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RV2020-002
RECEIVED
Oct 15, 2019
STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

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October 14, 2019

Ms. Emily T. Marsal
Executive Director
State Health and Planning Development Agency
100 North Union Street
RSA Union Building, Suite 870
Montgomery, Alabama 36130-3025

RE: Non-Reviewability Determination Request for Alabama Orthopedic Spine & Sports Medicine Associates, P.C.

Dear Ms. Marsal:

On behalf of Alabama Orthopedic Spine & Sports Medicine Associates, P.C. (hereafter the "Group"), I am writing to submit a reviewability request in accordance with the Alabama State Health Planning and Development Agency's Certificate of Need (CON) program rules and regulations (410-1-7-.02).

The Group is a single legal entity organized as an Alabama professional corporation. It is a fully integrated group practice organized in 1987 which employs 13 physicians and surgeons. It provides services in orthopedic surgery, physical medicine and rehabilitation, pain management and rheumatology and is a "Group Practice" as defined in applicable federal regulations. Its shareholders and employed physicians are board certified physicians and surgeons in the aforementioned specialties. It provides numerous ancillary services in its clinic pursuant to the Stark in office ancillary exception, including MRI, CT and other imaging, pharmacy, physical therapy and durable medical equipment.

Several years ago the Group outgrew its original location and in 2012 began acquiring land for its new clinic building, which was completed and opened in late 2015. In addition to space for all of its ancillary services, the new clinic also included two procedure rooms, where procedures reimbursed pursuant to the physician fee schedule can be performed in an office setting.

The Group can perform such procedures in its office as a convenience to its patients, but would like to confirm that no CON is required. Because the clinic was constructed several years ago, there is no expense incident to this request though it is possible that a wall or walls might be relocated at minimal cost to reconfigure one of the existing procedure rooms. No new medical or

other equipment will be acquired. Any procedures would be staffed by existing support personnel. The Group believes that it is exempt from the requirement of a CON by virtue of the Physician Office Exemption.

Our understanding is that the criteria as adopted by the Supreme Court for the Physician Office Exemption are as follows:

- 1) The proposed services are to be provided and related equipment used, exclusively by physicians who are owners or employees of the Group for the care of their patients.
- 2) The proposed services are to be provided, and related equipment used, at the principal office of the Group and such physicians.
- 3) All patient billing related to such services are through, or expressly on behalf of, the Group.
- 4) The equipment shall not be used for inpatient care, nor by, through or on behalf of a health-care facility or person who is not an owner or employee of the Group.

The Group will meet the above criteria respectively as follows:

- 1) All procedures will be performed only by physician owners of the Group or physician employees of the Group.
- 2) All procedures will be performed in the office of the Group located at 1801 Gadsden Highway, Birmingham, Alabama 35173. All equipment necessary for the performance of the above procedures is located in and will be used only in the forgoing office of the Group.
- 3) All patient billing for the procedures performed will be done through and on behalf of the Group.
- 4) At no time will the rooms and equipment used for the performance of office-based procedures be used for inpatient care, nor by, through or on behalf of any healthcare facility. The procedure rooms will not be leased to or licensed to any person or entity other than the Group and its owners and employed physicians.

Based on information given above, the proposed use should meet the criteria adopted by the Alabama Supreme Court for application of the Physician Office Exemption.

With the support of this document we request that the Alabama State Health Planning and Development Agency grant a determination of non-reviewability to Alabama Orthopedic Spine & Sports Medicine Associates, P.C. for the uses as described above.

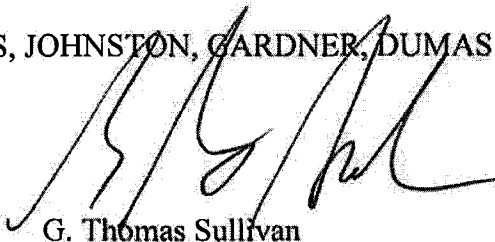
No other healthcare facilities or groups have any financial interests in this reviewability determination request.

An electronic payment for the filing fee in the amount of \$1,000.00 will be made today via the SHPDA online portal.

Please do not hesitate to contact us directly at 205-716-5256 if you request any further information or have any questions.

Yours very truly,

CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP



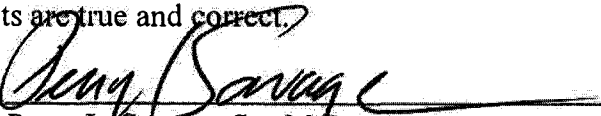
G. Thomas Sullivan

GTS/jh

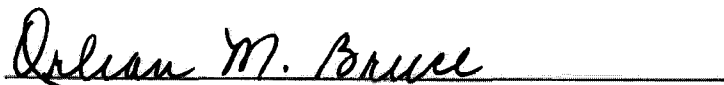
Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that he is the Owner, has knowledge of the facts in this request, and to the best of his information, knowledge and belief, such facts are true and correct.

Affiant:


Perry L. Savage, Sr., M.D.

SUBSCRIBED AND SWORN to before me
this 14th day of October, 2019.


Notary Public

My Commission Expires: 08/26/2020

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Nov 07 2019

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November 7, 2019

Ms. Emily T. Marsal
Executive Director
State Health and Planning Development Agency
100 North Union Street
RSA Union Building, Suite 870
Montgomery, Alabama 36130-3025

RE: RV2020-02: Non-Reviewability Determination Request by Alabama Orthopedic
Spine & Sports Medicine Associates, P.C.

Dear Ms. Marsal:

Thank you very much for your letter dated October 25, 2019. I wanted to respond to the four questions posed therein. In response, Alabama Orthopedic Spine & Sports Medicine Associates, PC (the "Group") provides the following information as requested:

- 1) There is no proposed relocation. The Group moved to its current clinic location at 1801 Gadsden Highway, Birmingham, Alabama 35173 in 2015 and currently provides its services in that clinic.
- 2) The proposed project will not include any new or additional health services.
- 3) The clinic is located contiguous to the City Limits of Birmingham and Trussville. The service area is Jefferson County, primarily in the northeastern area where the clinic is located.
- 4) The initial response was written in an effort to preemptively address possible concerns since we have seen requests where the applicant proposed to block lease or otherwise permit use of the premises by other entities, physicians or physician groups. What we were trying to convey was that only physicians employed by the Group will use the procedure rooms.

If you have any additional questions I will be glad to address them.

Yours very truly,

CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP


G. Thomas Sullivan

GTS/jh