,559, resulting in total construction, equipment and start-up costs of approximately \$850,000. These costs will be financed through a 60-month loan to CCPC arranged through Bryant Bank of Tuscaloosa.
- First-year annual operating costs for the OBLG are estimated at \$950,000 for medical and non-medical supplies, space rental, salaries and benefits, equipment service and maintenance and similar routine expenses.

Based on the above, we respectfully request that the Agency grant a determination of non-reviewability to CCPC for the proposed OBL project described above. CCPC's check for \$1,000 in payment of the filing fee for this request is enclosed with the hard copy of this letter, which is being sent today by Federal Express. Please do not hesitate to contact our counsel, William W. Horton, at (205) 244-5221 or whorton@joneswalker.com if you require any further information or have any questions.

We appreciate your attention, and look forward to hearing from you.

Very truly yours,

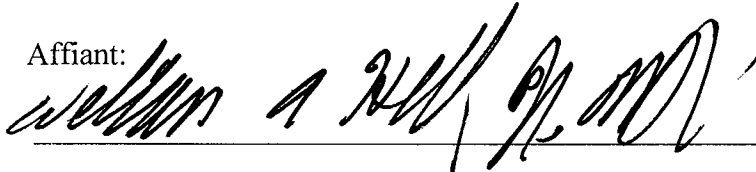


William A. Hill, Jr., M.D.
President, Cardiology Consultants, PC


Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that he is William A. Hill, Jr., M.D. of Cardiology Consultants, P.C., has knowledge of the facts in this request, and to the best of his/her/their information, knowledge and belief, such facts are true and correct.

Affiant:

 (SEAL)

SUBSCRIBED AND SWORN to before me this 10th day of April, 2019.


Notary Public

My commission expires: 09-15-2021