

UPDATED REPORT TO BROWARD HEALTH REGARDING VARIOUS MATTERS

Prepared by:
Berger Singerman LLP
350 East Las Olas Blvd., Suite 1000
Fort Lauderdale, FL 33301



Mitchell W. Berger

From: Mitchell W. Berger
Sent: Tuesday, March 29, 2016 5:56 AM
To: Rodriguez, Rocky
Cc: Vinnette Hall (Vhall@browardhealth.org)
Subject: Re: Important request

Dear Commissioner :

We will do our best to have what information we currently have in our possession to you by 3 pm
We interviewed Commissioner La Marca last night and it lasted until approximately 8 pm.
While we worked into the evening it will take us some additional time to complete what we have
Given the additional information received last night.
Thank you in advance for your patience. If you have any questions please call me .

Very truly yours,
Mitchell Berger .

Sent from my iPhone

On Mar 28, 2016, at 3:09 PM, Rodriguez, Rocky <R5rodriguez@browardhealth.org> wrote:

Dear Mr. Berger,

In preparation for the meeting of the full Board of Commissioners which will occur on Wednesday, March 30, 2016, I request that you send me a copy of all reports, memoranda or updates (whether in draft, preliminary or final form), you or your firm are currently working on relating to matters involving the review of the District by the Chief Inspector General, or any other matters within the scope of your engagement which began on or about February 24, 2016. I kindly request that you send me this information with a final report by no later than noon tomorrow, March 29, 2016. Consistent with other information we Commissioners are provided prior to our meetings, I'm sure you understand that it is important to receive the information at the time I have requested so we Commissioners will have the materials sufficiently in advance of the Board meeting to review and consider. Thank you for your cooperation and your attention to this matter.

The mission of Broward Health is to provide quality health care to the people we serve and support the needs of all physicians and employees.

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INDEX

1. Letter to Hon. Rick Scott from Melinda M. Miguel with attachments, dated March 18, 2016.
2. Draft letter to Melinda M. Miguel from Mitchell W. Berger regarding Administrative Review 2016-01280006, dated March 18, 2016.
3. Letter to Vinnette Hall from Melanie A. Hines with attachments regarding response to letter of Chief Inspector General to the Governor, dated March 21, 2016.
4. Updated letter to Vinnette Hall from Mitchell W. Berger regarding Wayne Black Investigation, dated March 29, 2016.
5. Letter to Vinnette Hall from Mitchell W. Berger regarding G4S Secure Solutions (USA) Inc., dated March 21, 2016.
6. Updated letter to Vinnette Hall from Mitchell W. Berger with attachments regarding Report for Zimmerman Contract, dated March 29, 2016.
7. (A) Updated letter to Vinnette Hall from Mitchell W. Berger with attachment regarding Board of Commissioners Oversight versus Interference, dated March 29, 2016.

(B) Updated Letter to Vinnette Hall regarding Remaining Issues, dated March 30, 2016.
8. E-mail to Vinnette Hall from Melanie A. Hines, dated March 24, 2016 with letters concerning IG Review.
9. Preliminary Budget.

Tab 1



RICK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0800

www.flgov.com
850-488-7146
850-487-0801 fax

March 18, 2016

The Honorable Rick Scott
Governor
State of Florida
Plaza Level, The Capitol
Tallahassee, FL 32399

VIA HAND DELIVERY

The Honorable Rick Scott:

On January 28, 2014, the Office of the Chief Inspector General initiated a review of the North Broward Hospital District (Broward Health) Board of Commissioners.¹ This review is not complete, but I believe an interim briefing is appropriate based on recent developments.

Activity to Date

On January 29, 2016, I informed the Chair of the Board of Commissioners that a review was to take place. (See Attached) I also contacted Florida Department of Law Enforcement and the Federal Bureau of Investigation (FBI) to ensure that this review would not interfere with any activity they had underway and we received verbal assurance that it would not.

Since January 29, my office has acted to identify and interview persons with knowledge about Broward Health's condition and operations. To date, we have amassed lots of data related to the operation of the Board and Broward Health and have requested additional information. (See Attached) We have begun a systematic review of the data received to date and plan to continue until all data has been thoroughly analyzed. Additionally, we have conducted more than 20 witness interviews – 10 of which were sworn recorded interviews of Broward Health employees or contractors. We will continue this review and anticipate that this work will require another 90 days, at a minimum, to complete.

Additional Work Required

¹ According to the Laws of Florida, the governing body of the North Broward Hospital District shall consist of seven commissioners ... All commissioners shall serve without compensation....Members of the board of commissioners are appointed by the Governor for terms of 4 years each. The Governor has the power to remove any member of the board of commissioners for cause and fill any vacancies that may occur. Section 5 of the Broward Health Charter states four commissioners constitute a quorum, and a vote of at least three commissioners is necessary to the transaction of any business of the district. See Attorney General Opinion 2011-12 attached.

Additional planning is underway based on the work completed to date. Specifically, we want to review the files that have been requested and interview persons of interest suggested by that review. Additionally, while one of our first requests was for a listing of all contracts, we have not yet begun our review of individual contracts. We have identified as many as 20 personnel files, contracts, procurement arrangements and physician agreements that need additional examination. We are also curious about the frequent use of "shade meetings" to conduct the work of the Board. Following this work, we will interview all of the members of the board and other witnesses as appropriate.

Concerns

My primary concerns from the outset were and are as follows: 1) whether the Board is operating as a whole body and not through the actions of any individual commissioner; 2) whether any Board member has operated in a management role while also performing charter oversight duties; 3) whether any Board member has given direction to or interfered with any district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO.⁷ The provisions of section 5 (2) of the Board's charter specifically make a violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7 (a) of the Florida Constitution.

Several of the persons interviewed have made allegations that Board members may have overstepped the authority granted the Board in the charter. There are also suspicions about pressure being applied by certain Board members on staff of Broward Health to steer contracts to various entities. However, we've not yet confirmed the facts associated with these allegations.

In a Board meeting on February 24, 2016, the Board voted to hire special independent legal counsel to work with the Broward Health Internal Auditor on the IG review and other investigations as necessary and, in essence, to "manage" the demands of my review. Mr. Mitch Berger attended this public meeting and made a presentation that his firm should be selected. No other firm presented.

Correspondence dated March 7, 2016, from Mitchell Berger, Berger Singerman, addressed to the "Acting Chief Executive Officer", states the following:

The Board of Commissioners has retained us as special independent legal counsel to assist the Audit Committee in responding to inquiries from the Florida Chief Inspector General and to conduct other investigations as necessary in order to advise the Board as to recent allegations made concerning the operations of Board Health. ... As the Board of Commissioners reiterated at its most recent meeting, the Board is committed to full and complete cooperation

⁷ The Legislature has expressed its intent that members of the board of commissioners refrain from operating in a management role while also performing charter oversight duties in what appears to be policy language in section 5 (2), Chapter 2007-299, Laws of Florida.

with any and all official law enforcement investigations [sic] any other inquiries. But such cooperation must be directed and coordinated through the procedures and policies in place and under the oversight of the Board of Directors. [emphasis added]

On February 25, 2016, the morning after Berger Singerman was retained, an attorney for this firm appeared for interviews conducted by my staff representing the Board of Broward Health and not the witnesses being interviewed. This attorney said that she was entitled to attend *on behalf of the Audit Committee/Board* although one person interviewed that day said that he thought he had been misled by his employer, Broward Health, and the other did not want her there even though she insisted on staying. On March 1, 2016, I advised the Board that attendance at any upcoming interviews would be evaluated on a case by case basis and reserved the right to exclude third parties from an interview in the best interests of the review.

At my request, then interim Chief Executive Officer (CEO) Kevin Fusco, at the direction of the Chair of the Board, issued instructions on March 1, 2016, to all Broward Health employees that they may report any concerns directly to the Office of the Chief Inspector General without fear of retaliation or adverse personnel action. On Wednesday, March 16, 2016, even though the Board was cautioned about doing so (See Attached), some members of the Board singled out for dismissal or removal two Broward employees³ that we had interviewed including then interim CEO -- the very person who had just given the no retaliation assurance to the employees of Broward Health. Also, in this public meeting, there were reports of several concerns at Broward Health including that 1) employees fear retaliation and, 2) there is a lack of leadership at Broward Health. Even though we interviewed at least one person making these statements, this information was not communicated to us during our interview of this person on February 23 or 24, 2016. In this meeting, Mr. Berger of Berger Singerman, also raised questions about the scope of my review, made a statement that added expenses *[to the taxpayers and Broward Health]* would be associated with the recent records request (See Attached), indicated this was expansion in original scope, and recommended that members of the Board *[the actions of these Board members are under review]* travel to Tallahassee to meet. A request for this meeting was received in writing on March 16, 2016. (See Attached)

Based on unfolding events, I am concerned about the Board hiring outside special counsel, escalating costs for this representation, and this firm requesting that witness interviews and documents requests be routed through them could intimidate employees that may want to come forward. While the outside counsel asserts that is not their purpose, I believe it may have that effect.

I am also concerned about this firm hired by the Board providing advice that, as a condition of cooperation, "cooperation must be directed and coordinated through the procedures and policies in place and under the oversight of the Board of Directors" while the actions of the members of the Board are the subject under review.

³ Interim CEO Kevin Fusco and General Counsel Lynn Barrett. According to available information, it appears that Fusco was voted not to continue in the role of CEO and Barrett will be re-evaluated by the Board in 30 days.

Further, I am concerned about the Board's authorization for the continued intervention of the firm to "manage" this review for them. I am concerned about the message by the Board that the hiring of this firm at taxpayer's expense sends to the employees of Broward Health. I am concerned about the message sent to all Broward Health employees by the removal by the Board of the very person who had just provided them assurance that there would be no retaliation. I am further concerned by the public testimony that there is fear, lack of leadership and instability at Broward Health.

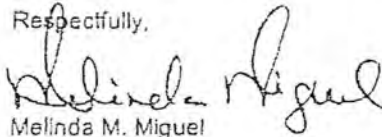
Although this review is not complete in any way, these matters raise concerns about interference and retaliation.

Recommendation

Based on the totality of these concerns and in order to protect the integrity of my review, I request that you give serious consideration to the suspension of certain key members of the Board for the duration of my review or at least until members of the Board are cleared of any suspicion. At a minimum, I believe that David Di Pietro, and Darryl Wright, because of their key leadership positions as Chair of the Board and Chair of the Audit Committee, respectively, should be suspended to neutralize their ability, or even their perceived ability, to retaliate/interfere or to operate in a perceived management role of Broward Health. I believe that this would send a strong message to the Broward Health employees that interference, retaliation, and malfeasance will not be tolerated.

Thank you for your consideration of this request.

Respectfully,



Melinda M. Miguel



RICK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

100 S. WASHINGTON
TALLAHASSEE, FLORIDA 32304-0001

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January 29, 2016

David Di Pietro, Esq.
Chair, North Broward Hospital District/Broward Health
1608 Southeast Third Avenue
Ft. Lauderdale, FL 33316

Dear Chair Di Pietro:

Based on reported allegations, as Chief Inspector General for the Executive Office of the Governor, I have received Governor Scott's full support to conduct a thorough review of every contract North Broward Hospital District/Broward Health has entered into since July 1, 2012 and all correspondence, in any form, related to these contracts. The purpose of the review is to determine any possible improprieties or inappropriate actions including any violation of law, rule, regulation, charter, bylaws or procedures associated with these contracts.

Section 20.055(4)(d), Florida Statutes, states that it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review or hearing

Please identify a person in your organization to act as liaison for this body of work and provide that person's contact information and contact me immediately with that information at (850) 717-9254.

Respectfully,

A handwritten signature in black ink, appearing to read "Melinda M. Miguel".

Melinda M. Miguel
Chief Inspector General
Executive Office of the Governor

Doyal, Marvin

From: Doyal, Marvin
Sent: Friday, February 05, 2016 10:19 AM
To: Robinson, Heather; Romeiser, Erin
Cc: Miguel, Melinda
Subject: Partial Contract listing
Attachments: Ariba listing from 070112 020416.xls; Meditract contract listing from 70112 provided 020216.xls

Ms Hall called me at 9:29 today and said that she had been unable to get the contract listings that CIG Miguel had requested by today. She said that the systems had changed and getting the data merged in a meaningful way was more difficult than she had thought. She asked if she could have until next Tuesday. I agreed but asked that she send me some information today so that we could begin our analysis. This is the data that she provided.

From: Hall, Vinnette [mailto:Vhall@browardhealth.org]
Sent: Friday, February 05, 2016 10:04 AM
To: Doyal, Marvin <Marvin.Doyal@eog.myflorida.com>
Subject: Contract list

Good morning Mr. Doyal,

Please see the contract listing for contracts effective from 7/1/12 forward from our 2 contract systems. As discussed, these systems have recently been implemented and thus may not have all the data from the relevant time period. We are in the process of reconciling data from older systems that may not have been migrated to the new system due to expiration etc.

As also discussed, there are some contracts on the list with odd contract dates (e.g. 2050) generated that we will have to pull the documents on to finalize the list. Lastly some of the information requested such as payment arrangement type and contract amount/type may not have been captured in the contract system when the information was inputted. We have attempted to capture the information where possible (mostly from spend data on the supplies side (Ariba listing), but as the contract systems are not integrated with our payment systems, it would be an exhaustive project to go back and try capture that information for all the contracts.

I will make every attempt to get you a combined updated list that will hopefully include any older information that may have been excluded in the lists above by Tuesday.

Thank you very much for your understanding.

Sincerely,
Vinnette

Vinnette Hall, CPA
Chief Internal Auditor
303 SE 17th Street, Fort Lauderdale, FL 33316
t- 954.355.5004 f- 954.355.5185
vhall@browardhealth.org

Doyal, Marvin

From: Doyal, Marvin
Sent: Friday, February 19, 2016 10:46 AM
To: 'Hall, Vinnette'
Cc: 'ddipietro@browardhealth.org'; 'kfusco@browardhealth.org';
'mcanada@browardhealth.org'; 'jgustaf@bellsouth.net';
'fSrodriguez@browardhealth.org'; 'cure@browardhealth.org';
'svanhoose@browardhealth.org'; 'darryllamarkwright@gmail.com';
'lmbarratt@browardhealth.org'; Romeiser, Erin; Miguel, Melinda
Subject: 1st Request - Broward Health Information

Ms. Hall:
Ms Hall:

We have reviewed the list of contracts you provided to this office and we intend to select a small subset of the contracts to examine at this time. We will be in Broward County next week to interview selected persons. At that time, we will arrange to review the selected contract files and then determine what documentation, if any, we require. We do not believe our requirements or requests for information will be onerous.

Thus far, we have an interest in contracts with Emcare, MedAssets, Dr. Herskowitz, Dr. Z. P. Zachariah, Premier Inc. (a GPO), G4S, and Zimmerman. Some of these contractors did not appear on the list you provided but we have seen other references to these firms or individuals. Please identify the Broward Health staff members who are most familiar with each contract or proposal so that we can contact them next week.

Please also provide any board meeting tapes, minutes, and board/committee policies. We can arrange to pick these up on Tuesday.

Let me know if you have any questions.

Thank you for your assistance.

Marvin Doyal
Director of Auditing
Office of Chief Inspector General
Executive Office of the Governor
850-717-9264



RIK K SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPTOR
TALLAHASSEE, FLORIDA 32399-0001

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March 15, 2016

Vinnette Hall, Chief Internal Auditor
North Broward Hospital District
303 SE 17th Street
Fort Lauderdale, FL 33316
vhall@nbrowardhealth.org

RE: Chief Inspector General Case # 201601280006

Dear Ms. Hall:

Please provide the following information to the Office of the Chief Inspector General to assist with our ongoing review:

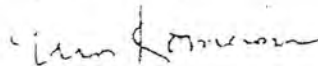
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding disclosures of any potential or actual conflicts of interest and/or recusals or contemplated recusals by members of the North Broward Hospital District (Broward Health) Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present. Please include any and all disclosures made by Broward Health Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to lobbying activities (actual or perceived) of members of the Broward Health Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all contracts and invoices for legal services and/or investigative services for the Broward Health Board of Commissioners, committees of the Board to include the Broward Health Internal Audit Committee, the Broward Health General Counsel, and the Broward Health Chief Internal Auditor from 2012 to present. Please include names, dates of service, type of services expected or provided, the scope of work, as well as invoices and payments rendered or expected/projected to be rendered for services from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to Board governance, Board committee structure, composition, authority, voting procedure, disclosures, independence, independence statements, and compliance with sunshine laws and/or public meeting rules.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials relating to the separation of authorities of the Board oversight activities versus operational

- management of Broward Health
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding the use of "shade" meetings by the Broward Health Board of Commissioners and/or any committee of the Board. Please include a listing of all meetings conducted in the "shade" by the Broward Health Board of Commissioners and/or any committee of the Board; dates of the meeting; justification for conducting the meeting or portions of the meeting in the "shade" for the period of 2012 to present.
- Complete personnel files as well as employment applications, resumes, employment contracts, termination agreements, settlement agreements, reports of internal or external investigations in which the individual was the subject, as well as correspondence and any other documentation required to provide a full understanding of the following individuals' relationship to Broward Health: Lynn Barrell, Brian Bravo, Kevin Fusco, Calvin Glidewell, Vinnette Hall, Donna Lewis, Robert Martin, Frank Nast, Mike Palaez, and Maria Panyi.

Please provide all records in electronic form using Microsoft software or .pdf (searchable). Also, please liberally construe these requests in favor of transparency and cooperation with this office, and please anticipate additional requests as we continue our review.

Thank you for your assistance. In the event you have any questions, please feel free to contact me or Marvin Doyal at (850) 717-9264.

Sincerely,



Erin Romeiser
Investigations Manager
Office of the Chief Inspector General



RIK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

1111 N. W. 111th St.
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March 1, 2016

David DiPietro, Chair
North Broward Hospital District Board of Commissioners
1608 Southeast Third Avenue
Ft. Lauderdale, FL 33316

Dear Chair DiPietro,

On February 25, 2016, attorney Melanie Hines, of Berger Singerman, was granted access to interviews conducted by my staff relating to our review of North Broward Hospital District (Broward Health). According to Ms. Hines, she sought access to these interviews due to a relationship with the Broward Health Audit Committee and the Board of Commissioners. As of this morning, I have requested a Representation Letter from Ms. Hines. Specifically, I've asked that her firm identify their client, any conditions upon which representation may exist (official capacity, individual capacity, etc.), and the basis for requesting attendance in any interviews conducted by my office.

Requests for attendance in any upcoming interviews will be evaluated on a case-by-case basis and contemporaneous requests will not be granted. Further, we reserve the right to exclude third parties from an interview at any time in the best interests of our review.

In addition, I request that Broward Health take no official or unofficial action that could be construed as adverse personnel or retaliatory action against any person participating in this review. I am also requesting that employees of Broward Health be advised that they may contact the Office of the Chief Inspector General directly without fear of adverse personnel or retaliatory action. Employees should be advised to contact Marvin Doyal or Erin Romeiser at (850) 717-9264, if they have any information that may assist us in our review. This notice to Broward Health employees would go a long way to demonstrate transparency and cooperation with our review.

As you know, we expect full cooperation during our review of matters concerning Broward Health and we expect to continue our review without any delay or interference.

Thank you for your attention to these important requests

Sincerely,

Melinda M. Miguel
Chief Inspector General

- cc: Broward Health Commissioners
- Broward Health Internal Auditor
- Broward Health Director of Corporate Security
- Broward Health Chief Compliance Officer
- Broward Health General Counsel

Doyal, Marvin

From: Miguel, Melinda
Sent: Thursday, March 17, 2016 7:52 PM
To: Doyal, Marvin; Romeiser, Erin
Subject: Fwd: URGENT NOTICE

Please print when you get in.

Melinda M. Miguel
Chief Inspector General
Executive Office of the Governor
850.717.9264

Sent from my iPhone

Begin forwarded message:

From: David Di Pietro <david@ddpalaw.com>
Date: March 16, 2016 at 12:22:16 AM EDT
To: "Miguel, Melinda" <Melinda.Miguel@eog.nyflorida.com>
Subject: Re: URGENT NOTICE

Dear Inspector General Miguel:

Thank you for your letter to me this evening.

Let me assure you, in writing, that any action taken by the Board of Commissioners at its meeting on March 16, will be made without regard to any potential participation in any government proceeding. Let me also assure you that any action taken by the Board of Commissioners will be taken for proper and lawful purposes, and will be made by the independent fiduciary judgment of the Board of Commissioners using the best interests of the Broward Health system and its taxpayers as our lodestar. I am confident that any proper review of the Board's decisions will result in that conclusion.

I would encourage you or someone from your office to attend tomorrow's meeting to fully appreciate the nature of the decision this Board will make. As always, please feel free to let me know how we can assist you in your review.

Sincerely,

David Di Pietro

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BERGER SINGERMAN

Melanie Ann Hines
(850) 521-6722
mhines@bergersingerman.com

March 16, 2016

VIA ELECTRONIC MAIL
(Melinda.miguel@csgr.ny.florida.com)

Ms. Melinda M. Miguel
Chief Inspector General
Office of the Chief Inspector General
Executive Office of the Governor
Room 1902, The Capitol
Tallahassee, FL 32399-0001

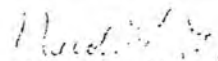
Re: Office of the Chief Inspector General; Administrative Review 2016-01280006

Dear Ms. Miguel:

On behalf of the North Broward Hospital District Board of Commissioners, we are requesting a meeting with you and the Chair of the Audit Committee, Darryl L. Wright, and Chief Internal Auditor, Vinnette Hall next week. At the meeting, we would like to discuss the scope of your administrative review, the scope of your recent extensive document requests, and the manner in which we should prioritize our efforts to assist you in your undertaking, while ensuring that the District continues to meet its vital mission to the citizens of Broward County. Please advise me of a date and time next week during which we might meet with you for an hour to discuss these issues.

Sincerely,

BERGER SINGERMAN LLP


/s/ Melanie Ann Hines

MAH:mj

cc: Ms. Vinnette Hall, Chief Internal Auditor of the North Broward Hospital District
Mr. Darryl L. Wright, Chair of the Audit Committee of the North Broward Hospital District Board of Commissioners

20160316

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2011-12

Date: July 19, 2011

Subject: Hospital District Board, charter oversight duties

Mr. Samuel S. Goren
Goren, Cheroff, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

RE: SPECIAL DISTRICTS - HOSPITALS - MALFEASANCE - CHARTERS
- OVERSIGHT - charter oversight duties of hospital
district's board of commissioners; non-interference clause.
Chs. 2006-347 and 2007-299, Laws of Fla.

Dear Mr. Goren:

On behalf of the North Broward Hospital District, you have asked for my opinion on the following questions:

1. How are the members of the North Broward Hospital District's Board of Commissioners able to exercise their "charter oversight duties," if at all, given the "explicit segregation of duties between the functions of operational management of the district and oversight by the board," as stated in the district charter, as amended?
2. Are the board members of the North Broward Hospital District permitted to utilize their prerogative to give direction to or interfere with employees, officers, or agents under the direct or indirect supervision of the district's President/CEO for the limited purpose of "inquiry or information" as individuals, or must they exercise such option as a whole collegial body?
3. Since violations of the non-interference provision of the 2007 act specifically constitute "malfeasance within the meaning of Article IV, s. 7(a) of the Florida Constitution," how is this section to be enforced and what are the penalties for violations thereof?

In sum:

1. The Legislature has expressed its intent that members of the board of commissioners refrain from operating in a management role while also performing charter oversight duties in what appears to be policy language in section 5(2), Chapter 2007-299, Laws of Florida. In the directory language of the amendment, members of the board are required to refrain from giving direction to or interfering with employees or others under the supervision of the President/CEO, with the exception of inquiry and information gathering.

2. An individual member of the board of commissioners of the North Broward Hospital District may ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district, but may not otherwise give direction to or interfere with any such employee.

3. The provisions of section 5(2) of the charter specifically make a violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which sets forth the procedure for disposition of an order of suspension by the Governor.

The North Broward Hospital District (the "district") is an independent special taxing district created in 1951 by chapter 27438, Laws of Florida, to meet the health care needs of the people of the district. [1] The district is governed by a seven member board of commissioners (the "board") appointed by the Governor. [2] The enabling legislation for the district and subsequent amendments were recently recodified in Chapter 2006-347, Laws of Florida, which is the district's charter. In 2007, the charter was amended to include a "non-interference" provision and to require that the board adopt a code of conduct and ethics. [3] As provided in the district's bylaws:

"The Board shall guide the North Broward Hospital District and all of its facilities, common divisions and wholly owned entities toward the efficient and effective provision

of quality health care, education and research. The powers of the Board of Commissioners shall be employed so as to ensure that the welfare and health of the patients and the best interests of the hospitals and facilities of the District are at all times served." [4]

You have requested this office's assistance in determining how the board of commissioners of the North Broward Hospital District may comply with the legislative directive expressed in section 5(2), Chapter 2007-299, Laws of Florida, which provides:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the charter oversight duties contemplated by creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and oversight by the board of commissioners. Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision of the President/CEO. Such action shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution. Nothing contained herein shall prevent a commissioner from referring a citizen complaint to the President/CEO or to the board of commissioners or providing information about any issue to the President/CEO or to the board of commissioners." (e.s.)

Question One

This office is authorized to provide legal opinions on questions of state law; we have no authority to provide district boards or commissions with detailed suggestions as to how they may accomplish the work of the district for which they were appointed. As such, I must advise you that this office cannot direct how members of the board of the North Broward Hospital District should accomplish their duties.

Your first question relates to the scope of the oversight

duties of the North Broward Hospital District's board of commissioners as limited by Chapter 2007-299, Laws of Florida. The language of section 5(2), Chapter 2007-299, Laws of Florida, which has prompted your question appears to be language reflecting the intent of the Legislature rather than language directing the board to perform some action:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the charter oversight duties contemplated by creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and oversight by the board of commissioners."
(e.s.)

As demonstrated above, these sentences are phrased in terms of legislative findings and intent, but these statements do not require any particular action by the board or provide any direction as to how such action should be accomplished.[5] The operative provision is the sentence stating that "[e]xcept for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee" It is through this provision that the Legislature chose to accomplish its stated intent of separating the management and oversight of the district.[6]

Question Two

Your second question requires consideration of the language of the 2007 amendment of the charter/special act which provides:

"It is . . . the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. . . . Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision

of the President/CEO." [7]

Concerns have been expressed that this language would restrict the ability of individual board members to directly engage district staff working under the supervision of the President/CEO for purposes of inquiry or for informational purposes.

While this office recognizes that section 5(2), Chapter 2007-299, Laws of Florida, provides that "the board of commissioners [should] only exercise its oversight function as a whole body and not through the actions of any individual commissioner[;]" the act also specifically authorizes individual members of the board to give direction to district employees within the supervision of the President/CEO for purposes of inquiry and information seeking. As discussed more fully in my response to Question One, the legislative intent/policy language suggesting that the oversight function of the board should only be exercised "as a whole body" is not expressed in terms requiring particular action by the board. Rather, this language appears to constitute a statement of intent by the Legislature as to the purpose and construction of the operative provisions of the 2007 legislation that an individual member may not direct or interfere with these employees except for inquiry and information purposes.

The charter clearly gives individual members of the board the authority to ask questions or request information from staff of the district or others who may come within the supervisory authority of the President/CEO. Members of the board may not otherwise, without committing malfeasance, give directions to or interfere with these employees of the district. This legislative prohibition would appear to be directed toward the "functions of operational management" mentioned elsewhere in section 5, Chapter 2007-299, Laws of Florida. Thus, in order to accomplish the legislatively declared object of segregating the oversight function from the operational management of the district, these provisions should be read together and harmonized. [8] Further, courts are bound to ascribe reasonableness to the intention of the Legislature and a reasoned construction to its enactments. [9] Staff analysis for the 2007 legislation appears to support this reading of the act and states that "[a] board member that gives direction or interferes with any employee under the supervision of the President/CEO, except for inquiry, will have conducted malfeasance . . .

. "[10]

Therefore, it is my opinion that an individual member of the board of commissioners of the North Broward Hospital District may directly ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district. In asking questions or seeking information, the board members need not act as a collegial body. However, section 5, Chapter 2007-299, Laws of Florida, makes clear the Legislature's intent that no individual member of the board may give direction to or interfere with any such employee outside the scope of inquiry and information seeking without violating the charter.

Question Three

Finally, you have asked for direction in determining enforcement options and penalties for violations of section 5(2) of the charter. The language of the special act specifically provides that violations of this section "shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."

Article IV, section 7 of the Florida Constitution provides for suspensions by the Governor and filling of any vacancy created by such a suspension:

"(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor."

If the officer is not reinstated by the Governor, the Senate may remove him or her from office or reinstate the suspended official. [11] The provisions of Part V, Chapter 112, Florida Statutes, set forth procedures for the disposition of the order of suspension by the Governor implementing the constitutional provision [12] and specifying such matters as the contents of such a

suspension order[13] and the prosecution of the suspension before the Senate.[14]

Moreover, Article I, section 18, Florida Constitution, provides that "[n]o administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." As the court recognized in *Broward County v. La Rosa*, [15] the phrase "by law" contemplates an enactment of the Legislature.[16] Thus, the district, as an administrative agency, [17] has no authority to prescribe penalties for violations of its charter except those the Legislature has adopted. Section 5, Chapter 2007-299, Laws of Florida, contains no other provision for penalties or enforcement for violations of the "non-interference" provision.[18]

In sum, it is my opinion that the provisions of section 5(2) of the charter specifically make violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which provides the procedure for disposition of an order of suspension by the Governor.

Sincerely,

Fam Bondi
Attorney General

PB/tgh

[1] See s. 3, Ch. 2006-347 and s. 1, Ch. 2007-299, Laws of Fla.

[2] See s. 3, Ch. 2006-347, Laws of Fla.; Art. I, s. 1-2, Bylaws of the North Broward Hospital District and Broward General Medical Center, North Broward Medical Center, Imperial Point Medical Center, Coral Springs Medical Center.

[3] This office is aware that the district's bylaws were last revised in 1991. See Bylaws of the North Broward

Hospital District, Editor's note, p. 37. The board may wish to update the district's bylaws to reflect the more recent legislative directives considered herein and more fully delineate the operational management duties and charter oversight duties of the President/CEO and the board. This office has no information regarding the situation existing in the district which gave rise to the adoption of Ch. 2007-299, Laws of Fla., which could provide guidance, but would suggest that some investigation into the situation surrounding the amendments could be helpful in effectuating the legislative intent expressed in the act. See, e.g., *Singleton v. Larson*, 46 So. 2d 186 (Fla. 1950) (in construing a statute, court will consider its history, evil to be corrected, intention of Legislature, subject to be regulated, objects to be obtained and will be guided by legislative intent); *State v. Webb*, 398 So. 2d 820 (Fla. 1981); *State v. Anderson*, 764 So. 2d 848 (Fla. 3d DCA 2000).

[4] Art. I, s. I-4, Bylaws *supra*.

[5] See *Bledsoe v. Palm Beach Soil and Water Conservation Dist.*, 942 F.Supp. 1439, reversed 133 F.3d 816, rehearing and suggestion for rehearing denied, 140 F.3d 1044, certiorari denied, 119 S.Ct. 72, 525 U.S. 826, 142 L. Ed. 2d 57 (in ascertaining plain meaning of statute, court should look not only to discrete portion of statute at issue, but to design of statute as whole and to its object and policy).

[6] *Cassoult v. Cessna Aircraft Co.*, 742 So. 2d 493 (Fla. 1st DCA 1999) (When construing a statutory provision, court is guided by the rule that the intent of the Legislature is the overriding consideration.); *State, Dept. of Revenue v. Kemper Investors Life Ins. Co.*, 660 So. 2d 1124 (Fla. 1st DCA 1995) (When construing statutes, primary purpose designated should determine force and effect of words used, and no literal interpretation should be given that leads to unreasonable ridiculous conclusion or purpose not intended by Legislature).

[7] Section 5, Ch. 2007-299, Laws of Fla.

[8] See *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452 (Fla. 1992) (all parts of a statute must be read together in order to

achieve a consistent whole); *State v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).

[9] *City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983); *Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981); *City of Dania v. Hertz Corporation*, 518 So. 2d 1387 (Fla. 4th DCA 1988).

[10] See House of Representatives Local Bill Staff Analysis, CS/HB 1391, p.2, dated April 11, 2007.

[11] Section 7(b), Art. IV, Fla. Const.

[12] Section 112.40, Fla. Stat.

[13] Section 112.41, Fla. Stat.

[14] Section 112.43, Fla. Stat.

[15] 484 So. 2d 1374 (Fla. 4th DCA 1986). And see *Broward County v. Plantation Imports, Inc.*, *infra*, in which the court struck down a provision of the Broward County Consumer Protection Code which authorized the county Consumer Protection Board to determine if there were violations of the Code and impose civil penalties for violation of any cease and desist orders. The court held the provision authorizing an administrative agency to impose a penalty, without such authority being provided by legislative act, was unconstitutional.

[16] See *Grapeland Heights Civic Association v. City of Miami*, 257 So. 2d 321, 324 (Fla. 1972); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Ison v. Zimmerman*, 372 So. 2d 431 (Fla. 1979); Op. Att'y Gen. Fla. 79-109 (1979).

[17] See, e.g., Ops. Att'y Gen. Fla. 09-53 (2009) (mosquito control district is administrative agency for purposes of Art. I, s. 18, Fla. Const.); 09-29 (2009) (county precluded from adopting ordinance imposing civil penalty); 01-77 (2001) (city code enforcement board may not alter statutory provisions to authorized imposition of fine).

[18] Section 5(3)(a), Ch. 2007-299, Laws of Fla., also makes failure to comply with the provisions of the district's code of conduct "malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 16-78 (Executive Order of Suspension)

WHEREAS, David DiPietro, is presently serving as a Governor-appointed commissioner and Chair of the North Broward Hospital District Board of Commissioners; and

WHEREAS, on March 18, 2016, the Chief Inspector General of the State of Florida reported grave concerns regarding interference by Board members with her ongoing investigation into the North Broward Hospital District; and

WHEREAS, members of the Board of Commissioners are prohibited from giving direction to or interfering with any employee, officer, or agent under the direct or indirect supervision of the President/CEO, and violations of this non-interference clause constitute malfeasance. *See* chapter 2007-299, Laws of Florida; and

WHEREAS, the Governor may issue an order of suspension for acts of malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties. *See* sections 112.51 and 112.511, Florida Statutes; and

WHEREAS, it is in the best interests of the residents of Broward County, and the citizens of the State of Florida, that David DiPietro be immediately suspended from the public office to which he was appointed to by the Governor, and now holds, upon the grounds set forth in this executive order;

NOW, THEREFORE, I, RICK SCOTT, Governor of Florida, pursuant to sections 112.51 and 112.511, Florida Statutes, find as follows:

A. David DiPietro is, and at all times material was, a member of the North Broward Hospital District Board of Commissioners.

B. The office of Commissioner of the North Broward Hospital District is within the purview of the suspension powers of the Governor, pursuant to sections 112.51 and 112.511, Florida Statutes.

C. The attached letter reports past and ongoing conduct in violation of the non-interference clause, which constitutes malfeasance and threatens the integrity of the Chief Inspector General's investigation into allegations of fraud, waste, and abuse within the North Broward Hospital District. This suspension is predicated upon the attached letter, and is incorporated as if fully set forth in this Executive Order.

BEING FULLY ADVISED in the premises, and in accordance with the Constitution and the laws of the State of Florida, this Executive Order is issued, effective today:

Section 1. David DiPietro is suspended from the public office to which he was appointed by the Governor, and now holds, to wit: Commissioner for the North Broward Hospital District.


Section 2. David DiPietro is prohibited from performing any official act, duty, or function of public office, and from being entitled to any of the emoluments or privileges of public office during the period of this suspension, which period shall be from today until a further Executive Order is issued (possibly at the conclusion of the Chief Inspector General's investigation), or as otherwise provided by law.



ATTEST:


SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 18th day of March, 2016.


RICK SCOTT, GOVERNOR

2016 MAR 18 PM 1:37
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED



RICK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

March 16, 2016

The Honorable Rick Scott
Governor
State of Florida
Plaza Level, The Capitol
Tallahassee, FL 32399

VIA HAND DELIVERY

The Honorable Rick Scott:

On January 28, 2014, the Office of the Chief Inspector General initiated a review of the North Broward Hospital District (Broward Health) Board of Commissioners.¹ This review is not complete, but I believe an interim briefing is appropriate based on recent developments.

Activity to Date

On January 29, 2016, I informed the Chair of the Board of Commissioners that a review was to take place. (See Attached) I also contacted Florida Department of Law Enforcement and the Federal Bureau of Investigation (FBI) to ensure that this review would not interfere with any activity they had underway and we received verbal assurance that it would not.

Since January 29, my office has acted to identify and interview persons with knowledge about Broward Health's condition and operations. To date, we have amassed lots of data related to the operation of the Board and Broward Health and have requested additional information. (See Attached) We have begun a systematic review of the data received to date and plan to continue until all data has been thoroughly analyzed. Additionally, we have conducted more than 20 witness interviews – 10 of which were sworn recorded interviews of Broward Health employees or contractors. We will continue this review and anticipate that this work will require another 90 days, at a minimum, to complete.

Additional Work Required

¹ According to the Laws of Florida, the governing body of the North Broward Hospital District shall consist of seven commissioners ... All commissioners shall serve without compensation... Members of the board of commissioners are appointed by the Governor for terms of 4 years each. The Governor has the power to remove any member of the board of commissioners for cause and fill any vacancies that may occur. Section 5 of the Broward Health Charter states four commissioners constitute a quorum, and a vote of at least three commissioners is necessary to the transaction of any business of the district. See Attorney General Opinion 2011-12 attached

Additional planning is underway based on the work completed to date. Specifically, we want to review the files that have been requested and interview persons of interest suggested by that review. Additionally, while one of our first requests was for a listing of all contracts, we have not yet begun our review of individual contracts. We have identified as many as 20 personnel files, contracts, procurement arrangements and physician agreements that need additional examination. We are also curious about the frequent use of "shade meetings" to conduct the work of the Board. Following this work, we will interview all of the members of the board and other witnesses as appropriate.

Concerns

My primary concerns from the outset were and are as follows: 1) whether the Board is operating as a whole body and not through the actions of any individual commissioner; 2) whether any Board member has operated in a management role while also performing charter oversight duties; 3) whether any Board member has given direction to or interfered with any district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO.² The provisions of section 5 (2) of the Board's charter specifically make a violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7 (a) of the Florida Constitution.

Several of the persons interviewed have made allegations that Board members may have overstepped the authority granted the Board in the charter. There are also suspicions about pressure being applied by certain Board members on staff of Broward Health to steer contracts to various entities. However, we've not yet confirmed the facts associated with these allegations.

In a Board meeting on February 24, 2016, the Board voted to hire special independent legal counsel to work with the Broward Health Internal Auditor on the IG review and other investigations as necessary and, in essence, to "manage" the demands of my review. Mr. Mitch Berger attended this public meeting and made a presentation that his firm should be selected. No other firm presented.

Correspondence dated March 7, 2016, from Mitchell Berger, Berger Singerman, addressed to the "Acting Chief Executive Officer", states the following:

The Board of Commissioners has retained us as special independent legal counsel to assist the Audit Committee in responding to inquiries from the Florida Chief Inspector General and to conduct other investigations as necessary in order to advise the Board as to recent allegations made concerning the operations of Board Health. .. As the Board of Commissioners reiterated at its most recent meeting, the Board is committed to full and complete cooperation

² The Legislature has expressed its intent that members of the board of commissioners refrain from operating in a management role while also performing charter oversight duties in what appears to be policy language in section 5 (2), Chapter 2007-299, Laws of Florida.

with any and all official law enforcement investigations [sic] any other inquiries. But such cooperation must be directed and coordinated through the procedures and policies in place and under the oversight of the Board of Directors. [emphasis added]

On February 25, 2016, the morning after Berger Singerman was retained, an attorney for this firm appeared for interviews conducted by my staff representing the Board of Broward Health and not the witnesses being interviewed. This attorney said that she was entitled to attend *on behalf of the Audit Committee/Board* although one person interviewed that day said that he thought he had been misled by his employer, Broward Health, and the other did not want her there even though she insisted on staying. On March 1, 2016, I advised the Board that attendance at any upcoming interviews would be evaluated on a case by case basis and reserved the right to exclude third parties from an interview in the best interests of the review.

At my request, then interim Chief Executive Officer (CEO) Kevin Fusco, at the direction of the Chair of the Board, issued instructions on March 1, 2016, to all Broward Health employees that they may report any concerns directly to the Office of the Chief Inspector General without fear of retaliation or adverse personnel action. On Wednesday, March 16, 2016, even though the Board was cautioned about doing so (See Attached), some members of the Board singled out for dismissal or removal two Broward employees³ that we had interviewed including then interim CEO -- the very person who had just given the no retaliation assurance to the employees of Broward Health. Also, in this public meeting, there were reports of several concerns at Broward Health including that 1) employees fear retaliation and, 2) there is a lack of leadership at Broward Health. Even though we interviewed at least one person making these statements, this information was not communicated to us during our interview of this person on February 23 or 24, 2016. In this meeting, Mr. Berger of Berger Singerman, also raised questions about the scope of my review, made a statement that added expenses *[to the taxpayers and Broward Health]* would be associated with the recent records request (See Attached), indicated this was expansion in original scope, and recommended that members of the Board *[the actions of these Board members are under review]* travel to Tallahassee to meet. A request for this meeting was received in writing on March 16, 2016. (See Attached)

Based on unfolding events, I am concerned about the Board hiring outside special counsel, escalating costs for this representation, and this firm requesting that witness interviews and documents requests be routed through them could intimidate employees that may want to come forward. While the outside counsel asserts that is not their purpose, I believe it may have that effect

I am also concerned about this firm hired by the Board providing advice that, as a condition of cooperation, "cooperation must be directed and coordinated through the procedures and policies in place and under the oversight of the Board of Directors" while the actions of the members of the Board are the subject under review

³ Interim CEO Kevin Fusco and General Counsel Lynn Barrett. According to available information, it appears that Fusco was voted not to continue in the role of CEO and Barrett will be re-evaluated by the Board in 30 days.

Further, I am concerned about the Board's authorization for the continued intervention of the firm to "manage" this review for them. I am concerned about the message by the Board that the hiring of this firm at taxpayer's expense sends to the employees of Broward Health. I am concerned about the message sent to all Broward Health employees by the removal by the Board of the very person who had just provided them assurance that there would be no retaliation. I am further concerned by the public testimony that there is fear, lack of leadership and instability at Broward Health.

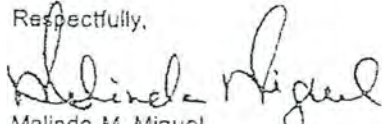
Although this review is not complete in any way, these matters raise concerns about interference and retaliation.

Recommendation

Based on the totality of these concerns and in order to protect the integrity of my review, I request that you give serious consideration to the suspension of certain key members of the Board for the duration of my review or at least until members of the Board are cleared of any suspicion. At a minimum, I believe that David Di Pietro, and Darryl Wright, because of their key leadership positions as Chair of the Board and Chair of the Audit Committee, respectively, should be suspended to neutralize their ability, or even their perceived ability, to retaliate/interfere or to operate in a perceived management role of Broward Health. I believe that this would send a strong message to the Broward Health employees that interference, retaliation, and malfeasance will not be tolerated.

Thank you for your consideration of this request.

Respectfully,



Melinda M. Miguel



RR & SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

1111 G. MIFLIN
TALLAHASSEE, FLORIDA 32304-0001

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January 29, 2016

David Di Pietro, Esq.
Chair, North Broward Hospital District/Broward Health
1608 Southeast Third Avenue
Ft. Lauderdale, FL 33316

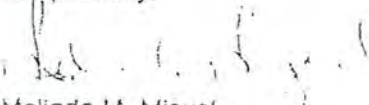
Dear Chair Di Pietro:

Based on reported allegations, as Chief Inspector General for the Executive Office of the Governor, I have received Governor Scott's full support to conduct a thorough review of every contract North Broward Hospital District/Broward Health has entered into since July 1, 2012 and all correspondence, in any form, related to these contracts. The purpose of the review is to determine any possible improprieties or inappropriate actions including any violation of law, rule, regulation, charter, bylaws or procedures associated with these contracts.

Section 20.055(4)(d), Florida Statutes, states that it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review or hearing

Please identify a person in your organization to act as liaison for this body of work and provide that person's contact information and contact me immediately with that information at (850) 717-9254.

Respectfully,


Melinda M. Miguel
Chief Inspector General
Executive Office of the Governor

Doyal, Marvin

From: Doyal, Marvin
Sent: Friday, February 05, 2016 10:19 AM
To: Robinson, Heather, Romeiser, Erin
Cc: Miguel, Melinda
Subject: Partial Contract listing
Attachments: Ariba listing from 070112 020416.xls; Meditract contract listing from 70112 provided 020216.xls

Ms Hall called me at 9:29 today and said that she had been unable to get the contract listings that CIG Miguel had requested by today. She said that the systems had changed and getting the data merged in a meaningful way was more difficult than she had thought. She asked if she could have until next Tuesday. I agreed but asked that she send me some information today so that we could begin our analysis. This is the data that she provided.

From: Hall, Vinnette (mailto:Vhall@browardhealth.org)
Sent: Friday, February 05, 2016 10:04 AM
To: Doyal, Marvin <Marvin.Doyal@eog.myflorida.com>
Subject: Contract list

Good morning Mr. Doyal,

Please see the contract listing for contracts effective from 7/1/12 forward from our 2 contract systems. As discussed, these systems have recently been implemented and thus may not have all the data from the relevant time period. We are in the process of reconciling data from older systems that may not have been migrated to the new system due to expiration etc.

As also discussed, there are some contracts on the list with odd contract dates (e.g. 2050) generated that we will have to pull the documents on to finalize the list. Lastly some of the information requested such as payment arrangement type and contract amount/type may not have been captured in the contract system when the information was inputted. We have attempted to capture the information where possible (mostly from spend data on the supplies side (Ariba listing), but as the contract systems are not integrated with our payment systems, it would be an exhaustive project to go back and try capture that information for all the contracts.

I will make every attempt to get you a combined updated list that will hopefully include any older information that may have been excluded in the lists above by Tuesday.

Thank you very much for your understanding.

Sincerely,
Vinnette

Vinnette Hall, CPA
Chief Internal Auditor
303 SE 17th Street, Fort Lauderdale, FL 33316
T- 954.355.5004 F- 954.355.5185
vhall@browardhealth.org

Doyal, Marvin

From: Doyal, Marvin
Sent: Friday, February 19, 2016 10:46 AM
To: 'Hali, Vinnette'
Cc: 'ddipietro@browardhealth.org'; 'klusco@browardhealth.org';
'mcanada@browardhealth.org'; 'jgustaf@bellsouth.net';
'r5rodriguez@browardhealth.org'; 'cure@browardhealth.org';
'svanhooose@browardhealth.org'; 'darryllamarkwright@gmail.com';
'imbarretti@browardhealth.org'; Romeiser, Erin; Miguel, Melinda
Subject: 1st Request - Broward Health Information

Ms. Hall:
Ms Hall:

We have reviewed the list of contracts you provided to this office and we intend to select a small subset of the contracts to examine at this time. We will be in Broward County next week to interview selected persons. At that time, we will arrange to review the selected contract files and then determine what documentation, if any, we require. We do not believe our requirements or requests for information will be onerous.

Thus far, we have an interest in contracts with Emcare, MedAssets, Dr. Herskowitz, Dr. Z. P. Zachariah, Premier Inc (a GPO), G45, and Zimmerman. Some of these contractors did not appear on the list you provided but we have seen other references to these firms or individuals. Please identify the Broward Health staff members who are most familiar with each contract or proposal so that we can contact them next week.

Please also provide any board meeting tapes, minutes, and board/committee policies. We can arrange to pick these up on Tuesday.

Let me know if you have any questions.

Thank you for your assistance.

Marvin Doyal
Director of Auditing
Office of Chief Inspector General
Executive Office of the Governor
850-717-9264



BRUCE SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
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March 15, 2016

Vinnette Hall, Chief Internal Auditor
North Broward Hospital District
303 SE 17th Street
Fort Lauderdale, FL 33316
vhall@browardhealth.org

RE: Chief Inspector General Case # 201601280006

Dear Ms. Hall:

Please provide the following information to the Office of the Chief Inspector General to assist with our ongoing review:

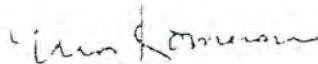
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding disclosures of any potential or actual conflicts of interest and/or recusals or contemplated recusals by members of the North Broward Hospital District (Broward Health) Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present. Please include any and all disclosures made by Broward Health Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to lobbying activities (actual or perceived) of members of the Broward Health Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all contracts and invoices for legal services and/or investigative services for the Broward Health Board of Commissioners, committees of the Board to include the Broward Health Internal Audit Committee, the Broward Health General Counsel, and the Broward Health Chief Internal Auditor from 2012 to present. Please include names, dates of service, type of services expected or provided, the scope of work, as well as invoices and payments rendered or expected/projected to be rendered for services from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to Board governance, Board committee structure, composition, authority, voting procedure, disclosures, independence, independence statements, and compliance with sunshine laws and/or public meeting rules.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials relating to the separation of authorities of the Board oversight activities versus operational

- management of Broward Health
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding the use of "shade" meetings by the Broward Health Board of Commissioners and/or any committee of the Board. Please include a listing of all meetings conducted in the "shade" by the Broward Health Board of Commissioners and/or any committee of the Board; dates of the meeting; justification for conducting the meeting or portions of the meeting in the "shade" for the period of 2012 to present.
- Complete personnel files as well as employment applications, resumes, employment contracts, termination agreements, settlement agreements, reports of internal or external investigations in which the individual was the subject, as well as correspondence and any other documentation required to provide a full understanding of the following individuals' relationship to Broward Health: Lynn Barrett, Brian Bravo, Kevin Fusco, Calvin Glidewell, Vinnette Hall, Donna Lewis, Robert Martin, Frank Nast, Mike Palaez, and Maria Panyi.

Please provide all records in electronic form using Microsoft software or .pdf (searchable). Also, please liberally construe these requests in favor of transparency and cooperation with this office, and please anticipate additional requests as we continue our review.

Thank you for your assistance. In the event you have any questions, please feel free to contact me or Marvin Doyal at (850) 717-9264.

Sincerely,



Erin Romeiser
Investigations Manager
Office of the Chief Inspector General



RIK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

1100 CAPITAL
TALLAHASSEE, FLORIDA 32310-0001

www.flgov.com
(850) 488-3146
(850) 487-0001 fax

March 1, 2016

David DiPietro, Chair
North Broward Hospital District Board of Commissioners
1608 Southeast Third Avenue
Ft. Lauderdale, FL 33316

Dear Chair DiPietro:

On February 25, 2016, attorney Melanie Hines, of Berger Singerman, was granted access to interviews conducted by my staff relating to our review of North Broward Hospital District (Broward Health). According to Ms. Hines, she sought access to these interviews due to a relationship with the Broward Health Audit Committee and the Board of Commissioners. As of this morning, I have requested a Representation Letter from Ms. Hines. Specifically, I've asked that her firm identify their client, any conditions upon which representation may exist (official capacity, individual capacity, etc.), and the basis for requesting attendance in any interviews conducted by my office.

Requests for attendance in any upcoming interviews will be evaluated on a case-by-case basis and contemporaneous requests will not be granted. Further, we reserve the right to exclude third parties from an interview at any time in the best interests of our review.

In addition, I request that Broward Health take no official or unofficial action that could be construed as adverse personnel or retaliatory action against any person participating in this review. I am also requesting that employees of Broward Health be advised that they may contact the Office of the Chief Inspector General directly without fear of adverse personnel or retaliatory action. Employees should be advised to contact Marvin Doyal or Erin Romelser at (850) 717-9264, if they have any information that may assist us in our review. This notice to Broward Health employees would go a long way to demonstrate transparency and cooperation with our review.

As you know, we expect full cooperation during our review of matters concerning Broward Health and we expect to continue our review without any delay or interference.

Thank you for your attention to these important requests.

Sincerely,

Melinda M. Miguez
Chief Inspector General

- cc Broward Health Commissioners
- Broward Health Internal Auditor
- Broward Health Director of Corporate Security
- Broward Health Chief Compliance Officer
- Broward Health General Counsel

Doyal, Marvin

From: Miguel, Melinda
Sent: Thursday, March 17, 2016 7:52 PM
To: Doyal, Marvin; Romeiser, Erin
Subject: Fwd: URGENT NOTICE

Please print when you get in.

Melinda M. Miguel
Chief Inspector General
Executive Office of the Governor
850.717.9264

Sent from my iPhone

Begin forwarded message:

From: David Di Pietro <david@ddpajaw.com>
Date: March 16, 2016 at 12:22:16 AM EDT
To: "Miguel, Melinda" <Melinda.Miguel@eog.myflorida.com>
Subject: Re: URGENT NOTICE

Dear Inspector General Miguel:

Thank you for your letter to me this evening.

Let me assure you, in writing, that any action taken by the Board of Commissioners at its meeting on March 16, will be made without regard to any potential participation in any government proceeding. Let me also assure you that any action taken by the Board of Commissioners will be taken for proper and lawful purposes, and will be made by the independent fiduciary judgment of the Board of Commissioners using the best interests of the Broward Health system and its taxpayers as our lodestar. I am confident that any proper review of the Board's decisions will result in that conclusion.

I would encourage you or someone from your office to attend tomorrow's meeting to fully appreciate the nature of the decision this Board will make. As always, please feel free to let me know how we can assist you in your review.

Sincerely,

David Di Pietro

Confidentiality Notice: The preceding email message is confidential. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message, and any information contained in the email may not be relied upon by any other party. This email shall not be forwarded, copied and redistributed in any way without the expressed written consent of the sender.

BERGER SINGERMANN

Melanie Ann Hines
t.501.521.6727
mhines@bergersingerman.com

March 16, 2016

VIA ELECTRONIC MAIL
(Melinda.miguel@cs.ccg.ny.florida.com)

Ms. Melinda M. Miguel
Chief Inspector General
Office of the Chief Inspector General
Executive Office of the Governor
Room 1902, The Capitol
Tallahassee, FL 32399-0001

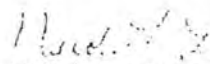
Re: Office of the Chief Inspector General: Administrative Review 2016-01280006

Dear Ms. Miguel:

On behalf of the North Broward Hospital District Board of Commissioners, we are requesting a meeting with you and the Chair of the Audit Committee, Darryl L. Wright, and Chief Internal Auditor, Vinnette Hall next week. At the meeting, we would like to discuss the scope of your administrative review, the scope of your recent extensive document requests, and the manner in which we should prioritize our efforts to assist you in your undertaking, while ensuring that the District continues to meet its vital mission to the citizens of Broward County. Please advise me of a date and time next week during which we might meet with you for an hour to discuss these issues.

Sincerely,

BERGER SINGERMANN LLP


/s/ Melanie Ann Hines

MAH:all

Cc: Ms. Vinnette Hall, Chief Internal Auditor of the North Broward Hospital District
Mr. Darryl L. Wright, Chair of the Audit Committee of the North Broward Hospital District Board of Commissioners

0078601

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2011-12
Date: July 19, 2011
Subject: Hospital District Board, charter oversight duties

Mr. Samuel S. Goren
Goren, Cheroff, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Port Lauderdale, Florida 33308

RE: SPECIAL DISTRICTS - HOSPITALS - MALFEASANCE - CHARTERS
- OVERSIGHT - charter oversight duties of hospital
district's board of commissioners; non-interference clause.
Chs. 2006-347 and 2007-299, Laws of Fla.

Dear Mr. Goren:

On behalf of the North Broward Hospital District, you have
asked for my opinion on the following questions:

1. How are the members of the North Broward Hospital District's Board of Commissioners able to exercise their "charter oversight duties," if at all, given the "explicit segregation of duties between the functions of operational management of the district and oversight by the board," as stated in the district charter, as amended?
2. Are the board members of the North Broward Hospital District permitted to utilize their prerogative to give direction to or interfere with employees, officers, or agents under the direct or indirect supervision of the district's President/CEO for the limited purpose of "inquiry or information" as individuals, or must they exercise such option as a whole collegial body?
3. Since violations of the non-interference provision of the 2007 act specifically constitute "malfeasance within the meaning of Article IV, s. 7(a) of the Florida Constitution," how is this section to be enforced and what are the penalties for violations thereof?

In sum:

1. The Legislature has expressed its intent that members of the board of commissioners refrain from operating in a management role while also performing charter oversight duties in what appears to be policy language in section 5(2), Chapter 2007-299, Laws of Florida. In the directory language of the amendment, members of the board are required to refrain from giving direction to or interfering with employees or others under the supervision of the President/CEO, with the exception of inquiry and information gathering.

2. An individual member of the board of commissioners of the North Broward Hospital District may ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district, but may not otherwise give direction to or interfere with any such employee.

3. The provisions of section 5(2) of the charter specifically make a violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which sets forth the procedure for disposition of an order of suspension by the Governor.

The North Broward Hospital District (the "district") is an independent special taxing district created in 1951 by chapter 27438, Laws of Florida, to meet the health care needs of the people of the district. [1] The district is governed by a seven member board of commissioners (the "board") appointed by the Governor. [2] The enabling legislation for the district and subsequent amendments were recently recodified in Chapter 2006-347, Laws of Florida, which is the district's charter. In 2007, the charter was amended to include a "non-interference" provision and to require that the board adopt a code of conduct and ethics. [3] As provided in the district's bylaws:

"The Board shall guide the North Broward Hospital District and all of its facilities, common divisions and wholly owned entities toward the efficient and effective provision

of quality health care, education and research. The powers of the Board of Commissioners shall be employed so as to ensure that the welfare and health of the patients and the best interests of the hospitals and facilities of the District are at all times served." [4]

You have requested this office's assistance in determining how the board of commissioners of the North Broward Hospital District may comply with the legislative directive expressed in section 5(2), Chapter 2007-299, Laws of Florida, which provides:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the charter oversight duties contemplated by creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and oversight by the board of commissioners. Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision of the President/CEO. Such action shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution. Nothing contained herein shall prevent a commissioner from referring a citizen complaint to the President/CEO or to the board of commissioners or providing information about any issue to the President/CEO or to the board of commissioners." (e.s.)

Question One

This office is authorized to provide legal opinions on questions of state law; we have no authority to provide district boards or commissions with detailed suggestions as to how they may accomplish the work of the district for which they were appointed. As such, I must advise you that this office cannot direct how members of the board of the North Broward Hospital District should accomplish their duties.

Your first question relates to the scope of the oversight

duties of the North Broward Hospital District's board of commissioners as limited by Chapter 2007-299, Laws of Florida. The language of section 5(2), Chapter 2007-299, Laws of Florida, which has prompted your question appears to be language reflecting the intent of the Legislature rather than language directing the board to perform some action:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the charter oversight duties contemplated by creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and oversight by the board of commissioners."
(e.s.)

As demonstrated above, these sentences are phrased in terms of legislative findings and intent, but these statements do not require any particular action by the board or provide any direction as to how such action should be accomplished. [5] The operative provision is the sentence stating that "[e]xcept for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee" It is through this provision that the Legislature chose to accomplish its stated intent of separating the management and oversight of the district. [6]

Question Two

Your second question requires consideration of the language of the 2007 amendment of the charter/special act which provides:

"It is . . . the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. . . . Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision

of the President/CEO." [7]

Concerns have been expressed that this language would restrict the ability of individual board members to directly engage district staff working under the supervision of the President/CEO for purposes of inquiry or for informational purposes.

While this office recognizes that section 5(2), Chapter 2007-299, Laws of Florida, provides that "the board of commissioners (should) only exercise its oversight function as a whole body and not through the actions of any individual commissioner[;]" the act also specifically authorizes individual members of the board to give direction to district employees within the supervision of the President/CEO for purposes of inquiry and information seeking. As discussed more fully in my response to Question One, the legislative intent/policy language suggesting that the oversight function of the board should only be exercised "as a whole body" is not expressed in terms requiring particular action by the board. Rather, this language appears to constitute a statement of intent by the Legislature as to the purpose and construction of the operative provisions of the 2007 legislation that an individual member may not direct or interfere with these employees except for inquiry and information purposes.

The charter clearly gives individual members of the board the authority to ask questions or request information from staff of the district or others who may come within the supervisory authority of the President/CEO. Members of the board may not otherwise, without committing malfeasance, give directions to or interfere with these employees of the district. This legislative prohibition would appear to be directed toward the "functions of operational management" mentioned elsewhere in section 5, Chapter 2007-299, Laws of Florida. Thus, in order to accomplish the legislatively declared object of segregating the oversight function from the operational management of the district, these provisions should be read together and harmonized. [8] Further, courts are bound to ascribe reasonableness to the intention of the Legislature and a reasoned construction to its enactments. [9] Staff analysis for the 2007 legislation appears to support this reading of the act and states that "[a] board member that gives direction or interferes with any employee under the supervision of the President/CEO, except for inquiry, will have conducted malfeasance . . .

. " [10]

Therefore, it is my opinion that an individual member of the board of commissioners of the North Broward Hospital District may directly ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district. In asking questions or seeking information, the board members need not act as a collegial body. However, section 5, Chapter 2007-299, Laws of Florida, makes clear the Legislature's intent that no individual member of the board may give direction to or interfere with any such employee outside the scope of inquiry and information seeking without violating the charter.

Question Three

Finally, you have asked for direction in determining enforcement options and penalties for violations of section 5(2) of the charter. The language of the special act specifically provides that violations of this section "shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."

Article IV, section 7 of the Florida Constitution provides for suspensions by the Governor and filling of any vacancy created by such a suspension:

"(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor."

If the officer is not reinstated by the Governor, the Senate may remove him or her from office or reinstate the suspended official. [11] The provisions of Part V, Chapter 112, Florida Statutes, set forth procedures for the disposition of the order of suspension by the Governor implementing the constitutional provision [12] and specifying such matters as the contents of such a

suspension order[13] and the prosecution of the suspension before the Senate.[14]

Moreover, Article I, section 18, Florida Constitution, provides that "[n]o administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." As the court recognized in *Broward County v. La Rosa*, [15] the phrase "by law" contemplates an enactment of the Legislature,[16] Thus, the district, as an administrative agency,[17] has no authority to prescribe penalties for violations of its charter except those the Legislature has adopted. Section 5, Chapter 2007-299, Laws of Florida, contains no other provision for penalties or enforcement for violations of the "non-interference" provision.[18]

In sum, it is my opinion that the provisions of section 5(2) of the charter specifically make violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which provides the procedure for disposition of an order of suspension by the Governor.

Sincerely,

Fam Bondi
Attorney General

PB/tgh

[1] See s. 3, Ch. 2006-347 and s. 1, Ch. 2007-299, Laws of Fla.

[2] See s. 3, Ch. 2006-347, Laws of Fla.; Art. I, s. 1-2, Bylaws of the North Broward Hospital District and Broward General Medical Center, North Broward Medical Center, Imperial Point Medical Center, Coral Springs Medical Center.

[3] This office is aware that the district's bylaws were last revised in 1991. See Bylaws of the North Broward

Hospital District, Editor's note, p. 37. The board may wish to update the district's bylaws to reflect the more recent legislative directives considered herein and more fully delineate the operational management duties and charter oversight duties of the President/CEO and the board. This office has no information regarding the situation existing in the district which gave rise to the adoption of Ch. 2007-299, Laws of Fla., which could provide guidance, but would suggest that some investigation into the situation surrounding the amendments could be helpful in effectuating the legislative intent expressed in the act. See, e.g., *Singleton v. Larson*, 46 So. 2d 186 (Fla. 1950) (in construing a statute, court will consider its history, evil to be corrected, intention of Legislature, subject to be regulated, objects to be obtained and will be guided by legislative intent); *State v. Webb*, 398 So. 2d 620 (Fla. 1981); *State v. Anderson*, 764 So. 2d 848 (Fla. 3d DCA 2000).

[4] Art. I, s. I-4, Bylaws *supra*.

[5] See *Bledsoe v. Palm Beach Soil and Water Conservation Dist.*, 942 F.Supp. 1439, reversed 133 F.3d 816, rehearing and suggestion for rehearing denied, 140 F.3d 1044, certiorari denied, 119 S.Ct. 72, 525 U.S. 826, 142 L. Ed. 2d 57 (in ascertaining plain meaning of statute, court should look not only to discrete portion of statute at issue, but to design of statute as whole and to its object and policy).

[6] *Cassott v. Cessna Aircraft Co.*, 742 So. 2d 493 (Fla. 1st DCA 1999) (When construing a statutory provision, court is guided by the rule that the intent of the Legislature is the overriding consideration.); *State, Dept. of Revenue v. Kemper Investors Life Ins. Co.*, 660 So. 2d 1124 (Fla. 1st DCA 1995) (When construing statutes, primary purpose designated should determine force and effect of words used, and no literal interpretation should be given that leads to unreasonable ridiculous conclusion or purpose not intended by Legislature).

[7] Section 5, Ch. 2007-299, Laws of Fla.

[8] See *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452 (Fla. 1992) (all parts of a statute must be read together in order to

achieve a consistent whole); *State v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).

[9] *City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983); *Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981); *City of Dania v. Hertz Corporation*; 518 So. 2d 1387 (Fla. 4th DCA 1988).

10 See House of Representatives Local Bill Staff Analysis, CS/HB 1391, p.2, dated April 11, 2007.

[11] Section 7(b), Art. IV, Fla. Const.

[12] Section 112.40, Fla. Stat.

[13] Section 112.41, Fla. Stat.

[14] Section 112.43, Fla. Stat.

[15] 484 So. 2d 1374 (Fla. 4th DCA 1986). And see *Broward County v. Plantation Imports, Inc.*, *infra*, in which the court struck down a provision of the Broward County Consumer Protection Code which authorized the county Consumer Protection Board to determine if there were violations of the Code and impose civil penalties for violation of any cease and desist orders. The court held the provision authorizing an administrative agency to impose a penalty, without such authority being provided by legislative act, was unconstitutional.

[16] See *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Ison v. Zimmerman*, 372 So. 2d 431 (Fla. 1979); Op. Att'y Gen. Fla. 79-109 (1979).

[17] See, e.g., Ops. Att'y Gen. Fla. 09-53 (2009) (mosquito control district is administrative agency for purposes of Art. I, s. 18, Fla. Const.); 09-29 (2009) (county precluded from adopting ordinance imposing civil penalty); 01-77 (2001) (city code enforcement board may not alter statutory provisions to authorized imposition of fine).

[18] Section 5(3)(a), Ch. 2007-299, Laws of Fla., also makes failure to comply with the provisions of the district's code of conduct "malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 16-79 (Executive Order of Suspension)

WHEREAS, Darryl Wright, is presently serving as a Governor-appointed commissioner on the North Broward Hospital District Board of Commissioners and Chair of its Audit Committee; and

WHEREAS, on March 18, 2016, the Chief Inspector General of the State of Florida reported grave concerns regarding interference by Board members with her ongoing investigation into the North Broward Hospital District; and

WHEREAS, members of the Board of Commissioners are prohibited from giving direction to or interfering with any employee, officer, or agent under the direct or indirect supervision of the President/CEO, and violations of this non-interference clause constitute malfeasance. *See* chapter 2007-299, Laws of Florida; and

WHEREAS, the Governor may issue an order of suspension for acts of malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties. *See* sections 112.51 and 112.511, Florida Statutes; and

WHEREAS, it is in the best interests of the residents of Broward County, and the citizens of the State of Florida, that Darryl Wright be immediately suspended from the public office to which he was appointed to by the Governor, and now holds, upon the grounds set forth in this executive order;

NOW, THEREFORE, I, RICK SCOTT, Governor of Florida, pursuant to sections 112.51 and 112.511, Florida Statutes, find as follows:

A. Darryl Wright is, and at all times material was, a member of the North Broward Hospital District Board of Commissioners.

B. The office of Commissioner of the North Broward Hospital District is within the purview of the suspension powers of the Governor, pursuant to sections 112.51 and 112.511, Florida Statutes.

C. The attached letter reports past and ongoing conduct in violation of the non-interference clause, which constitutes malfeasance and threatens the integrity of the Chief Inspector General's investigation into allegations of fraud, waste, and abuse within the North Broward Hospital District. This suspension is predicated upon the attached letter, and is incorporated as if fully set forth in this Executive Order.

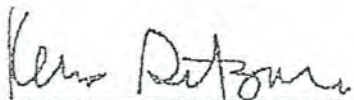
BEING FULLY ADVISED in the premises, and in accordance with the Constitution and the laws of the State of Florida, this Executive Order is issued, effective today:

Section 1. Darryl Wright is suspended from the public office to which he was appointed by the Governor, and now holds, to wit: Commissioner for the North Broward Hospital District.

Section 2. Darryl Wright is prohibited from performing any official act, duty, or function of public office, and from being entitled to any of the emoluments or privileges of public office during the period of this suspension, which period shall be from today, until a further Executive Order is issued (possibly at the conclusion of the Chief Inspector General's investigation), or as otherwise provided by law.



ATTEST:


SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 18th day of March, 2016.


RICK SCOTT, GOVERNOR

2016 MAR 18 PM 1:37
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED

Tab 2

March 18, 2016

Melinda M. Miguel
Chief Inspector General
Office of the Chief Inspector General
Executive Office of the Governor
Room 1902, The Capitol
Tallahassee, FL 32399-0001

Re: Administrative Review 2016-01280006

Dear Ms. Miguel:

We are extremely disappointed by your letter recommending to the Governor the suspension of David Di Pietro and Darryl Wright from their positions as Chair of the Board of Commissioners (the "Board") and Chair of the Audit Committee for the North Broward Hospital District, respectively. Since the tragic death of Dr. Nabil El Sanadi, the Board has sought to insure that Broward Health has leadership in place that can restore the confidence and trust of its employees in order to serve its primary function of providing superior healthcare to the citizens of Broward County. Your actions today lead us to question your stated objective of assuring the Governor that the members of the Board are acting within their proper oversight role. Instead, it appears that you are intent upon destroying the very concept of a community-owned and operated public healthcare system.

On March 16, 2016, faced with widespread criticism among senior management that there was a leadership crisis that was threatening the ability of Broward Health to provide basic services to its patients, the Board responded by majority vote, replacing interim CEO Kevin Fusco with veteran Broward Health administrator Pauline Grant. Criticisms of General counsel Lynn Barrett were directed at the fact that there was a backlog in processing physician contracts which left the regional hospitals without the assurance that they would be able to fill the necessary range of specialties. Again, the Board voted unanimously to review Ms. Barrett's performance in 30 days. Contrary to your letter to the Governor, these Board actions had nothing to do with the email sent by Mr. Fusco that advised employees that they were free to contact your Office, nor with any other retaliatory motive. In fact, as you know, it was initially Commissioner Di Pietro who sent an open letter to all Broward Health employees advising them at your request that they were free to contact your Office directly without fear of retaliation or other adverse personnel action. The Board voted to appoint Ms. Grant in an effort to stabilize the management of Broward Health by putting at the helm an experienced administrator who had previously managed the system's 409-bed Broward Health North Medical Center. These efforts have now

been undermined by your misdirected recommendation that the leadership of the Board of Commissioners be suspended.

We are further dismayed by your allegation that our work as Special Legal Counsel for the Board somehow interferes with your review. On February 24, 2016, the Board of Commissioners appointed this firm to assist its Audit Committee in responding to the administrative review being conducted by your Office and to conduct other investigations as necessary. In response to your demand, the Board appointed a liaison with whom you would interface regarding your review of documents and scheduling of interviews, the Board promptly responded by appointing Chief Internal Auditor, Vinnette Hall, to serve as the liaison. As Ms. Hall is not an attorney, she stated at this Board meeting that she would find the advice of outside counsel of great assistance to her in responding to your requests.

Since the time of our engagement, we assured you in our letter of March 1, 2016, that we wished to provide you with timely and complete information to satisfy your review including providing voluntary access to Broward Health employees and full access to any relevant documents that you might request. In light of the extensive requests made by your Office to Broward Health, we have assisted Ms. Hall in responding to document requests. We responded to document requests producing extensive records with our letters to you of March 2, and March 9, 2016. We attended witness interviews with the express consent of your investigator, as you acknowledged in your letter of March 1, 2016, so that the Board would be able to provide informed responses to you. Initially, you contacted Ms. Hall to arrange interviews of Broward Health employees, but in recent weeks you have circumvented this orderly process and are interviewing Broward Health employees without contacting Ms. Hall, giving the impression that you are conducting a covert investigation rather than a review, in direct contradiction to your assertions.

On March 15, 2016, you made greatly expanded requests for documents that covered a myriad of subjects not limited to the Board's oversight responsibilities or focused in any perceivable way on the interference of any Board member in the operations of Broward Health. At the direction of the Board, we requested a meeting with you together with Audit Committee Chair Darryl Wright, Internal Auditor Vinnette Hall and Melanie Hines in order to clarify your requests and hopefully to learn what specific information would aid your review rather than to produce thousands of documents that are likely irrelevant to the scope of any properly tailored review that your Office would be authorized to conduct. You refused to grant us this meeting, and instead sought the suspension of the Audit Chair and have now accused our firm of interfering with your review.

As you know, the Governor has no jurisdiction over the operations of the North Broward Hospital District, nor the activities of its managers. The Governor's jurisdiction is limited to the fitness of a given Commissioner or Commissioners to hold the office to which he has appointed them. Yet, you have asserted that you have the jurisdiction to demand thousands of contracts, procurement arrangements and other agreements and should be given access to the personnel records of Broward Health employees including portions of which are protected from disclosure under the Public Records Act. You have rebuffed our efforts to identify specifically the

March 18, 2016

Page 3

Commissioner or Commissioners whom you believe to have acted outside the proper scope of his or her position, the specific nature of the activity under review or any events that may have triggered your inquiry. Although you have made pointed accusations that members of the Board have acted improperly, you would deprive the Board of its right to hire counsel to advise it in the face of what has every appearance of being nothing more than an attempt to disrupt Broward Health.

Under Florida law, it is your “duty and responsibility” to “[c]omply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.” Section 20.055(2)(j), Florida Statutes. You have indicated that your Office is conducting a “review.” The Inspector General Standards for Inspections, Evaluations, and Reviews (“Standards”) require that “[d]ue professional care should be used in conducting inspections, evaluations, and reviews and in preparing accompanying reports.” [Standards, pg. 35]. Among other things, “[d]ue professional care includes obtaining, to the extent possible, a **mutual understanding** of the inspection, evaluation or **review scope**, objectives, findings, and conclusions *with the entity being reviewed.*” Id. (Emphasis added). This is the cooperation that we have sought to provide to you and that you have refused.

Unfortunately, it is the patients and the public who stand to suffer. We hope that you will reconsider your recent actions and work with us to identify, resolve and to correct any issues that may exist with the functioning of the Board of Commissioners or the actions of any of its members.

Sincerely,

Berger Singerman LLP

Mitchell W. Berger

MWB:wp

Tab 3

March 21, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORG

Vinnette Hall, Chief Internal Auditor
North Broward Hospital District
1700 N. W. 49th Street
Ft. Lauderdale, FL 33309

Re: Response to letter of Chief Inspector General to the Governor, dated March 18, 2016

Dear Ms. Hall:

I write in response to the allegations of the Chief Inspector General in her letter to the Governor dated March 18, 2016, concerning my appearance as counsel for the Board and its Audit Committee during the interviews of three Broward Health employees held by her staff on February 25, 2016.

Please be aware that the Chief Inspector General's staff expressly allowed me to be present during the interviews, and on tape, asked me if I consented to being recorded if I made any statements. Five days after the interviews, in her letter of March 1, 2016, to Chair Di Pietro, the Chief Inspector General acknowledged that I was "**granted access**" to the interviews by her staff. [Exhibit A, emphasis added]. Nowhere in that letter did the Chief Inspector General claim that any of the witnesses registered any objection to my attendance during the interviews. In fact, in her letter of March 1st, the Chief Inspector General did not impose a ban on our attendance at future interviews, but instead stated that our requests to attend any upcoming interviews would be "evaluated on a case-by-case basis." We responded to the Chief Inspector General's letter the same day, indicating why I had attended the interviews: "for the purpose of insuring that [the Inspector General] received full and complete information both from the witnesses and through any follow-up as necessary." (Exhibit B).

In her letter of March 18th, written three weeks after the interviews, and with no further dialogue with us on this issue, the Chief Inspector General now claims that "one person interviewed that day said that he thought he had been misled by his employer, Broward Health, and the other did not want her there even though she insisted on staying."

The first phrase of her claim (one person . . . said he thought he had been misled by his employer, Broward Health) has nothing to do with me or our firm. The phrase refers to the following facts which the Chief Inspector General's staff heard quite clearly on the day of the

interviews. On that date, a Mr. Mark S. Thomas, an attorney from Gainesville, Florida, appeared with one of the witnesses. When I asked Mr. Thomas if he represented the witness personally, he replied that he had been retained by the Hospital District to represent both the witness and the Hospital District. The witness was completely caught off guard by this revelation, stating that he thought Mr. Thomas represented him personally, and only him. When I pointed out to Mr. Thomas that the Board had retained our firm for purposes of assisting with the Inspector General's review, and that the District's counsel had no role in this matter any longer, Mr. Thomas consulted privately with the District's General Counsel, Ms. Lynn Barrett, then consulted privately with the witness, and then he left. If the witness felt he had been "misled by his employer, Broward Health" he was not referring to me or to our firm. If the Inspector General's staff thought that the witness had any misapprehensions about going forward with the interview without counsel of his choosing, they should not have gone forward with it at that time.

The second half of the Inspector General's allegation that another witness did not want me there is equally flawed. Again, if the Chief Inspector General's staff believed I was hindering their interviews in any way, or intimidating the witnesses, as implied in the letter, the Inspector General's staff had an obligation to make a contemporaneous record of it on the audio-tape, and to ask me to leave, but they did neither. To repeat: the Inspector General's staff raised **no objection** to my presence and in fact, asked me, on tape, if I consented to being recorded on audio-tape, which I did. I was, as the Chief Inspector General said in her letter of March 1, 2016, "**granted access**" to the interviews.

I ask that you provide a copy of my letter to the Board and the Audit Committee to ensure an accurate record of the events in which I was involved.

Sincerely,

Berger Singerman LLP



Melanie Ann Hines

Enclosures

MAH/sf

EXHIBIT A



RICK SCOTT
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

March 1, 2016

David DiPietro, Chair
North Broward Hospital District Board of Commissioners
1608 Southeast Third Avenue
Ft. Lauderdale, FL 33316

Dear Chair DiPietro:

On February 25, 2016, attorney Melanie Hines, of Berger Singerman, was granted access to interviews conducted by my staff relating to our review of North Broward Hospital District (Broward Health). According to Ms. Hines, she sought access to these interviews due to a relationship with the Broward Health Audit Committee and the Board of Commissioners. As of this morning, I have requested a Representation Letter from Ms. Hines. Specifically, I've asked that her firm identify their client, any conditions upon which representation may exist (official capacity, individual capacity, etc.), and the basis for requesting attendance in any interviews conducted by my office.

Requests for attendance in any upcoming interviews will be evaluated on a case-by-case basis and contemporaneous requests will not be granted. Further, we reserve the right to exclude third parties from an interview at any time in the best interests of our review.

In addition, I request that Broward Health take no official or unofficial action that could be construed as adverse personnel or retaliatory action against any person participating in this review. I am also requesting that employees of Broward Health be advised that they may contact the Office of the Chief Inspector General directly without fear of adverse personnel or retaliatory action. Employees should be advised to contact Marvin Doyal or Erin Romeiser at (850) 717-9264, if they have any information that may assist us in our review. This notice to Broward Health employees would go a long way to demonstrate transparency and cooperation with our review.

As you know, we expect full cooperation during our review of matters concerning Broward Health and we expect to continue our review without any delay or interference.

Thank you for your attention to these important requests.

Sincerely,

A handwritten signature in blue ink that reads "Melinda M. Miguel".

Melinda M. Miguel
Chief Inspector General

cc: Broward Health Commissioners
Broward Health Internal Auditor
Broward Health Director of Corporate Security
Broward Health Chief Compliance Officer
Broward Health General Counsel

EXHIBIT B

March 1, 2016

**VIA UNITED STATES
AND ELECTRONIC MAIL**
(Melinda.miguel@eog.myflorida.com)

Ms. Melinda Miguel
Chief Inspector General
Office of the Chief Inspector General
Room 1902, The Capitol
Tallahassee, FL 32399-0001

Re: Office of the Chief Inspector General; Administrative Review 2016-01280006

Dear Ms. Miguel:

I received a copy of your letter to Chair David DiPietro of the North Broward Hospital District Board of Commissioners and your request for a Representation Letter from me.

On February 24, 2016, the Board of Commissioners of the North Broward Hospital District (the "Board") voted to retain our firm to act as special legal counsel for the Board to assist its Audit Committee in responding to the above-referenced administrative review being conducted by your Office and to conduct other investigations as necessary. Our role is to represent the Board, to assist the Audit Committee in responding to any requests made by your Office and to apprise the Board of any potential misconduct within the Hospital District so that the Board will be able to provide the necessary assurances to its Outside Auditor, to communicate effectively with the bond rating agencies and to exercise appropriate oversight by insuring that management is in compliance with the Corporate Integrity Agreement. We do not represent any member of the Board individually.

Mr. Doyal advised that because the Governor has authority to appoint and can remove Commissioners for malfeasance, the Governor has asked your Office to conduct an "administrative review," focusing on section 5 of Section 3 of the District's Charter concerning non-interference and decision making. As counsel for the Board, we also have an interest in making sure that no individual Board member has acted outside his or her authority.

As stated at the meeting on February 24, 2016, the Board is committed to providing full and complete cooperation with your review. I attended the interviews conducted by Your Deputy Mr. Doyal with his permission for the purpose of insuring that you received full and complete

Ms. Melinda Miguel
March 1, 2016
Page 2

information both from the witnesses and through any follow-up as necessary. In our view, our participation is essential for us to be able to advise our client, the Board, as to any concerns that you may have about their actions so that they might address those concerns as quickly as possible.

In short, our goal is to provide you with timely and complete information to satisfy your review, as to documents, witnesses and any other information that may be relevant. In light of recent allegations, we also have been tasked by the Board to provide them with accurate information as to any issues within the Hospital District that should be addressed by its Audit Committee. In that regard, I respectfully request that you and I coordinate on a way for employees to communicate any information they may have regarding your review or any other concerns in a manner that protects employees against any adverse personnel or retaliatory action consistent with the Corporate Integrity Agreement and the Broward Health Code of Conduct.

We share your interest in insuring that the North Broward Hospital District and its Board act with integrity to serve its patients and the public.

Sincerely,

BERGER SINGERMAN LLP

A handwritten signature in black ink, appearing to read "Melanie Ann Hines", is written over the printed name below.

Melanie Ann Hines

MAH:apw

Tab 4

March 29, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORGVinnette Hall, Internal Auditor
North Broward Hospital District
1700 N. W. 49th Street
Ft. Lauderdale, FL 33309

Re: Wayne Black Internal Investigation

Dear Ms. Hall:

In connection with our investigation of certain actions of the North Broward Hospital District (the "District"), we have reviewed certain issues related to consulting agreements entered into between the District and private investigator Wayne Black. **We update our preliminary findings noting our changes in red for your ease of reference:**

1. On March 19, 2015 and August 31, 2015, Dr. El Sanadi entered into two consulting agreements with Wayne Black & Associates, Inc. The scope of work described by the first agreement was "Risk and Security Consultant Services," and the second listed three items: "1. Risk and Security Services; 2. Procurement RFP Process and 3. Any other assignments as directed by President /CEO."

2. Notwithstanding the Charter of the Audit Committee and the Internal Audit Department which directs that the Audit Committee and Internal Audit Department should evaluate and report on "compliance with applicable laws, rules and regulations" and "hire experts to assist in special reviews, if necessary," there is no evidence that the Audit Committee or the Board of Commissioners was made aware of Mr. Black's contracts or activities until January 2016. Nor is there any indication that Mr. Black's open-ended engagement was limited to a definite time frame or to any specifically defined issues.

3. According to Mr. Black, Dr. El Sanadi asked him to investigate various rumors concerning corruption in the procurement process at Broward Health. Among these rumors was the allegation that Commissioner Darryl L. Wright had a relationship with Corporate Procurement Officer and Director of Materials Management Brian Bravo dating back to a common military career that threatened the integrity of the procurement process. Dr. El Sanadi later told Director of Corporate Security Carlos A. Perez-Irizary that he was getting "calls from Tallahassee" about the connection between Wright and Bravo. Mr. Black found no evidence to

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support this allegation and determined that Wright and Bravo had served in the Army at different times and in different units.

4. Mr. Black took issue with the fact that the policy at Broward Health was not to release confidential employee information to law enforcement without a subpoena and that this policy had caused Broward Health's name to be "mud" in the law enforcement community. At one point in his investigation, Mr. Black demanded employee Social Security numbers from Ms. Dionne Wong, Senior Vice President and Chief Human Resources Officer, asserting that he wished to give them to law enforcement. Ms. Wong obtained a legal opinion to support her position that such information should not be provided without a subpoena.

5. Mr. Black focused his internal investigation on the procurement department and in particular on Brian Bravo. He refused to share his findings with General Counsel Lynn Barrett or to disclose the names of any witnesses with whom he had spoken. He informed Dr. El Sanadi and Ms. Barrett that he had gone directly to the FBI with this information. Although Florida Statutes §493.6119 provides that the confidential work product of a licensed private investigator may not be disclosed to anyone other than the client without the prior written consent of the client, there is no indication that Mr. Black was given prior written authority by the District to disclose any of his work product or other confidential information from Broward Health to the FBI.

6. According to Ms. Barrett, Mr. Black represented to her and to others that he was working "under the direction of the FBI." In early September 2015, according to the General Counsel, Black told her that he believed that documents were about to be imminently destroyed and that "evidence needed to be preserved." Black said that he suspected that Bravo was "on to his investigation" and that there were people in IT who "could not be trusted." **According to Ms. Barrett, Mr. Black was particularly suspicious of Doris Peek and Reynaldo Montmann. For this reason, Mr. Black told Ms. Barrett that she needed to hire outside vendors to image computers and copy documents immediately or that she would be "interfering with his investigation."**

7. **In a follow-up interview, Doris Peek related that Dr. El Sanadi had received a report from Lynn Barrett that Brian Bravo was destroying paper documents which had greatly upset him. Dr. El Sanadi asked Ms. Peek if she was able to make sure nothing electronic was being destroyed, but she told him that there was no way to prevent an employee from deleting a file. Ms. Peek said that she cooperated fully with Mr. Black and that he had no reason to distrust her. According to Ms. Peek, Wayne Black subsequently confirmed to Ms. Peek that he had never expressed any lack of trust in the IT Department and that it had been Lynn Barrett who insisted that outside vendors be brought in to preserve documents because of a concern that they were being destroyed. She also said that Reynaldo Montmann who worked in IT was unfamiliar to Mr. Black. According to Ms. Peek, he is a Baptist preacher who is on the technical side of the IT Department and would not have access to the contacts in the procurement database.**

8. According to Wayne Black, it was Dr. El Sanadi who told him that Brian Bravo was destroying evidence, but he wouldn't disclose how he knew this. Mr. Black also claimed

that he thought that Dr. El Sanadi was briefing Chairman of the Board of Commissioners David DiPietro on the investigation and that Mr. Di Pietro would inform the other Board members. We found no evidence that Mr. Di Pietro or any other Board was apprised of the nature of Mr. Black's investigation, the search conducted at Broward Health or Mr. Black's contacts with the FBI.

9. At Mr. Black's and Dr. El Sanadi's insistence, Ms. Barrett retained Foley & Lardner LLP and an outside vendor to image computerized data and to copy documents from Mr. Bravo's Office. Mr. Black wanted to turn this information directly over to the FBI, but Ms. Barrett first wanted to conduct a privilege review of the documents. Although Dr. El Sanadi instructed Mr. Black to work with General Counsel Lynn Barrett, Black refused and said he would cooperate only with a lawyer that he selected, Ryan Stumphauzer.

10. On September 10, 2015, Ryan Stumphauzer, Esq. was hired by Lynn Barrett for the purpose of interfacing with Mr. Black. The idea was for all information from Broward Health to pass through legal before being disclosed to the FBI. Mr. Stumphauzer attempted to assist in drafting a *Kovel* letter that would require Mr. Black to coordinate his investigation with counsel. Although the *Kovel* doctrine has been invoked for over half a century to preserve the attorney-client privilege when outside experts are employed to conduct an internal investigation, Mr. Black refused to sign the *Kovel* letter and has publicly accused Ms. Barrett of obstruction of justice for her handling of the documents and other physical evidence obtained during the September search. We have found no factual or legal basis for the allegation made against Ms. Barrett.

11. In October, 2016, internal auditor Vinnette Hall discovered that a relative of Mr. Bravo owned a company that was doing business with the District and that Mr. Bravo had failed to disclose this conflict of interest. Confronted with serious allegations made about Mr. Bravo, Dr. El Sanadi expressed to Ms. Barrett and Mr. Carlos A. Perez-Irizarry his desire to terminate Mr. Bravo as Corporate Procurement Officer and Director of Materials Management. Mr. Black told Dr. El Sanadi that the FBI wanted to keep Mr. Bravo in place so that they could "flip him" and conduct a "sting operation." Mr. Bravo was not terminated until December 14, 2015.

12. On October 19, 2015, Carlos A. Perez-Irizarry was hired as Director of Corporate Security and Chief Ethics Officer. Dr. El Sanadi instructed him that he was to take over Mr. Black's investigation and to meet with him in order to transition. Mr. Black was unavailable to meet with Mr. Perez-Irizarry until January 2016. In November, Mr. Perez-Irizarry met with the FBI. He asked whether they had probable cause to arrest Mr. Bravo and they replied "no." Mr. Black told us in March 2016 that he knows of no evidence that any Broward Health contract either past or present had been obtained through kickbacks, bribes or any other improper financial incentive.

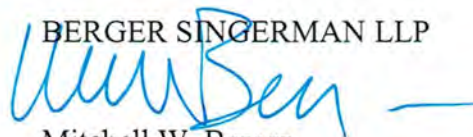
13. Although Mr. Black was instructed to stop any further work for the District and his access to Broward Health was cut off by Kevin Fusco at Dr. El Sanadi's instruction, Mr. Black was not formally provided with a Notice of Termination until March 2016.

14. We have attempted to contact both the FBI and the U.S. Attorney's Office to determine their level of oversight, if any, with respect to Mr. Black's activities, but we were unable to reach them as of this time.

Having reported to each of you individually, we are memorializing this report about Wayne Black's investigation to you in writing. Should you have any further questions, please contact me at your convenience.

Respectfully submitted,

BERGER SINGERMAN LLP



Mitchell W. Berger

Tab 5

March 21, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORGVinnette Hall, Internal Auditor
North Broward Hospital District
1700 N. W. 49th Street
Ft. Lauderdale, FL 33309**Re: G4S Secure Solutions (USA) Inc.**

Dear Ms. Hall:

As you know, this firm has undertaken an investigation of certain actions of the North Broward Hospital District ("Broward Health") and its Governing Board, including but not limited to the RFP process for the security contract with G4S Secure Solutions (USA) Inc. ("G4S"). The following is a summary of our findings to date:

1. Broward Health and G4S entered into a Service Agreement which was effective from June 1, 2010 through May 31, 2015, and subsequently extended through August 31, 2015.
2. During the short-term extension of the existing G4S contract, a request for proposals (RFP) was issued and six vendors, including G4S completed the RFP.
3. At some point during the RFP process, Dr. El Sanadi raised concerns to Wayne Black about potential wrongful interference with the bidding process for the a new security contract. According to Wayne Black, "Bravo was all over this \$4M contract." Black claimed that the RFP had been drafted by the incumbent G4S, that Bravo was on the scoring committee, that someone from G4S improperly had card access to Broward Health's system, that Commissioner Darryl L. Wright had tried to insert himself in the scoring process and that G4S was given an inside track even though they had failed to produce full financial information as required by the RFP.
4. Sourcing Manager Juan Ugalde worked under Brian Bravo and was familiar with the RFP process for the security contract. Ugalde said that he drafted the scope for the RFP and that it was presented for review to the Procurement Steering Committee and released in March 2015. Pre-bid meetings were set up at five (5) locations and overseen by the Chief Experience Officer. The sealed bids were

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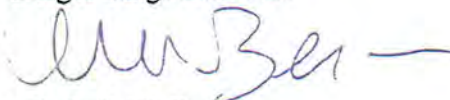
opened in front of the vendors a public meeting. Neither Ugalde nor Bravo were on the scoring committee; Ugalde said that Bravo had no involvement in scoring the bids and never heard anything about Commissioner Wright wanting to be part of the scoring process. In response to a complaint made to Compliance that Ugalde was influencing the process, an internal review was performed by internal auditor Nigel Crooks, and the outcome was that Ugalde had not influenced the process.

5. Mark Sprada, Vice President and Corporate Chief Nursing Officer for Broward Health served on the scoring committee for the security contract. Sprada said G4S was one of the bidders. Although it was one of the top four (4) bidders, G4S was penalized for failing to provide financial information and was not in line to be recommended for the contract based on the scores of the scoring committee.
6. According to Sprada, Wayne Black repeatedly claimed that Darryl L. Wright was on the scoring committee although it was pointed out to him several times that this was not true. Black also said that there was a G4S employee who had badge access everywhere, but according to Sprada this was investigated and found not to be true. Black further claimed that he had "heard in the community" that someone from G4S was bragging that G4S would get the contract because of a relationship with Commissioner Darryl L. Wright. As noted, G4S was not the highest bidder and was not in line to be recommended for the contract based on the scores of the scoring committee.
7. Based upon Black's recommendation, Dr. El Sanadi made the decision to withdraw the RFP for the security services contract.

Plainly, these contradictory comments raise further questions, but we have not had an opportunity to inquire further into this matter. Please let us know if you have any questions regarding the foregoing, or wish to discuss this matter further.

Sincerely,

Berger Singerman LLP



Mitchell W. Berger

MWB:nll

Tab 6

March 29, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORGVinnette Hall, Internal Auditor
North Broward Hospital District
1700 N. W. 49th Street
Ft. Lauderdale, FL 33309

Re: Updated Report for the Zimmerman Contract

Dear Ms. Hall:

As you know, this firm is undertaking an investigation of certain actions of the North Broward Hospital District (the "District") and its Governing Board. It is our understanding that a significant area of inquiry in your investigation centers around the District's contract with Zimmerman Advertising. We have now had a chance to update our investigation although, as described below, it remains incomplete. The list of additional work undertaken since the date of our Preliminary Report (March 21, 2016) and the work remaining can be found at the end of this letter. We have noted the changes between this Updated Report and our Preliminary Report of March 21, 2016 in red for your ease of reference.

As of this update, our investigation indicates the following pertinent facts:

1. The Zimmerman contract was entered into on or about May 4, 2015 by then CEO Dr. Nabil El Sanadi. The contract was designed to replace the internal marketing department as well as the outside advertising contract with Beber Silverstein. It was priced at a cost of \$2.1M (\$1.9M for Broward Health generally, and additional amounts for the member hospitals, for a total contract price of \$2.1M) intended to be budget neutral to the District. We have been unable to locate any Board agenda item or other notice to the Board of the contract. Pursuant to Section 1.6 of the District's Procurement Code, contracts for marketing services are not subject to the provisions of the Procurement Code (copy attached). Pursuant to District Policy GA-001-020 (copy attached), contracts for services within Board-approved budgeted amounts do not have to be approved by the Board, although legal review is required. It does not appear that legal review was sought for this contract. According to Ms. Peek, the Zimmerman contract was intended to be budget-neutral although there may have been a short period of time (between contract execution and termination of internal marketing employees and termination of the Beber Silverstein contract) where the marketing budget may have been exceeded for some period of time.

7016393-5

2. According to Doris Peek, the District's Marketing Coordinator, by July 2015, Zimmerman voiced concerns to Dr. El Sanadi and others at the District that the May contract was not sufficient to conduct an effective marketing campaign, and thereafter engaged in a concerted campaign by Zimmerman and Broward County Commissioner and former Zimmerman employee, Chip LaMarca, to convince Dr. El Sanadi that the existing marketing budget was insufficient to do the marketing that the District needed. According to Mr. LaMarca, it was Dr. El Sanadi who desired and initiated the expansion of the Zimmerman contract in order to "drown out" the negative press resulting from the DOJ settlement. Mr. LaMarca's impression of Mr. Zimmerman's motivation to expand his work with the District was purely civic, particularly given Mr. LaMarca's belief that that the additional marketing costs related to the expansion of the contract would have resulted in little to no increased revenue directly for Zimmerman. Mr. LaMarca was not aware of any significant increase in direct revenue to Zimmerman which would result from increasing the amount of advertising placed by Zimmerman. Mr. LaMarca believed the bulk of the revenue Zimmerman would receive was the amount set forth in the base contract of \$2.1M. We have been unable to determine the validity of Mr. LaMarca's beliefs with regard to possible increased revenue to Zimmerman from additional advertising buys as compared to industry standards, nor confirm this matter with Mr. Zimmerman for the reason described in paragraph 11 on page 11 below. While employed by Zimmerman, Mr. LaMarca reported directly to Mr. Zimmerman, had no direct responsibility for Zimmerman's contract with the District, and was paid on a straight salaried basis with no bonus or commission.

3. According to Ms. Peek, a meeting occurred in August 2015 at the request of Dr. El Sanadi attended by Dr. El Sanadi, Ms. Peek and Mr. LaMarca. Mr. LaMarca advises that the meeting occurred on August 25, 2015 and had a calendar appointment on his cell phone to substantiate this. The meeting took place at a Waffle House near the District's offices. Both Ms. Peek and Mr. LaMarca recall that it was Dr. El Sanadi to who chose the location. The purpose of the meeting, according to Ms. Peek, was to discuss Zimmerman's desire to expand its contract with the District and Mr. LaMarca carried the conversation. Mr. LaMarca stated that the purpose of the meeting was for Dr. El Sanadi to seek Mr. LaMarca's advice on how Dr. El Sanadi should approach Mr. Zimmerman about the marketing issue. According to Ms. Peek, she asked Mr. LaMarca at this meeting what his role was to which she was told Mr. LaMarca was to develop new business at Zimmerman. Ms. Peek stated that Mr. LaMarca asked to be part of the marketing working group meetings, and asked her to move them away from Tuesdays since those are County Commission meeting days. Ms. Peek stated that she asked Mr. LaMarca why he wanted to participate in these meetings and he advised her that he wished to identify new opportunities which could be mutually beneficial to the District and Zimmerman. According to Ms. Peek, the marketing working group meeting dates were not changed as a result of this request and Mr. LaMarca did not attend any such meetings. Ms. Peek stated that sometime during this meeting she recalls Mr. LaMarca telling Dr. El Sanadi that "I put you here, and I can take you out." Ms. Peek interpreted that comment in the context of the broader discussion to mean that Dr. El Sanadi needed to support the expansion of the Zimmerman contract or he would lose his job. Mr. LaMarca denies making this statement. According to Mr. LaMarca, there was no discussion of the Board Members at this meeting, nor any discussion about any specifics of

the marketing proposal since the “Brand Tracker” study had not yet been completed and, therefore, Zimmerman had not yet determined a proposed strategy. Mr. LaMarca acknowledged that because of his significant involvement with the Board (see paragraph 22 below), Ms. Peek may have been influenced by his attendance at this meeting and misinterpreted his words. This meeting occurred during the time in which efforts were underway to expand the Zimmerman contract.

4. According to Mr. LaMarca, two back-to-back meetings were held on or about August 26, 2015, the day after the “Waffle House” meeting described in paragraph 3 above. A pre-meeting occurred at the Marriott near the Zimmerman offices attended by Dr. El Sanadi, Ms. Peek, Mr. LaMarca and Ben Porritt, the owner of Outside Eyes to resolve a claim by Outside Eyes that Zimmerman had copied certain work product of Outside Eyes. According to Mr. LaMarca, Dr. El Sanadi mediated the dispute between Outside Eyes and Zimmerman successfully. A second meeting then occurred at the Zimmerman offices. Those present at the second meeting included Jordan Zimmerman, Mr. LaMarca, Dr. El Sanadi, Ms. Peek, Mr. Sutcliffe, Zimmerman’s CEO and chief creative officer, and other members of Mr. Sutcliffe’s team. Mr. Sutcliffe’s team pitched two marketing themes at this meeting, and Mr. LaMarca reports that Dr. El Sanadi preferred the “Whatever it takes” theme. Mr. LaMarca stated that no discussion of a \$2M, \$3M or \$5M option occurred at this meeting, but only a \$10M and a \$15 M option. However, Mr. LaMarca stated that it could have been possible that Ms. Peek and Mr. Sutcliffe had been working on other options. According to Mr. LaMarca, Dr. El Sanadi directed the team at the conclusion of this meeting to “push the \$10M option.” The “\$10M option” would have been for a possible total contract term of six years, and would have been in addition to the base contract of \$1.9M per year for Broward Health for the same term, for an overall possible contract amount over six years of \$71.4M. David Henry, Zimmerman’s Senior Vice President of Strategy was charged with the task of developing performance metrics. Mr. LaMarca viewed Mr. Zimmerman’s relationship with Dr. El Sanadi to be “fractured” during this general timeframe while Zimmerman was pressing to increase the amount of District expenditures for advertising and marketing. Ms. Peek did not mention these meetings during our interviews of her, and we did not have an opportunity to follow-up with her on these meetings.

5. The discussion of a potential amendment to and/or expansion of the Zimmerman contract appears to have begun at the Board level during the District’s budget hearings on September 9 and 24, 2015. A lengthy discussion of the marketing budget and Zimmerman contract occurred at the September 24, 2015 second budget meeting, led by Commissioner David Nieland who asked for “an accelerated marketing plan,” the “allocation of funds” to marketing “now,” and who suggested/requested a shade meeting to discuss marketing and advertising. According to Ms. Peek, Dr. El Sanadi asked her to call into the September 24, 2015 meeting to explain that the marketing figure being requested for the upcoming budget. Specifically, Dr. El Sanadi wanted Ms. Peek to explain to the Board that the request management was making was twice the amount of any amount previously spent by the District on marketing. At the time of this meeting, Ms. Peek had just undergone surgery, was home recuperating, which is why she called in instead of attending in person. Further, the meeting described in paragraph 4 above

occurred prior to this September 24, 2015 budget hearing. We find it noteworthy that no reference to the \$10M option was brought up to the Board by staff at this budget meeting.

6. According to Doris Peek, she together with Bert Sutcliffe from Zimmerman put together a detailed booklet for the Board's consideration containing three distinct options for a marketing campaign together with media tactics in the amounts of a \$ 2M, \$3M and \$5M outlay for advertising and marketing in addition to the \$1.9M fee paid to Zimmerman. Ms. Peek believed that the booklet outlined a marketing strategy for the Board to consider, although she had concerns regarding whether it qualified as "strategic planning" appropriate for a shade meeting, but relied upon the Board's legal counsel with regard to matters of Sunshine. Ms. Peek did not discuss her concerns with legal staff.

7. Ms. Peek has said that no Member of the Board contacted her directly or interfered with her work concerning the Zimmerman contract.

8. At the direction of Dr. El Sanadi, Mark Sprada, the Corporate Vice President and Chief Nursing Officer as well as Coordinator for Strategic Planning and Population Health, put together the agenda for a shade session at which the jointly-prepared detailed booklet referenced in paragraph 6 above would be discussed. Additionally, Ms. Peek had prepared a "Framework and Budget Analysis" presentation for the Board. Ms. Peek advised that Mr. Sprada was in charge of reviewing the Power Point presentation of the detailed booklet to insure that it was "strategic" in nature.

9. The shade meeting was held on October 30, 2015 . At the outset of the meeting, the District's General Counsel, Lynn Barrett, advised the Board that the matter was appropriate for a shade meeting since an exception from State Sunshine requirements existed under Section 395.3035 for "strategic planning," which was "the purpose" of that meeting (transcript excerpts attached). The Board, in reliance upon the advice and direction of its counsel, proceeded.

10. In evaluating Ms. Barrett's counsel and direction to the Board at its October 30, 2015 "shade" meeting, it is important to note the following:

(a) The statute in question is 305.3035 "Confidentiality of hospital records and meetings".

(b) Section (1) provides that "all meetings of a governing board of a public hospital ... shall be open ... unless confidential or exempt by law."

(c) Section (2) provides an exemption from public records (as opposed to Sunshine requirements) for records and information related to a strategic plan "which would be reasonably likely to be used by a competitor to frustrate, circumvent, or exploit the purpose of the plan before it is implemented ... and trade secrets." Section (4) provides that "those portions of a board meeting at which one or more written strategic plans that are confidential pursuant to

subsection (2) are discussed, reported on, modified, or approved by the governing board are exempt” from Sunshine requirements.

(d) Section (3) provides in relevant part that “all governing board meetings at which the board is scheduled to vote to accept, reject, or amend contracts, ... shall be open to the public.”

(e) Section (6) specifically defines what the term “strategic plan” means, and none of the delineated items (a-i) cover marketing or advertising contracts/plans. Importantly, section (6) states the term “strategic plan” “does not include records that describe the existing operations of a hospital ... unless disclosure of any such document would divulge any part of a strategic plan which has not been fully implemented.” The section goes on to state that “existing operations include “the placement of advertisements.”

(f) Finally, section (8) states that “a hospital may not approve a binding agreement to implement a strategic plan at any closed meeting of the board. Any such approval must be made at a meeting open to the public and noticed in accordance with” Sunshine requirements.

(g) Section 688.002(4) defines “trade secret” as “information, including a formula, pattern, compilation, program, device, method, technique, or process that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

11. Under the applicable statutes, the October 30, 2015 meeting did not appear to qualify as a shade meeting according to the stated purpose of the meeting. Ms. Barrett specifically characterized the meeting as a strategic planning meeting which, at least as it pertained to Zimmerman, was not (it did not meet the definition of strategic plan under the statute). Arguably, it could have been characterized as a discussion of trade secret material. However, there was no official plan being discussed. The purpose of the shade meeting (as discussed at the budget hearings) and what was ultimately voted upon was to direct staff to go back *and prepare a plan*. Further, the plan was to come back to the Board *at a regular public Board meeting*.

12. Approximately an hour before the October 30, 2015 meeting, Ms. Peek stated that staff member Jenny Hughes **told her that Zimmerman directed her to** remove the booklets containing the three marketing options from the chairs of each Board Member where they had been placed by Doris Peek. **No handout was substituted. However, Ms. Peek proceeded with her “Framework and Budget Analysis” presentation. Mr. LaMarca, who was present at this meeting to observe his colleagues, stated he did not see anyone remove any books. However, Mr. LaMarca stated that he and others from Zimmerman were asked by Maryanne Wing to leave**

the shade meeting until the marketing item was to be discussed. Zimmerman made a presentation based on overhead slides. Ms. Peek characterizes the slides and presentation given by Zimmerman as marketing which contained no tactics or strategy. Therefore, even assuming the original intent of the October 30, 2015 meeting qualified under the applicable statutes as a shade meeting, the actual substance of the meeting did not.

13. Doris Peek had been the person originally responsible for presenting the marketing proposal, but according to Mark Sprada, Dr. El Sanadi said that he wanted Peek “removed from the process” because members of the Zimmerman team were complaining about her “interference” and “obstruction.” Ms. Peek stated that she believed members of the Zimmerman team including Mr. Zimmerman and Mr. LaMarca had been attempting to get her fired either from her marketing position or the District from the Spring of 2015 through the time of Dr. El Sanadi’s death. Mr. LaMarca denies that he viewed Ms. Peek as an obstructionist or that she interfered, although he did concede that he believed her to be “skeptical” of Zimmerman’s abilities. Mr. LaMarca denies that he attempted to have Ms. Peek fired, and stated that he knew of no one on the Zimmerman team that made any such attempts. According to Mr. LaMarca, he only met with Ms. Peek twice – the first time being the “Waffle House” meeting described in paragraph 3, and he second being the meetings described in paragraph 4.

14. Once the meeting started, Mr. Zimmerman made a presentation focusing on an accelerated growth” option for \$15M with an asserted return on investment of 411%. Only toward the end of the Zimmerman presentation did he also reference an “incremental growth” option for \$10M with an asserted return on investment of 290%. No media tactics or timetables were included in this presentation. In explaining after the meeting why the Zimmerman proposals were so significantly higher in price than those in the agreed-upon plan that was supposed to be presented to the Board, Bert Sutcliffe of the Zimmerman team told Ms. Peek that Jordan Zimmerman had told him to “go all in or go home.” Bob Martin, then CFO, voiced concerns regarding the return on investment represented by Zimmerman and the assumptions upon which it was based. According to Ms. Peek, Mr. Martin and Ms. Peek had provided Zimmerman with accurate data upon which to calculate its return on investment assertions, but that data was not included in Zimmerman’s presentation. Mr. LaMarca stated that members of the Zimmerman team had been attempting to obtain District data from Mr. Martin and Ms. Peek but had been unsuccessful as of October 30, 2015 so the Zimmerman team chose to use national data for its presentation. According to Ms. Peek, no Board Member was aware of the less expensive options contained in the booklet that had been previously prepared. Following the meeting, Mr. Sprada spoke to Dr. El Sanadi who said that the meeting had been “hijacked” by Zimmerman. As discussed more fully in paragraph 14 on page 11, we have been unable to interview Mr. Martin regarding these matters.

15. We are aware that Zimmerman invited members of the Board to visit its facilities, but have as yet not identified any lobbying efforts, as defined by District policy, on Zimmerman's behalf. Mr. LaMarca stated that he invited all seven Board Members to tour the Zimmerman facilities, but that only Commissioners Canada, Van Hoose and Gustafson accepted. According to Mr. LaMarca, the purpose of these tours was educational and no specifics of any

marketing plan were discussed. Commissioner Canada advised that she was invited by Mr. LaMarca to tour the Zimmerman facility. Commissioner Canada did tour the facility, but advised that she did not discuss her visit with any other Board Member outside of a public Board meeting. According to District policy, lobbying is defined to include communications “directly or indirectly ... with any Board member ... or District employee ... to encourage the passage, defeat, modification, or repeal of any items which may be presented for vote before the Board ...” Employees of vendors are not included in the definition of lobbyists. We have been advised that Mr. LaMarca advocated on Zimmerman’s behalf, although Mr. LaMarca denies this. If Mr. LaMarca advocated and his advocacy occurred in the course of his employment by Zimmerman, he would not constitute a “lobbyist” under the District’s policy. It appears that Mr. LaMarca has been employed by Zimmerman since approximately May 13, 2015 as Vice President of Community Relations, but not specifically assigned to the District’s account. However, the original Zimmerman contract was executed by Dr. El Sanadi on May 4, 2015, prior to Mr. LaMarca’s hire date. We have been unable to locate any lobbying registrations related to the Zimmerman contract, any evidence of any contact by Mr. LaMarca with anyone at the District regarding the Zimmerman contract prior to his employment date, nor any counsel, instruction, or warning by Ms. Barrett or any other member of management regarding any possible violation of the District's lobbying policy.

16. For purposes of context, we have identified the following timeline. Dr. El Sanadi assumed the position of CEO of the District on or about December 20, 2014. According to Ms. Peek, Dr. El Sanadi told her he was introduced to Mr. Zimmerman by George Lemieux in January or February of 2015 (a point further confirmed by Mr. LaMarca). Dr. El Sanadi executed the Zimmerman contract on May 4, 2015. Mr. LaMarca was hired by Zimmerman on or about May 13, 2015. Mr. Zimmerman with the assistance of Mr. LaMarca hosted a fundraiser for Chair Di Pietro’s wife’s judicial campaign on June 25, 2015 (see paragraph 26 below).

17. The Board at the request of the Chair, at the next regular (and public) Board meeting on November 18, 2015, sought to bring the matters discussed “in the shade” on October 30, 2015 into the public by asking for a motion to approve the direction provided to staff at the shade meeting to “proceed working on the Strategic Marketing/Communication Plan.” That motion was approved unanimously. According to Ms. Peek, however, Chair Di Pietro appeared surprised and frustrated that an item to consider an amendment to the Zimmerman contract was not on the agenda. Maryanne Wing has confirmed that the Chair had requested the item be placed on the November 18, 2015 agenda but that Dr. El Sanadi drafted the agenda and Dr. El Sanadi pulled the Zimmerman contract matter off of the agenda. Mr. Peek advised the Board at the November 18, 2015 meeting that she would prepare a Board exhibit including a proposed contract addendum and performance metrics to be presented to the Board in February. Chair Di Pietro, instead, asked that the Board exhibit, proposed addendum and performance metrics be brought back to the Board in January.

18. According to Mr. LaMarca, a meeting was held in the second or third week of November attended by Mr. Zimmerman, Dr. El Sanadi and, at Mr. Zimmerman’s invitation, Mr. LaMarca. Ms. Peek was not present at this meeting. Mr. LaMarca stated that the purpose of this

meeting was to discuss Dr. El Sanadi's desire for Zimmerman to "have skin in the game" which Mr. LaMarca explained was risk-sharing to be obtained through the imposition of performance metrics. As set forth in paragraph 4 above, Mr. LaMarca described Mr. Zimmerman's relationship with Dr. El Sanadi during the September/October 2015 timeframe as "fractured," but stated that the relationship was repaired at this meeting when Mr. Zimmerman and Dr. El Sanadi reached a compromise on a new \$5M option for advertising. This \$5M option, as more fully described in paragraph 19 below, is not the same \$5M option developed by Ms. Peek and Mr. Sutcliffe in the detailed booklets removed from the Board Members' seats at the October 30, 2015 shade meeting described in paragraphs 6 and 12 above. The Board exhibit described in paragraph 19 below did not reference the \$5M option. We have been unable to determine why a compromise at \$5M was necessary at this point since, based on information received from Mr. LaMarca, a \$10M option was discussed and embraced by Dr. El Sanadi at the second meeting described in paragraph 4 above.

19. The Board engaged in a lengthy discussion of marketing, advertising and the Zimmerman contract at its meeting on December 16, 2015. Ms. Peek had drafted a Board exhibit but neither an addendum nor performance metrics had yet been agreed upon. A copy of the Board exhibit prepared by staff and recommended by Dr. El Sanadi is attached. Mr. Martin's renewed and expanded his objections to the return on investment represented by Zimmerman and the assumptions upon which it was based. The Board agreed upon a proposal to authorize a \$1.5 million ad buy between December 16, 2015 and December 31, 2015, up to a \$3.5 million ad buy between January 1, 2016 and June 30, 2016 (the \$5M option discussed in paragraph 18 above), and directed staff to negotiate an addendum to the Zimmerman contract with agreed-up performance metrics. Further, motions to direct legal counsel to draft an amendment to the Bylaws to create a Marketing Committee and to have three Board Members as members of the Marketing Committee were made and passed unanimously.

20. As of this date, we can find no amendment or addendum to the Zimmerman contract that has been executed (although a draft was prepared by David Ashburn of Greenberg Traurig), nor have any performance metrics been finalized or agreed upon. In fact, it appears that all payments to Zimmerman ceased once Zimmerman was paid through its December work. As of February 12, 2016, approximately \$344,419 of the \$1.5 million authorized by the Board at its December 16, 2015 meetings remained unspent, and none of the \$3.5 million had been spent. Emails indicate that as late as February 16, 2016, District staff advised Zimmerman that legal would not allow further payments to Zimmerman (either of the original retainer or the additional amounts approved by the Board on December 16, 2015) until the addendum was completed and Zimmerman had complied with performance metrics. Ms. Peek advises that since the contract addendum with performance metrics were intended to be completed in February, January and February payments were originally withheld in anticipation of a quarterly "true-up" which was anticipated to be included in the addendum.

21. On January 20, 2016, three days prior to Dr. El Sanadi's death and one week before the January Board meeting, the Board's Legal Affairs Committee met. During this meeting, Ms. Barrett and Mr. Ashburn provided an update on the Zimmerman amendment. The

Board was advised that the contract amendment was drafted and in “nearly complete form with the exception of plugging in what the metrics are going to be ...” Mr. Ashburn advised the five Members of the Board present at this meeting that he had drafted the contract amendment so that amounts remaining under the original contract as well as the \$3.5M (the January 1, 2016 through June 30, 2016 portion of the \$5M approved by the Board at the December 16, 2015 meeting) were “all subject to achievement of quality metrics that are being developed.”

22. Mr. LaMarca stated that he perceived that Dr. El Sanadi believed Mr. LaMarca could be helpful to Dr. El Sanadi with Mr. Zimmerman and the Board. Prior to Dr. El Sanadi becoming CEO of the District, Mr. LaMarca had sworn in Chair Di Pietro and Commissioner Rodriguez. Mr. LaMarca had assisted Mr. Zimmerman with the June 25, 2015 fundraiser for Chair Di Pietro’s wife’s judicial campaign which, as more fully described in paragraph 26 below, was considered to be a very successful event. Mr. LaMarca had invited all of the Commissioner to tour the Zimmerman facility, and had accompanied Commissioners Canada, Van Hoose and Gustafson on their tours. According to Mr. LaMarca, Dr. El Sanadi called Mr. LaMarca on January 5, 2016 to ask Mr. LaMarca if he would be interested in being the president of the Broward Health Foundation. Mr. LaMarca advised that Commissioner Canada made a similar inquiry of him. Mr. LaMarca did not consider these offers. Mr. LaMarca believes the offer might have been made in an effort by Dr. El Sanadi to sever Mr. LaMarca’s relationship with Mr. Zimmerman. According to Mr. LaMarca, Dr. El Sanadi attempted to insert Mr. LaMarca into the Zimmerman/District contract matter based upon Mr. LaMarca’s assertions that Dr. El Sanadi invited him to the “Waffle House” meeting as well as a pre-meeting on the day of the meeting described in paragraph 4.

23. Due to Dr. El Sanadi’s death on January 23, 2016, the addendum/amendment was never completed. Shortly thereafter, Ms. Peek attempted to process Zimmerman’s January and February retainer payments as well as the spent portion of the Board-approved \$1.5M (approximately \$1.15M). Not until March 10, 2016 did Ms. Barrett authorize payment of parts of the amounts withheld under the original retainer, but she would not authorize payment of any additional amounts approved by the Board without an executed contract amendment. At present, according to Ms. Peek, Zimmerman continues its work for the District.

24. As mentioned in paragraph 1 above, marketing services are excluded from the District’s Procurement Code. The Zimmerman contract is set to expire on or about May 4, 2016. Ms. Peek has determined it to be appropriate to competitively solicit future marketing/advertising services and has drafted a Request for Qualifications which she has provided to the marketing team and the procurement team. No official action on the draft RFQ has yet been taken.

25. According to Dionne Wong, the District’s Director of Human Resources, Dr. El Sanadi had consulted her in November regarding his desire to terminate Bob Martin as CFO. Ms. Wong indicated that Dr. El Sanadi did not believe Mr. Martin shared his vision for the District. Ms. Wong counseled Dr. El Sanadi to refrain from taking action until after the holidays. Mr. Martin was terminated in January 2016. To date, our research has not identified any

evidence indicating that Mr. Martin's termination was related to his objections to the Zimmerman contract.

26. Newspapers have noted that Jordan Zimmerman hosted a fundraiser for Chairman Di Pietro's wife during her campaign for judge. That event was held on or about June 25, several weeks after Dr. El Sanadi executed the original Zimmerman contract without input from the Board. According to Mr. LaMarca, this event raised approximately \$50,000 for Nina Di Pietro's campaign for County Judge, and was considered to be very successful. This fundraiser took place months before any addendum to the Zimmerman contract was discussed by the Board. No staff member has said that Commissioner Di Pietro had approached them about the proposed addendum and there is a time gap between the fundraiser and the initial discussion of the addendum. As an initial observation, the fundraiser and the proposed addendum appear to be unconnected.

In order to complete our investigation of the District's relationship with Zimmerman, we need the following:

1. Minutes of all Finance Committee and Marketing Committee meetings from 9/1/15 to the present. Minutes of the Finance Committee meetings for August, September and October of 2015, and January of 2016 were reviewed. Despite a unanimous vote of the Board at its December 16, 2015 meeting directing Ms. Barrett to amend the Bylaws to create a marketing committee, no marketing committee was created. Section IV-8 of the Bylaws provides: "Special committees may be created and their members appointed by the Chair of the Board, with concurrence of the members, for such special tasks as circumstances warrant." "Such special committees shall limit their activities to the accomplishment of the task for which created and appointed, and shall have no power to act except such as is specifically conferred by action of the Board. Upon completion of the task for which appointed, each special committee shall stand discharged." Commissioner Canada was advised that a marketing committee was not formed as a result of Ms. Barrett's conclusion that the Bylaws did not permit it. We have received and reviewed the minutes of the Legal Committee meetings for August, September and October of 2015, and January of 2016.
2. Transcripts for any shade meetings for strategic planning purposes between 9/1/15 and the present other than the meeting on 10/30/15. You have confirmed that there were no other shade meetings for strategic planning purposes held during this timeframe, nor any other shade meetings at which the Zimmerman contract was discussed.
3. Copies of all "metrics" by which Zimmerman's performance was to be measured (draft and final) prepared internally or externally between 6/1/15 and the present with the author identified. Draft metrics that were provided have been reviewed.
4. Copies of all analysis of "return on investment" and "metrics" related to the Zimmerman contract and/or amendment/addenda prepared by or for the Board, the Finance

Committee, the Marketing Committee, the CFO's office and/or the internal auditor. All analysis that were provided have been reviewed.

5. The 12/9/15 audio started with the discussion portion of the Board Meeting indicating that the audio is incomplete. We need the remainder of that meeting audio. Ms. Wing has advised that only the roll call is missing from the audio and that the audio is otherwise complete.
6. Date upon which Chip LaMarca was hired by Zimmerman. Date provided by Mr. LaMarca.
7. Date upon which Commissioner Nieland went off of the NBHD Board. You have advised that Commissioner Nieland went off the Board in November 2015 and we have not identified any lobbying efforts by Mr. Nieland thereafter.
8. Any lobbying registrations, logs or other materials related to any lobbying effort by individuals on behalf of Zimmerman Advertising. You have advised that there are none.
9. Complete review of audio tapes of Board. Completed.
10. Interview Commissioner Di Pietro (Chair). Completed.
11. Interview Jordan Zimmerman. We were directed to contact Ronnie Haligman, General Counsel to Zimmerman Advertising, in order to arrange interview of Mr. Zimmerman. Several conversations were had with Mr. Haligman. On the afternoon of March 25, 2015, we received a letter from William Shepherd of Holland & Knight on behalf of Zimmerman Advertising advising that "it does not seem appropriate to work with your law firm in its private engagement" (copy attached). As such, we have been unable to conduct this interview.
12. Interview Chip LaMarca. Completed on March 28, 2016. Mr. LaMarca resigned his position as Vice President of Community Relations with Zimmerman Advertising on March 25, 2016. His stated purpose for resigning was to be able to speak with us for this investigation.
13. Complete interview of Peek (internal marketing director). Completed on March 23, 2016.
14. Interview Martin (ex-CFO). Mr. Martin was contacted and an expressed a willingness to be interviewed provided he received written confirmation from the District that to do so would not put him in violation of his February 5, 2016 General Release and Agreement ("separation agreement"). This firm wrote to Ms. Grant (acting CEO) and Ms. Barrett on March 22, 2016 seeking the requested confirmation. Ms. Barrett inquired of Dionne Wong (the District's Director of Human Resources) at the end of the day on March 28, 2015 as to whether our request was authorize. Within the hour, Ms. Wong confirmed it

was authorized, but Ms. Barrett informed us of such at 12:56 p.m. today. As such, we have been unable to complete this portion of our review in time to include it in this update, but will endeavor to interview Mr. Martin this afternoon. We will update the Board of the results of that interview.


15. Review District's Procurement Code and related District policies. Completed.
16. Interview Maryanne Wing. Completed.

Based on the investigation conducted to date, we have found no evidence of any unlawful activity by the Board, nor have we found any evidence that any Board Member improperly interfered with staff.

Please let us know if you have any questions regarding the foregoing.

Respectfully submitted,

BERGER SINGERMAN LLP


Mitchell W. Berger

participate in seminars, professional association activities, projects, and continuing education.

1.5.2.2.3 Enhance the profession through recognition programs for individual achievement and professional commitments. Encourage all employees to work towards professional development.

1.5.2.2.4 Never enter into any transactions that would result in personal benefit or a conflict of interest.

1.5.2.2.5 Conduct business with potential and current suppliers in an atmosphere of good faith, fairness, integrity, and loyalty to the institution and the profession, devoid of intentional misrepresentation.

1.5.3 Receiving or Soliciting Gifts

Soliciting or accepting anything of value by an employee can lead to the perception or the reality that the employee's official action or judgment could be influenced. Procurement Divisions and other NBHD staff shall handle solicitation of gifts within the guidelines of the "Code of Conduct" and applicable Corporate Compliance policies and procedures. Additionally, refer to the General Administrative Policy 001-050 "Personal Gifts from Suppliers, Contractors and Patients", General Administrative 001-105 "Vendor Solicitation", as well as the General Administrative Policy 001-015, "Conflict of Interest" for more detail. Failure to comply may result in corrective action up to or including termination.

1.6 PROCUREMENT ITEMS NOT COVERED BY THIS CODE

Certain procurement items do not fall within the general guidelines of this Code: Contracts for professional and consulting services (see General Administrative Policy 001-140), physician services, legal services, lobbyist services, marketing services, finance-related services, accounting services, audit services, and design, construction and real estate initiatives (see General Administrative Policy 001-086).

PART 4: CONTRACTING PROCEDURES

4.1 CONTRACT ADMINISTRATION

The NBHD enters into a wide variety of contractual agreements. The following section provides guidance on the administration of contracts governed by this Code (see Section 1.4), as well as procedures required to ensure compliance with NBHD contracting guidelines. This section does not modify the process for vendor selection or the approval requirements previously identified in this Code.

4.1.1 CA is responsible for processing all professional and non-professional service-based contracts unrelated to construction

4.1.2 CRMM is responsible for processing all purchase-based and supply-based contracts.

4.2 CONTRACTS FOR GOODS AND SERVICES

Notwithstanding normal business acumen and diligence applied to the contract procurement process, emphasis is placed on, but not limited to the following terms, conditions, and considerations as applied to contracts for goods and services:

4.2.1 Contract must meet the requirements of and comply with the Charter of the NBHD, as amended from time to time.

4.2.2 Contract must include appropriate language and provisions related to the HIPAA.

4.2.3 Contractor is not on the OIG list of excluded persons.

4.2.4 Contractor is not debarred by the NBHD.

4.2.5 Contract complies with all regulatory requirements.

4.3 LEGAL COUNSEL REVIEW

CA and CRMM review all contracts before approval or execution by the President/CEO or SVP/CFO. Contract authorization levels are listed in Section 3.5 of this Code. All contracts are subject to review by NBHD Legal Counsel. General Administrative Policy 001-020 provides guidance for the authority for approval, execution, and legal review of contracts. NBHD Legal Counsel will collaborate with CA and CRMM and make final determinations as to the extent and degree of contract development to be accomplished by CA, CRMM, or NBHD Legal Counsel.

4.4 CONTRACT DEVELOPMENT

4.4.1 For all contracts, CA or CRMM prepares a draft contract using a format approved by NBHD Legal Counsel.

- 4.4.2 Based on the amount, complexity, or unusual circumstances, CA or CRMM determines which contracts shall be referred to NBHD Legal Counsel for review.
- 4.4.3 When engaged, NBHD Legal Counsel will consult with CA or CRMM, the contract requester, and/or the vendor to finalize the development of the contract.
- 4.4.4 For contracts that are not referred to NBHD legal counsel, CA or CRMM will work with the contract requestor and vendor to finalize the form contract and will perform all due diligence needed for execution.

4.5 CONTRACT MAINTENANCE/ MANAGEMENT

4.5.1 Contract Maintenance

- 4.5.1.1 CA and CRMM are responsible for safe keeping of contracts applicable to their respective areas of responsibility.
- 4.5.1.2 CA and CRMM will perform the necessary administrative follow-through of executed contracts, including but not limited to insurance verification.
- 4.5.1.3 CA will provide copies of contracts to AP as reference for payment purposes.

4.5.2 Contract Management

- 4.5.2.1 Primary contract management related to performance is the responsibility of the designated contract custodian(s). This/these subject matter experts monitor the performance terms and conditions of a given contract.
- 4.5.2.2 Any performance failures of either party are to be reported to the Manager of CA or Director of CRMM. Unresolved issues are escalated to the PSC at the discretion of the Manager of CA or Director CRMM. See Section 2.2 of this Code for more information related to vendor performance.
- 4.5.2.3 The contract custodian, and/or the Manager of CA and Director of CRMM shall report unresolved compliance related issues to NBHD Corporate Compliance.
- 4.5.2.4 Some service-based contracts may not have a specifically designated contract custodian. In these cases, the relationship is managed either by the applicable NBHD region, department requesting the contract, or by CA.



Origination:	02/1986
Last Reviewed:	01/2015
Last Revised:	01/2015
Next Review:	01/2016
Owner:	<i>Kevin Fusco: CORP. COO</i>
Section:	<i>GA-General</i>
Manual:	<i>General Administrative</i>

GA-001-020 Contract Review, Approval and Signature Authority

I. Purpose

- A. The North Broward Hospital District, d/b/a Broward Health, enters into numerous agreements necessary for conducting its operations. This Policy addresses the authority and process for approval, execution and legal review of agreements, in conjunction with the Procurement Code.
- B. Sole authority for the approval and execution of contracts and agreements is granted to the Board of Commissioners (Board) by Florida Law, Chapter 2006-347, L.O.F.; the approval and execution authority of the Board is subject to the delegation provided for herein.

II. Definitions

- A. **Capital Expenditure:** expenditure for the acquisition of Capital Assets (as defined in Accounting Services Policy).
- B. **Operating Expenditure:** expenditure other than of the acquisition of Capital Assets.

BACKGROUND:

In order for the North Broward Hospital District, d/b/a Broward Health, to enter into agreements, it is necessary to delineate policies and procedures outlining the review, approval, and execution authority of such agreements. This Policy, in conjunction with the Procurement Code, addresses the authority and process for approval, execution and legal review of agreements.

III. Policy

Prior to the entry into any proposed agreement ("Agreement") to which this Policy applies, all proposed contracts and other written forms of agreement, including those for professional, consulting, legal or audit services, supplies, equipment, material, nonprofessional services, capital equipment, and leases (collectively, "Agreement(s)"), shall first be reviewed by the Broward Health ("BH") Legal Department (or such attorneys as selected by the Legal Department) in accordance with the requirements of this Policy. Once the form of the proposed Agreement is approved by the Legal Department, the Agreement is subject to further review by the Board (or a Committee thereof if the Board's authority is so delegated). Once approved by the Committee or Board, the Agreement shall be executed only in accordance with the procedures set forth in this Policy, as same is amended from time to time. The Broward Health Procurement Code provides for additional procedures and requirements for the review and approval of several types of Agreements for relationships and/or arrangements defined therein. Further, BH shall

comply with the requirements of the Consultants Competitive Negotiation Act, S.s. 287.055, F.S. applicable to architectural, professional engineering, landscape architecture or registered surveying and mapping services.

A. APPROVAL AND EXECUTION AUTHORITY

1. Capital Expenditures

- a. Capital Expenditures Greater than \$250,000: All single Agreements requiring or contemplating capital expenditures greater than \$250,000 within a single fiscal year, which shall have been documented in a written form acceptable to the Legal Department, must be reviewed by the Board of Commissioners (directly, or by the appropriate committee thereof) and, if approved, must be executed by the Chief Executive Officer of BH ("CEO").
 - i. Prohibition on avoidance of financial limitations. A BH aggregate expenditure with a single vendor (or a group of closely affiliated vendors) for similar goods and/or services, or related goods and/or services (i.e., goods and/or services which would not be purchased in the absence of the purchase of the remainder), may not be spread out or distributed among several written Agreements for the sole purpose of reducing each Agreement's expenditure amount for the purpose of avoiding the requirement of Board approval as set forth in Section I (A) of this Policy above.
- b. Capital Expenditures Equal to or less than \$250,000: All single Agreements requiring or contemplating capital expenditures equal to or less than \$250,000 within a single fiscal year, which have been documented in a written form acceptable to the Legal Department, must be reviewed by the CEO (or his/her designees) and may be executed by the CEO (or his/her designees), unless further review is expressly required by the terms of another BH policy (i.e., sole source agreements, etc). The CEO is authorized to make such further approval and execution authority delegations as are set forth in the Procurement Code, or otherwise as set forth in writing by the CEO from time to time.
- c. Budgeted Capital Expenditures: Budgeted expenditures which are approved by the Board at a regular or a special meeting called for that purpose following the Budget Workshop and/or revised through the Final Tax Hearing do not require additional Board review.
- d. Construction Agreements: All Agreements for the Construction of Capital Assets (to the extent set forth by law) which shall have been documented in a written form acceptable to the Legal Department, must be reviewed by the Board of Commissioners (directly, or by the appropriate committee thereof) and, if approved, must be executed by the CEO.

2. Operating Expenditures

- a. CEO's Authority: All single Agreements resuming or contemplating budgeted operating expenditures, which have been documented in a written form acceptable to the Legal Department, must be reviewed by the CEO (or his/her designees) and may be executed by the CEO (or his/her designees), unless further review is expressly required by the terms of another B.H policy (Le., sole source agreements, etc.). The CEO is authorized to make such further approval and execution authority delegations as are set forth in the Procurement Code, or otherwise as set forth in writing by the CEO from time to time. Any unbudgeted expenditure equal to or less than \$250,000 requires approval from the CEO (or his/her designees). Any unbudgeted expenditure in excess of \$250,000 requires approval from the Board of Commissioners.

- b. **Variable Operating Expenditures:** In the event that the operating expenditure required by a proposed Agreement cannot be determined with specificity in advance (Le., proposed Agreements that vary in price based on the volume of services to be required in the future, etc.), BH management shall make a good faith estimate ("GFE") of the maximum expenditure that will be required by the Agreement during each of the fiscal years in which the Agreement is proposed to be in effect, in accordance with Generally Accepted Accounting Principles. The amount of the GFE shall be provided in writing to the CEO (or his/her designees). Upon review, if found to be reasonable, the CEO shall approve the GFE. If approved, the amount of the GFE shall be presumed to be the expenditure required by the proposed Agreement for purposes of seeking approval pursuant to this Policy. The Finance Department shall monitor the expenditures associated with all such Agreements. If a proposed Agreement's variable expenditure is set by an approved GFE to be within the approved operating budget for a Fiscal Year, and, during the course of a Fiscal Year, the Finance Department determines that, based on experience, market conditions, volume, or for any other reason the expenditure is likely to exceed the approved operating budget, the Chief Financial Officer shall notify the CEO. The CEO may present the additional expenditures at the next regularly scheduled meeting of the Finance Committee.
- c. **Budgeted Operating Expenditures:** Budgeted expenditures which are approved by the Board at a regular or a special meeting called for that purpose following the Budget Workshop and/or revised through the Final Tax Hearing are exempt from additional Board review.

3. No Requirement of Expenditure by BH

All Agreements that do not contain terms requiring the Expenditure of an amount certain by BH, which have been documented in a written form acceptable to the Legal Department, shall be reviewed by the CEO (or his/her designees) and may be executed by the CEO (or his/her designees).

4. Reporting

From time to time, the CEO may report to the Board the status of budgeted and unbudgeted expenditures in a manner reasonably calculated to keep the Board informed as to the extent of Broward Health's year to date spending.

5. Agreement Required by Law

All Agreements requiring, by operation of law (including, but not limited to sole source bid waiver Agreements), Board approval prior to execution which shall have been documented in a written form acceptable to the Legal Department, shall be reviewed by the Board of Commissioners (directly, or by the appropriate committee thereof) and, upon approval, shall be executed by the CEO.

B. REQUESTS FOR DISCRETIONARY GUIDANCE

1. Board

The CEO (or his/her designee), may determine that any Agreement not otherwise subject to Board review and/or approval as required herein or pursuant to law should nonetheless be submitted to the Board for its discretionary review and/or approval because of the Agreement's subject matter, scope or for any other reason. The submission of a particular Agreement for such discretionary review shall not constitute a requirement to submit subsequent Agreements of similar type and/or nature for discretionary review.

2. Legal Department

The CEO may request that the Legal Department provide an opinion whether or not any proposed Agreement is subject to any portion of this Policy and/or whether or not any proposed Agreement involves a physician, a referral source, designated health services, or any other term defined by law.

C. LEGAL DEPARTMENT REVIEW

Agreements subject to Legal Department review as defined herein shall be reviewed by the Legal Department (or outside counsel) and shall only be subject to execution under this policy and the General Administrative Policy 001-140, Selection of Professional Physician and Consulting Services Contractors, when documented in written form acceptable to the Legal Department. Agreements subject to Legal Department review shall include:

1. Professional Services including, without limitation:
 - a. goods and/or services to be obtained from, or to be provided to or on behalf of Medico Administrative Practitioners (physicians [MD or DO], dentists or oral surgeons, podiatrists, optometrists, chiropractors), or the immediate family member of any of the foregoing (including husband or wife; birth or adoptive parent, child, or sibling; step relatives [parent, child, brother, sister]; in-laws [father, mother, son, daughter, brother, sister]; grandparent or grandchild; and spouse of a grandparent or grandchild);
 - b. legal services;
 - c. consulting services;
 - d. financial services.

IV. Procedure

A. Entry into New Agreements

The CEO shall determine the process for initiation, legal review, approval or rejection of, and, if approved, execution of all new Agreements, which shall be administered by the Department of Contract Administration in accordance with the Procurement Code, or as otherwise, set forth in BH policies and/or procedures. Agreements requiring or contemplating expenditures equal to or in excess of \$250,000 within a single fiscal year, may be subject to the then approved BH Request for Proposals ("RFP") process; refer to the RFP provisions contained within the Procurement Code for further details.

B. Agreement Renewals

All Agreement renewals, whether on the same or different terms, are subject to the same initiation, review, approval, and execution process as original contracts. Agreements shall not be automatically renewed unless the automatic renewal provision is contained in a written form of Agreement previously approved by the Legal Department; however, the Legal Department may promulgate a short-form renewal document where appropriate and compliant with applicable law, to promote efficiency. The person responsible for each contract shall, in a timely fashion, initiate the appropriate review to determine whether to recommend either renewal on the same terms, renegotiation of terms, or the selection of a new vendor, including initiation of the RFP process, as appropriate.

V. Related Policies

- Procurement Code

VI. Regulation/Standards

N/A

VII. References

Chapter 2006-347, L.OF

Interpretation and Administration

Administration and Interpretation of this policy is the responsibility of the President/Chief Executive Officer and Board of Commissioners.

Attachments:

No Attachments

NORTH BROWARD HOSPITAL DISTRICT
BOARD OF COMMISSIONERS' MEETING

CONFIDENTIAL

- - -

Friday, October 30th, 2015
9:11 a.m. - 1:10 p.m.

- - -

BROWARD HOSPITAL DISTRICT
SHADE MEETING

SPECTRUM COMPLEX
1700 NW 49th Street
Fort Lauderdale, Florida

IN RE: STRATEGIC PLANNING

Reported By:
Sandra D. Suarez, Court Reporter
Bailey & Associates Reporting

Fort Lauderdale, Florida 33301
(954) 358-9090

1 APPEARANCES:

2 BROWARD HEALTH COUNSEL
3 LYNN M. BARRETT, Esquire
4 ROETZEL & ANDRESS, LPA
5 Fort Lauderdale, Florida

6 COMMISSIONERS:

7 David Di Pietro, Chair
8 Joel K. Gustafson, Commissioner
9 Sheela VanHoose, Commissioner
10 David C. Nieland, Treasure Commissioner
11 Maureen Canada, Commissioner
12 Darryl L. Wright, Commissioner
13 Rocky Rodriguez, Commissioner
14 Nabil El Sanadi, M.D. President/CEO

15 ALSO PRESENT:

16 Maryanne Wing
17 Mark Sprada
18 Maria Trueba
19 Kevin Fusco
20 Bob Martin
21 Jasmine Shirley
22 Jenny Hughes
23 Dr. John Delzell
24 Dan Westphal

25 SPEAKERS:

Ed Giniat
Frank Ulibarri
Dr. Doris Peek
Jordan Zimmerman
Adam Herman
Bert Sutcliffe
David Nathanson
Ben Porit
David Henry
Michael Goldberg

- - -

1 (Thereupon, the following strategic meeting
2 was had:)

3 CHAIR DI PIETRO: I guess we'll start with
4 roll call.

5 DR. EL SANADI: Ms. Barrett, do you want to
6 make any pre-meeting comments or anything like that
7 before we get started?

8 MS. BARRETT: Nope. Once we go into the
9 shade, then I may.

10 DR. EL SANADI: Okay. Very good.

11 CHAIR DI PIETRO: Should we start with roll
12 call?

13 MS. WING: Okay. Commissioner Wright is ten
14 minutes away.

15 CHAIR DI PIETRO: Okay.

16 DR. EL SANADI: Should we wait?

17 MS. WING: No.

18 MR. SPRADA: Maryanne, can you call roll call,
19 please?

20 MS. WING: Sure.

21 Commissioner Di Pietro?

22 CHAIR DI PIETRO: Present.

23 MS. WING: Commissioner VanHoose?

24 COMMISSIONER VANHOOSE: Here.

25 MS. WING: Commissioner Canada?

1 COMMISSIONER CANADA: Here.

2 MS. WING: Commissioner Gustafson?

3 VICE CHAIR GUSTAFSON: Here.

4 MS. WING: Commissioner Rodriguez?

5 COMMISSIONER RODRIGUEZ: Here.

6 MS. WING: Commissioner Wright is not here.

7 Commissioner Nieland is not here.

8 DR. EL SANADI: Commissioner Nieland will be
9 arriving about an hour late.

10 CHAIR DI PIETRO: So we have a forum.

11 VICE CHAIR GUSTAFSON: Let's wait for him.

12 CHAIR DI PIETRO: So we have a forum.

13 Ms. Barrett?

14 MS. BARRETT: So I would like to call the
15 meeting to order and to note that this was a duly
16 noted public meeting.

17 Is there any member of the public here wanting
18 to make public comments, Maryanne?

19 MS. WING: No.

20 MS. BARRETT: No.

21 At this time I would like to request that any
22 members of the audience that are not part of the
23 shade session to kindly leave.

24 Seeing none, now I would like to close the
25 door to the public portion of the meeting and open

1 the shade session.

2 Mr. Chair, would you like to entertain a
3 motion to begin the shade?

4 CHAIR DI PIETRO: Yes. Is there a motion?

5 COMMISSIONER CANADA: So move.

6 CHAIR DI PIETRO: Is there a second?

7 COMMISSIONER VANHOOSE: Second.

8 CHAIR DI PIETRO: All those in favor say aye.

9 MEMBERS OF THE BOARD: Aye.

10 CHAIR DI PIETRO: Motion carries.

11 (Thereupon, public portion of meeting is
12 adjourned and shade session commences.)

13 MS. BARRETT: So just a few reminders. As you
14 know, public meetings are all open to the public,
15 but with a few exceptions. One of the exceptions
16 is under Florida Statute 395.303(5) for strategic
17 planning. That is the purpose of this meeting.

18 There are a few rules to keep in mind, the
19 court reporter is here. She will be transcribing
20 the entirety of the meeting, including the start
21 and stop times that will be certified.

22 There are no sidebars or off the record
23 conversations. Everything will be recorded.

24 Any handouts that you are provided will be
25 asked to be returned to us. And we ask that you

1 keep everything in confident that is discussed in
2 this meeting today.

3 CHAIR DI PIETRO: Okay.

4 MS. BARRETT: Any questions?

5 CHAIR DI PIETRO: Not from a legal standpoint.

6 MS. BARRETT: Nothing.

7 DR. EL SANADI: If I may, a couple of quick
8 opening comments. The theme today is Florida
9 Health Care System, ninth largest safety net in the
10 United States, is how do we become lean? What does
11 the environment look like? And then, how do we
12 move forward? Be very tactical and surgical, as
13 far as cost balance, instead of using a baseball
14 bat to go at the system and shake some money out of
15 it. We need to be, very, very precise as we
16 whittle down what we spend, as far as patient care.
17 Patient centric, evidence based, and evidence based
18 management. And you'll hear some of that today.

19 The second thing is, what are some of the
20 things that we could optimize intramurally,
21 meaning, operational? Can we do something as far
22 as revenue cycle, purchasing, procurement, recovery
23 of funds as far as billing and coding?

24 Then the third part is: How do we grow the
25 business? Where is the business going?



Broward Health Medical Center
 Broward Health North
 Broward Health Imperial Point
 Broward Health Coral Springs
 Chris Evert Children's Hospital
 Broward Health Weston
 Broward Health Community Health Services
 Broward Health Physician Group
 Broward Health Foundation

SUMMARY OF REQUEST

DATE: December 16, 2015

FACILITY / PRODUCT LINE: Corporate Marketing and Communications (MARCOM)

REQUEST: Approval to enter into a three year, value-based contract with Zimmerman Advertising, an Omnicom Group Company, to spend a maximum of \$10,000,000.00 annually for the production and external placement of corporate advertisements and the production of external brand awareness campaigns.

PURPOSE: Gain market penetration and share of voice in an every growing competitive market to grow Broward Health's business and to become the recognized leader in healthcare.

STRATEGIC INITIATIVE(S) SUPPORTED:

- (1) Increase revenue across the continuum of care by increasing admissions and outpatient visits
- (2) Improve brand awareness of Broward Health by increasing "share of voice" in both the local and regional service areas.

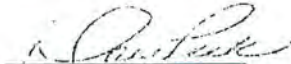
CAPITAL REQUIRED: Not Applicable – this request is an operating expense.

FISCAL IMPACT: This request represents an annual increase of up to \$10,000,000.00 in the MARCOM department operating expense category called FEES OTHER. This \$10,000,000.00 expense is in addition to the previously agreed to annual retainer fee of \$1,900,000.00 (agreement signed May 2015). The ROI calculations used in this board exhibit document and presented by Zimmerman at strategic planning session does not include the \$1.9M retainer expense.

BUDGET STATUS: The current fiscal year budget (FY16) does not include this additional \$10M operating expense. The current fiscal year spend will begin December 17, 2015 at \$1.5M and an additional \$3.5 M, January 15, 2016, totaling an un-budgeted amount of \$5,000,000.00 to support the attached advertising plan for January through June 2016 (see attachment A). This will create a significant budget variance for the MARCOM Department for the current year. Future fiscal year annual budgets for MARCOM will include the requested \$10,000,000.00. The future annual spend will begin July 2016 (approximately \$5M every six months) and will be scheduled based on an approved advertising plan. The FY17 advertising plan will be presented to the Marketing Committee of the Board of Commissioners during the FY17 budget planning season.

LEGAL REVIEW: Following the approval of the Board of Commissioners as to the terms, contracts are subject to General Counsel's review and approval as to legal form and conditioned on no material changes in the approved business terms. This purchase is exempt from Procurement Steering Committee (PSC) approval/review based on current procurement code/policy.

COMPLETION DATE: January 1, 2016

APPROVED: 
 Doris Peek, Sr. VP/CIO

DATE: 12/2/2015

 Dr. Nabil El Sanadi, President/CEO

DATE: _____

MEMORANDUM

To: Board of Commissioners of the North Broward Hospital District

From: Nabil El Sanadi, MD., President and CEO

Date: December 16, 2015

Re: Request to enter into a three-year value-based contract with Zimmerman Advertising, an Omnicom Group company, for production and placement of external advertisements and brand awareness promotions.

BACKGROUND

Currently, Broward Health has only 4% of the brand awareness voice in the tri-county market. Stated differently: our competition has 96% more external exposure to potential patients in our community and surrounding service areas. In order to gain more exposure, Broward Health must buy and place more external advertisements using diverse multi-media channels. Therefore, additional investments in media production and placement are necessary to increase public awareness of Broward Health as a reputable healthcare system. Based on discussions with and presentations from Zimmerman Advertising, members of the North Broward Hospital District Board of Commissioners requested Broward Health management consider a value-based arrangement with Zimmerman that is aimed at increasing the share of voice and brand awareness; thus resulting in an incremental annual increase in admissions and outpatient visits for each contract year. The goals of a value-based contract must include a positive return on investment with significant profitability to the bottom line. Zimmerman and Broward Health have agreed to develop a value-based, three year contract (with an annual renewal for up to 3 additional years) with a ROI of 290% or an expected contribution margin of approximately \$58,000,000 by the end of year three for a \$30,000,000 spend (as shown on slide 69 of Zimmerman presentation which is attached). The ROI and contribution margins presented by Zimmerman were based on licensed beds of 1750, an increase in occupancy rate from 52% annual average to the national occupancy average of 74% and an average profit margin of \$800 per night of each admission and a 10% increase in outpatient volume. The assumptions used by Zimmerman do not reflect the actual statistics at Broward Health and must be adjusted during contract negotiations. In addition to the annual \$10M production and placement costs, the annual retainer fee of \$1.9M continues to be paid but is not included in ROI calculations.

ACTION / PROJECT DESCRIPTION

Request to enter into a three year (renewable for a total of 6 years), value-based contract with Zimmerman Advertising, an Omnicom Group company, for the production and placement of external advertisements and promotion of external branding activities at a not to exceed annual amount of \$10M for production and placement costs plus an annual agency retainer fee of \$1.9M which will be placed at risk based on quarterly metrics (pre-agreed upon by bot parties) and adjusted based on results.

FINANCIAL / BUDGETARY IMPACT

This request represents an annual increase of up to \$10,000,000.00 in the MARCOM department operating expense category called FEES OTHER. This \$10,000,000.00 expense is in addition to the previously agreed to annual retainer fee of \$1,900,000.00. The current fiscal year budget (FY16) does not include this additional operating expense. The current fiscal year un-budgeted spend will begin December 17, 2015 at \$1.5M and an

additional \$3.5 M will be available January 15, 2016. This reflects a total un-budgeted amount of \$5,000,000.00 to support the attached advertising plan for January through June 2016 (see attachment A). Future fiscal year annual budgets for MARCOM will include the requested \$10,000,000.00 plus the agency annual retainer fee of \$1,900,000.00. The future annual spend will begin July 2016 and will be scheduled based on an approved advertising plan. The production costs will be scheduled quarterly based on an approved marketing plan and the retainer fee will be paid in equal monthly installments with a quarterly "true-up" based on metrics contained within the contract (admissions and outpatient visits).

The FY17 advertising plan will be presented to the Marketing Committee of the Board of Commissioners during the FY17 budget planning season.

JUSTIFICATION

A value-based contract based on an increase in admissions and outpatient visit allows Broward Health to adjust the expense of external advertising based on the associated contribution margin attributed to the advertising production and placement spend. By holding the agency retainer fee in escrow until quarterly volume measurements are made, adjustments to cash-flow is possible. Should quarterly volume result in less than expected volumes, the agency retainer amount will be adjusted accordingly. Should the volume metrics meet the expected target, the quarterly retainer will be paid in-full.

CONSISTENCY WITH DISTRICT STRATEGIC PLAN

This request supports the Broward Health strategic initiative for increase in visibility and inpatient and outpatient volume growth.

STAFF RECOMMENDATIONS

Therefore, it is requested that the Board of Commissioners of the North Broward Hospital District authorize the President/CEO to enter into a value-based contact with Zimmerman, an Omnicom Group company, for the production and external placement of multi-media advertisements and external-based brand awareness promotions at an annual cost not to exceed \$10,000,000.00 for a period of three calendar years (with annual renewals up to six years) beginning January 1, 2015 subject to General Counsel's review and approval as to legal form and conditioned on no material changes in the approved business terms.

Attachment A –
Zimmerman External Advertising Plan
January through June 2016

Attachment B –
Return on Investment (ROI)
Zimmerman Strategic Planning Presentation
Slide 69 Powerpoint

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

William N. Shepherd
(561) 650-8338
william.shepherd@hklaw.com

March 25, 2016

Via E-Mail

Dawn M. Meyers, Esq.
Berger Singerman LLP
350 East Las Olas Boulevard, Suite 1000
Ft. Lauderdale, FL 33301

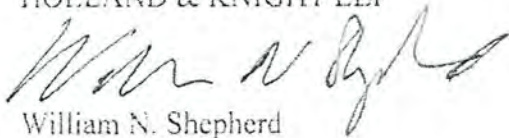
Re: Broward Health | Zimmerman Advertising, LLC

Dear Ms. Meyers:

My firm and I have been engaged to represent Zimmerman Advertising, LLC and understand you have contacted them to discuss their work on the Broward Health advertising contract. I have spoken to the Chief Inspector General of Florida. We have offered to cooperate in her formal investigation if she feels that is necessary; however, at this time, it does not seem appropriate to work with your law firm in its private engagement.

Sincerely,

HOLLAND & KNIGHT LLP



William N. Shepherd

WNS:mv

Tab 7

Tab A

March 29, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORGVinnette Hall, Internal Auditor
North Broward Hospital District
1700 N. W., 49th Street
Ft. Lauderdale, FL 33309

Re: Board of Commissioners Oversight versus Interference

Dear Ms. Hall:

This firm has been reviewing and analyzing various documents and audio tapes in an effort to determine whether any Board Member or Members may have exceeded their statutory oversight duties. As you know, the District's Charter provides in section 5(2) that:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the charter oversight duties contemplated by the creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and oversight of the board of commissioners. Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision of the President/CEO ..."

As you may also know, the District's prior legal counsel, Mr. Sam Goren, inquired of and received an opinion from the Florida Attorney General on this exact point. On July 10, 2011, the Attorney General opined that the Board shall exercise its charter oversight function as a whole body. However, the AG went on to state that the Charter language was "phrased in terms of legislative findings and intent, but these statements do not require any particular action by the board or provide any direction as to how such action should be accomplished." With regard to the actions of individual Board Members, the AG determined that the Charter "specifically authorized individual members of the board to give direction to district employees within the supervision of the President/CEO for purposes of inquiry and information seeking." In that instance, the AG opined, "the board members need not act as a collegial body." A copy of the Opinion is attached for your ease of reference.

7015915-4

Our review and analysis has not disclosed any instance of either (i) the Board exercising its Charter oversight function other than as a whole board, or (ii) any Board Member directing or interfering with any District employee, officer, or agent under the supervision of the President/CEO. To the contrary, our research indicates that the Board and its individual Members seemed to have operated within the confines of the District Charter and the Attorney General's opinion. However, it is important to note that we have uncovered several instances where either the will of the whole Board in its exercise of its Charter oversight functions, or the efforts of individual Board Members in attempting to inquire or obtain information, seem to have been thwarted by the efforts of senior District personnel. For example:

1. Section 395.3035(3), Florida Statutes, requires the acceptance, rejection or amendment of contracts to be pursuant to a Board vote at a public (Sunshine) meeting. It appears that the District's contract with Zimmerman Advertising was never presented to the Board but, instead, was approved and executed by former CEO Dr. Nabil El Sanadi.
2. At the December 16, 2015 Board Meeting, the Board voted unanimously to "direct General Counsel to put together a committee through an amendment to the District's bylaws to create a Marketing Committee." The Board then voted to have 3 Commissioners as members of the Marketing Committee which was also approved unanimously. The Chair then appointed Commissioners Canada, Di Pietro and Gustafson to serve on the Marketing Committee. Section IV-8 of the Bylaws provides: "Special committees may be created and their members appointed by the Chair of the Board, with concurrence of the members, for such special tasks as circumstances warrant." "Such special committees shall limit their activities to the accomplishment of the task for which created and appointed, and shall have no power to act except such as is specifically conferred by action of the Board. Upon completion of the task for which appointed, each special committee shall stand discharged." The Bylaws contain sufficient authority for the Board to do as it wished as evidenced by the 2 votes on December 16, 2015, and nothing in the Attorney General's Opinion prohibits or restricts the Board's authority to create or serve on committees. However, at least one Commissioner has indicated that the current General Counsel, Lynn Barrett, advised that the Bylaws *did not* allow a Marketing Committee to be created, and one was never formed.
3. We have previously advised you of our concerns regarding Ms. Barrett's misunderstanding and/or misapplication of Section 395.3035 with regard to the Board's October 30, 2015 shade meeting. Ms. Barrett's misunderstanding persisted even as late as the Board's February 10, 2016 meeting during which she aggressively counseled the Board (and specifically the Chair) that any discussion of the pending investigation be conducted in the shade despite the Chair's stated desire to do so publically.
4. **In response to rumors of corruption in the Broward Health Procurement Department**, Chair Di Pietro recommended that Dr. El Sanadi as CEO speak with Wayne Black, a private investigator known to him to investigate the matter. Instead of informing the Audit Committee about the need for an internal investigation, Dr. El Sanadi proceeded to


negotiate **two contracts** directly with Wayne Black. The contract **was** not limited to an investigation of the **procurement processes**, but appeared to have an unlimited scope at the sole direction of the CEO. **As reported in our letter detailing the Wayne Black investigation, Mr. Black refused to report his findings or coordinate his activities with General Counsel and claimed to be acting under the direction of the FBI. The Board was not made aware of Mr. Black's internal investigation until January 2016 when he sent an email accusing General Counsel, Lynn Barrett of obstruction of justice.**

5. [Updated Zachariah Report to Be In Separate Letter.]

Based on the information and research to date, therefore, our preliminary conclusion is that neither the Board nor any of its Members violated the "non-interference" provisions of the Charter.

Sincerely,

Berger Singerman LLP



Mitchell W. Berger

Fla. AGO 2011-12 (Fla.A.G.), 2011 WL 2922292

Office of the Attorney General

State of Florida

AGO 2011-12

July 19, 2011

RE: SPECIAL DISTRICTS - HOSPITALS - MALFEASANCE - CHARTERS - OVERSIGHT - charter oversight duties of hospital district's board of commissioners; non-interference clause. Chs. 2006-347 and 2007-299, Laws of Fla.

*1 Mr. Samuel S. Goren
Goren, Cheroff, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

Dear Mr. Goren:

On behalf of the North Broward Hospital District, you have asked for my opinion on the following questions:

1. How are the members of the North Broward Hospital District's Board of Commissioners able to exercise their "charter oversight duties," if at all, given the "explicit segregation of duties between the functions of operational management of the district and oversight by the board," as stated in the district charter, as amended?
2. Are the board members of the North Broward Hospital District permitted to utilize their prerogative to give direction to or interfere with employees, officers, or agents under the direct or indirect supervision of the district's President/CEO for the limited purpose of "inquiry or information" as individuals, or must they exercise such option as a whole collegial body?
3. Since violations of the non-interference provision of the 2007 act specifically constitute "malfeasance within the meaning of Article IV, s. 7(a) of the Florida Constitution," how is this section to be enforced and what are the penalties for violations thereof?

In sum:

1. The Legislature has expressed its intent that members of the board of commissioners refrain from operating in a management role while also performing charter oversight duties in what appears to be policy language in section 5(2), Chapter 2007-299, Laws of Florida. In the directory language of the amendment, members of the board are required to refrain from giving direction to or interfering with employees or others under the supervision of the President/CEO, with the exception of inquiry and information gathering.
2. An individual member of the board of commissioners of the North Broward Hospital District may ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district, but may not otherwise give direction to or interfere with any such employee.
3. The provisions of section 5(2) of the charter specifically make a violation of the "non-interference" clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which sets forth the procedure for disposition of an order of suspension by the Governor.

The North Broward Hospital District (the "district") is an independent special taxing district created in 1951 by chapter 27438, Laws of Florida, to meet the health care needs of the people of the district.¹ The district is governed by a seven member board of commissioners (the "board") appointed by the Governor.² The enabling legislation for the district and subsequent amendments were recently recodified in Chapter 2006-347, Laws of Florida, which is the district's charter. In 2007, the charter was amended to include a "non-interference" provision and to require that the board adopt a code of conduct and ethics.³ As provided in the district's bylaws:

*2 "The Board shall guide the North Broward Hospital District and all of its facilities, common divisions and wholly owned entities toward the efficient and effective provision of quality health care, education and research. The powers of the Board of Commissioners shall be employed so as to ensure that the welfare and health of the patients and the best interests of the hospitals and facilities of the District are at all times served."⁴

You have requested this office's assistance in determining how the board of commissioners of the North Broward Hospital District may comply with the legislative directive expressed in section 5(2), Chapter 2007-299, Laws of Florida, which provides:

"It is the finding of the Legislature that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the *charter oversight duties* contemplated by creation of this special act. It is therefore the intent of the Legislature that the board of commissioners only exercise its *oversight function* as a whole body and not through the actions of any individual commissioner. It is also the intent of the Legislature that there be an explicit segregation of duties between the functions of operational management of the district and *oversight* by the board of commissioners. Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision of the President/CEO. Such action shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution. Nothing contained herein shall prevent a commissioner from referring a citizen complaint to the President/CEO or to the board of commissioners or providing information about any issue to the President/CEO or to the board of commissioners." (e.s.)

Question One

This office is authorized to provide legal opinions on questions of state law; we have no authority to provide district boards or commissions with detailed suggestions as to how they may accomplish the work of the district for which they were appointed. As such, I must advise you that this office cannot direct how members of the board of the North Broward Hospital District should accomplish their duties.

Your first question relates to the scope of the oversight duties of the North Broward Hospital District's board of commissioners as limited by Chapter 2007-299, Laws of Florida. The language of section 5(2), Chapter 2007-299, Laws of Florida, which has prompted your question appears to be language reflecting the intent of the Legislature rather than language directing the board to perform some action:

"*It is the finding of the Legislature* that it is not in the public interest for any member of the board of commissioners to operate in the perceived role of management while simultaneously exercising the *charter oversight duties* contemplated by creation of this special act. *It is therefore the intent of the Legislature* that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. *It is also the intent of the Legislature* that there be an explicit segregation of duties between the functions of operational management of the district and oversight by the board of commissioners." (e.s.)

*3 As demonstrated above, these sentences are phrased in terms of legislative findings and intent, but these statements do not require any particular action by the board or provide any direction as to how such action should be accomplished.⁵ The operative provision is the sentence stating that "[e]xcept for the purposes of inquiry or information, a member of the board of

commissioners shall not give direction to or interfere with any employee . . .” It is through this provision that the Legislature chose to accomplish its stated intent of separating the management and oversight of the district.⁶

Question Two

Your second question requires consideration of the language of the 2007 amendment of the charter/special act which provides:

“It is . . . the intent of the Legislature that the board of commissioners only exercise its oversight function as a whole body and not through the actions of any individual commissioner. . . . Except for the purposes of inquiry or information, a member of the board of commissioners shall not give direction to or interfere with any employee, officer, or agent under the direct or indirect supervision of the President/CEO.”⁷

Concerns have been expressed that this language would restrict the ability of individual board members to directly engage district staff working under the supervision of the President/CEO for purposes of inquiry or for informational purposes.

While this office recognizes that section 5(2), Chapter 2007-299, Laws of Florida, provides that “the board of commissioners [should] only exercise its oversight function as a whole body and not through the actions of any individual commissioner[.]” the act also specifically authorizes individual members of the board to give direction to district employees within the supervision of the President/CEO for purposes of inquiry and information seeking. As discussed more fully in my response to Question One, the legislative intent/policy language suggesting that the oversight function of the board should only be exercised “as a whole body” is not expressed in terms requiring particular action by the board. Rather, this language appears to constitute a statement of intent by the Legislature as to the purpose and construction of the operative provisions of the 2007 legislation that an individual member may not direct or interfere with these employees except for inquiry and information purposes.

The charter clearly gives individual members of the board the authority to ask questions or request information from staff of the district or others who may come within the supervisory authority of the President/CEO. Members of the board may not otherwise, without committing malfeasance, give directions to or interfere with these employees of the district. This legislative prohibition would appear to be directed toward the “functions of operational management” mentioned elsewhere in section 5, Chapter 2007-299, Laws of Florida. Thus, in order to accomplish the legislatively declared object of segregating the oversight function from the operational management of the district, these provisions should be read together and harmonized.⁸ Further, courts are bound to ascribe reasonableness to the intention of the Legislature and a reasoned construction to its enactments.⁹ Staff analysis for the 2007 legislation appears to support this reading of the act and states that “[a] board member that gives direction or interferes with any employee under the supervision of the President/CEO, except for inquiry, will have conducted malfeasance . . .”¹⁰

*4 Therefore, it is my opinion that an individual member of the board of commissioners of the North Broward Hospital District may directly ask questions or request information of district employees, agents, and officers who are supervised, directly or indirectly, by the President/CEO of the district. In asking questions or seeking information, the board members need not act as a collegial body. However, section 5, Chapter 2007-299, Laws of Florida, makes clear the Legislature's intent that no individual member of the board may give direction to or interfere with any such employee outside the scope of inquiry and information seeking without violating the charter.

Question Three

Finally, you have asked for direction in determining enforcement options and penalties for violations of section 5(2) of the charter. The language of the special act specifically provides that violations of this section “shall be malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution.”

Article IV, section 7 of the Florida Constitution provides for suspensions by the Governor and filling of any vacancy created by such a suspension:

“(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.”

If the officer is not reinstated by the Governor, the Senate may remove him or her from office or reinstate the suspended official.¹¹ The provisions of Part V, Chapter 112, Florida Statutes, set forth procedures for the disposition of the order of suspension by the Governor implementing the constitutional provision¹² and specifying such matters as the contents of such a suspension order¹³ and the prosecution of the suspension before the Senate.¹⁴

Moreover, Article I, section 18, Florida Constitution, provides that “[n]o administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.” As the court recognized in *Broward County v. La Rosa*,¹⁵ the phrase “by law” contemplates an enactment of the Legislature.¹⁶ Thus, the district, as an administrative agency,¹⁷ has no authority to prescribe penalties for violations of its charter except those the Legislature has adopted. Section 5, Chapter 2007-299, Laws of Florida, contains no other provision for penalties or enforcement for violations of the “non-interference” provision.¹⁸

*5 In sum, it is my opinion that the provisions of section 5(2) of the charter specifically make violation of the “non-interference” clause an occasion of malfeasance within the meaning of Article IV, section 7(a) of the Florida Constitution. The constitutional provision must be read together with the statutory implementation language set forth in Part V, Chapter 112, Florida Statutes, which provides the procedure for disposition of an order of suspension by the Governor.

Sincerely,

Pam Bondi
Attorney General

Footnotes

- 1 See s. 3, Ch. 2006-347 and s. 1, Ch. 2007-299, Laws of Fla.
- 2 See s. 3, Ch. 2006-347, Laws of Fla.; Art. I, s. 1-2, Bylaws of the North Broward Hospital District and Broward General Medical Center, North Broward Medical Center, Imperial Point Medical Center, Coral Springs Medical Center.
- 3 This office is aware that the district's bylaws were last revised in 1991. See Bylaws of the North Broward Hospital District, Editor's note, p.37. The board may wish to update the district's bylaws to reflect the more recent legislative directives considered herein and more fully delineate the operational management duties and charter oversight duties of the President/CEO and the board. This office has no information regarding the situation existing in the district which gave rise to the adoption of Ch. 2007-299, Laws of Fla., which could provide guidance, but would suggest that some investigation into the situation surrounding the amendments could be helpful in effectuating the legislative intent expressed in the act. See, e.g., *Singleton v. Larson*, 46 So. 2d 186 (Fla. 1950) (in construing a statute, court will consider its history, evil to be corrected, intention of Legislature, subject to be regulated, objects to be obtained and will be guided by legislative intent); *State v. Webb*, 398 So. 2d 820 (Fla. 1981); *State v. Anderson*, 764 So. 2d 848 (Fla. 3d DCA 2000).
- 4 Art. I, s. 1-4, Bylaws supra.
- 5 See *Bledsoe v. Palm Beach Soil and Water Conservation Dist.*, 942 F.Supp. 1439, reversed 133 F.3d 816, rehearing and suggestion for rehearing denied, 140 F.3d 1044, certiorari denied, 119 S.Ct. 72, 525 U.S. 826, 142 L. Ed. 2d 57 (in ascertaining plain meaning of statute, court should look not only to discrete portion of statute at issue, but to design of statute as whole and to its object and policy).
- 6 *Cassoutt v. Cessna Aircraft Co.*, 742 So. 2d 493 (Fla. 1st DCA 1999) (When construing a statutory provision, court is guided by the rule that the intent of the Legislature is the overriding consideration.); *State, Dept. of Revenue v. Kemper Investors Life Ins. Co.*, 660 So. 2d 1124 (Fla. 1st DCA 1995) (When construing statutes, primary purpose designated should determine force and effect of

- words used, and no literal interpretation should be given that leads to unreasonable ridiculous conclusion or purpose not intended by Legislature.).
- 7 Section 5, Ch. 2007-299, Laws of Fla.
- 8 See *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452 (Fla. 1992) (all parts of a statute must be read together in order to achieve a consistent whole); *State v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).
- 9 *City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983); *Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981); *City of Dania v. Heriz Corporation*, 518 So. 2d 1387 (Fla. 4th DCA 1988).
- 10 See House of Representatives Local Bill Staff Analysis, CS/HB 1391, p.2, dated April 11, 2007.
- 11 Section 7(b), Art. IV, Fla. Const.
- 12 Section 112.40, Fla. Stat.
- 13 Section 112.41, Fla. Stat.
- 14 Section 112.43, Fla. Stat.
- 15 484 So. 2d 1374 (Fla. 4th DCA 1986). And see *Broward County v. Plantation Imports, Inc.*, *infra*, in which the court struck down a provision of the Broward County Consumer Protection Code which authorized the county Consumer Protection Board to determine if there were violations of the Code and impose civil penalties for violation of any cease and desist orders. The court held the provision authorizing an administrative agency to impose a penalty, without such authority being provided by legislative act, was unconstitutional.
- 16 See *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Ison v. Zimmerman*, 372 So. 2d 431 (Fla. 1979); *Op. Att'y Gen. Fla. 79-109* (1979).
- 17 See, e.g., *Ops. Att'y Gen. Fla. 09-53* (2009) (mosquito control district is administrative agency for purposes of Art. I, s. 18, Fla. Const.); *09-29* (2009) (county precluded from adopting ordinance imposing civil penalty); *01-77* (2001) (city code enforcement board may not alter statutory provisions to authorized imposition of fine).
- 18 Section 5(3)(a), Ch. 2007-299, Laws of Fla., also makes failure to comply with the provisions of the district's code of conduct "malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."

Fla. AGO 2011-12 (Fla.A.G.), 2011 WL 2922292

Tab B

March 30, 2016

VIA E-MAIL TO VHALL@BROWARDHEALTH.ORGVinnette Hall, Internal Auditor
North Broward Hospital District
1700 N. W. 49th Street
Ft. Lauderdale, FL 33309

Re: Issues relating to Zachariah, Med Assets, Abeline, Michael Pelaez Termination, & Salsa Technologies (Revised at 5:30 p.m. per conversation with Dionne Wong and Further revised on March 30, 2016 to include JHD Health Care Partners)

Dear Ms. Hall:

As you know, this firm has undertaken an investigation of certain actions of the North Broward Hospital District ("Broward Health") and its governing Board, including but not limited to certain issues regarding Zachariah, Med Assets, Abeline, Michael Pelaez, Salsa Technologies, and JHD Health Care Partners. Although we have only had the opportunity to conduct a preliminary rather than exhaustive review as to these issues, the following is a summary of our findings to date with respect to these issues.

Hiring of Zachariah Medical Group at Imperial Point Hospital

The following is a summary of our findings to date with respect to the Zachariah issue:

With respect to the contract to bring the Zachariah Group to Imperial Point Hospital, no Board members were involved with this process until his employment contract was approved at a full Board meeting in December, 2015. According to Alice Taylor and Susan Nelson who initially negotiated the Zachariah Group contract, Dr. El Sanadi wanted to act with the utmost discretion and confidentiality and elected not to use the standard physician onboarding process through the Physician Services Department. The Physician Services Department began participating in the process several months after negotiations began.

Dr. Zachariah's employment contract was brought to the full Board because his compensation was capped at a level requiring Board approval. The contract was subjected to a fair market value ("FMV") analysis and agreed to at 50% WRVU ("relative value unit"). Dr. Zachariah's basic employment agreement met with the approval of outside legal advisors to insure that it complied with the Corporate Integrity Agreement.

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3/30/16

Maria Panyi, Vice President for Physician Services, brought certain concerns to our attention related to outstanding issues that had not been resolved at the time Dr. Zachariah's contract was signed. We have concluded that all of these issues have been resolved or are being appropriately addressed with the input of Legal, Compliance and the Procurement Departments.

Shortly, before the employment contract was signed, Imperial Point learned that an asset purchase agreement was also necessary to purchase some of the equipment needed by Dr. Zachariah for his practice. The appraisal for the equipment was done by the procurement department and its FMV is in excess of the \$52,000 price agreed to by Dr. Zachariah. To be clear, Dr. Zachariah is willing to accept a price for this equipment less than FMV. Imperial Point has been working through issues related to Dr. Zachariah's dictation system and related software, the storage of a server for Cath lab images, the credentialing of Dr. Zachariah's managed care patients and the disposition of certain equipment currently used by Dr. Zachariah that is obsolete and may require replacement with the Legal and Compliance Departments. The asset purchase agreement is in the process of being finalized. Although these assets may have been treated differently if considered part of the purchase of an entire practice, it appears that the purchase of these assets is being handled in a commercially reasonable manner and that a fair market or below fair market price will be paid by the Hospital District. An issue related to the fact that the wife of one of the physicians in the Zachariah Group had previously been employed as Office Manager for the Group was resolved by transferring this individual to a different department to comply with the Anti-Nepotism policy. While due to the expedited schedule for bringing the Zachariah Group to Imperial Hospital there were open issues when he came aboard, those issues are being appropriately addressed by management at the corporate level. Dr. El Sanadi's desire to have the recruitment of Dr. Zachariah remain confidential appears to have driven his decision to bypass the traditional physician onboarding process which may have caused some confusion in the process of onboarding Dr. Zachariah. It does not appear to us that was any illegal or improper conduct by management with respect to this contract or the asset purchase agreement.

Med Assets Issues

The following is a summary of our findings to date with respect to this issue:

Kevin Houtchens is a customer service representative for Vizient (formerly Med Assets) who is located on-premises with Broward Health. According to Mr. Houtchens, Med Assets (now Vizient pursuant to a recent acquisition), represents approximately 4000 member hospitals for whom it does about \$130B in group purchasing. Vizient, as part of its service, pre-approves certain vendors from whom it gets volume discounts on all things needed by hospitals from pharmaceuticals to construction materials, or as Mr. Houtchens put it, "from CAT scans to carpet." Mr. Houtchens reported an apparent improper attempt by Brian Bravo on or about May 15, 2015 to authorize a non-District purchaser's (Imperial Medical in Palm Beach) use of the District's Med Assets' contract. Mr. Houtchens sought an email confirmation of the request from Mr. Bravo which he refused to provide. As such, Mr. Houtchens removed Imperial Medical as an affiliated/approved user on the District's account.

Abeline Issues

Richie Persaud, Director of Material Management and Procurement Officer, explained to us that Abeline is a distribution company that is part of the distribution chain involved in Broward Health's purchases of paper janitorial supplies and surgical gloves. The manufacturers of these products are Solares and MedPride, respectively. Broward Health pays for the products through Medline which is another distribution company. These products are purchased outside the MedAssets Group Purchasing Organization ("GPO"). At one point a contract was drafted directly with Abeline, but Brian Bravo said it wasn't necessary. It is unclear why either Medline or Abeline is used as an intermediary for these products. Mr. Persaud said that the contact price is based upon a negotiated price with the manufacturer plus a fixed price for the distributor Medline, so it is unclear whether additional money is being paid for these products on account of the involvement of Abeline in the process. The total price paid for these goods is \$3.8 million. Mr. Persaud said that he is now focusing on dealing directly with the manufacturers. This issue warrants further inquiry.

Michael Pelaez Termination

The following is a summary of our findings to date with respect to the Michael Pelaez termination issue:

Michael Pelaez was hired by the District in October of 2015. He was terminated from his employment during his three-month probationary period, in December 2015. Following his termination, Michael Pelaez, through counsel, sent a letter to the District claiming he was unlawfully terminated for reporting illegal acts. The claim was the District failed to comply with a settlement agreement between the District and the federal government. Our investigation to date reveals that Michael Pelaez's allegations are unsupported by the facts as we understand them.

According to Donna Lewis, Chief Compliance and Privacy Officer, Lynn Barrett knew Michael Pelaez from the time they worked together at Jackson Health System. According to Ms. Lewis, Michael Pelaez exhibited performance issues from the beginning of his employment with the District. As a result of these ongoing issues, Donna Lewis was unable to recommend Michael Pelaez for permanent employment at the end of his probationary period.

According to Denise Morris, Regional HR Director, Mr. Pelaez expressed no concerns during his termination meeting about the performance of the Compliance Department in which he worked. According to Donna Lewis, Michael Pelaez never expressed to her that he had any concerns over the performance of the District under the settlement agreement or the corporate integrity agreement.

Salsa Technologies (William Hubbard)

The following is a summary of our findings to date with respect to the Salsa Technologies issue:

According to Doris Peek, the District's Marketing Coordinator, Broward Health hired an employee, Marjorie Johns, to work in the IT Department at Broward Health. Ms. Johns was hired through the use of a headhunter firm and was initially hired for a 90 day probationary period. During the 90 day period, and upon determining that Ms. Johns was not well suited for the particular IT position for which she was hired, Broward Health terminated Ms. Johns. As a result of not being employed beyond the initial 90 day new hire period, the headhunter firm was not paid a commission.

Ms. Johns subsequently became employed by Salsa Technologies. Salsa Technologies is a temporary staffing agency with a focus on IT staffing needs, and is owned by William R. Hubbard, who is a former employee of Broward Health. Ms. Johns was hired by Salsa Technologies as a temporary consultant. On or about June 26, 2012, Broward Health and Salsa Technologies entered into a Master Services Agreement as well as a Statement of Work relating to Ms. Johns. A copy of the Master Services Agreement along with the Statement of Work relating to Ms. Johns is attached. According to Ms. Peek, not only was Ms. Johns hired in a completely different capacity but the work Ms. Johns was to perform for Salsa Technologies was significantly different from the work that Ms. Johns was originally hired to perform as an employee of Broward Health.

Based on Ms. Johns' re-employment with Broward Health through Salsa Technologies and based on the fact that the headhunter firm did not receive any commissions for Ms. Johns employment with Broward Health, the headhunter raised some concerns that Broward Health was avoiding paying the headhunter's commission by putting people on Salsa Technologies' payroll. Specifically, the potential claim by the headhunter firm is that Broward Health was terminating the referred employees who make \$90,000 per year before the 90 day probation period and then transferring them to Salsa making \$105 per hour, resulting at a 200% increase in expense to Broward Health. Upon investigation, however, it is clear that Ms. Johns was not transferred. To the contrary, Ms. Johns was terminated by Broward Health within the 90 day probationary period and subsequently hired by Salsa Technologies in a temporary consulting capacity to perform "Cerner support services as mutually agreed," which according to Ms. Peek is different than the work that Ms. Johns was initially hired to do as employee of Broward Health. It appears no Board member was involved in these decisions.

JHD Health Care Partners

According to Lynn Barrett, and others, JHD Health Care Partners ("JHD") is a consulting group that was recommended by Dr. El Sanadi to analyze the performance of the physician's services department in light of declining profitability of the physician practices. Ms. Barrett stated that the work conducted by JHD and the contract with JHD is unrelated to any complaints

Ms. Vinnette Hall
March 30, 2016
Page 5

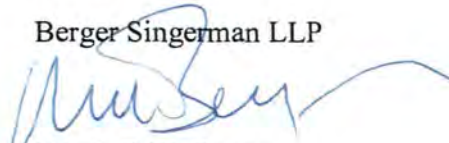
raised by Maria Panyi with respect to the hiring of Dr. Zachariah. Because it is a professional services contract, the contract with JHD did not have to go through the RFP process. A fully executed copy of the contract signed by Kevin Fusco was provided to the Contract Administration Department, where it was reviewed and due diligence performed to determine any conflicts of interest. According to Estrella Vantuyl Director of Contract Administration, this review revealed no conflicts of interest.

Summary

In sum, based on our investigation, we have found no evidence of any unlawful activity or impropriety implicating any member of the Board with respect to the matters set forth above. Please let us know if you have any questions regarding the foregoing, or wish to discuss this matter further.

Sincerely,

Berger Singerman LLP



Mitchell W. Berger

MWB:nll

7028117-8
3/30/16

Tab 8

Subject: NBHD - Request for information from the Chief Inspector General dated 3/15/2016
- attorney-client communication

Attachments: 2016-03-15 Demand Letter from FL-COIG.PDF; 2016-03-24 Letter from Melanie Ann Hines to Vinnette hall re IG's Reques....pdf

From: Melanie Hines
Sent: Thursday, March 24, 2016 4:50 PM
To: Hall, Vinnette <Vhall@browardhealth.org> (Vhall@browardhealth.org); cure@browardhealth.org
Cc: Mitchell W. Berger; Sharon Kegerreis
Subject: NBHD - Request for information from the Chief Inspector General dated 3/15/2016 - attorney-client communication

Vinnette,

Thank you for sending documents to us over the past several days so that we could review them with you for responsiveness and forward them to the Chief Inspector General on behalf of the Board and the Audit Committee. However, given the Board's direction on Tuesday, that we are not to have any further contact with the Chief Inspector General on behalf of the Board or the Audit Committee, we are not able to forward the documents to the IG for you.

In order to assist with transitioning these responsibilities back to you, we have prepared the attached letter outlining the concerns we have about the IG's demand letter. We have also Bates labelled the documents you have provided to us and compiled them on a sharefile link for you to download and then send to the IG. The link is <https://bergersingerman.sharefile.com/d-s96abfa647654ba68>

The sharefile link is password protected and I will send the password by separate email.

The documents on the link are:

1. Email from Kevin Hyde, Esq., re Shade Session, dated 8-21-2015, Bates labeled NBHD-FL OIG-000866 - NBHD-FL OIG-000867;
2. Board Training Materials, Bates labeled NBHD-FL OIG-000868 - NBHD-FL OIG-000943;
3. Conflict of Interest Questionnaire and Disclosure Agreement for Board Members, Bates labeled NBHD-FL OIG-000944 - NBHD-FL OIG-001055;
4. LOIs and Law firm Engagement Letters, Bates labeled NBHD-FL OIG-001056 - NBHD-FL OIG-001344; and,
5. Voting Recusals - Form 8B, Bates labeled NBHD-FL OIG-001345 - NBHD-FL OIG-001397.

I believe you sent additional documents after we had processed the above, so you will need to add them to the compilation. These are the list of shade meetings and Commissioner Wright's COI Forms. These are attached to your emails to me of 1:59 pm and 3:03 pm.

Sharon and I are available to answer any questions you or Commissioner Ure may have about the attached letter.
Regards,
Melanie

BERGER SINGERMAN

Melanie Ann Hines

125 South Gadsden Street | Suite 300 Tallahassee FL 32301
direct: (850) 521-6722 | cell: (850) 320-5335 | fax: (850) 561-3013

email: mhines@bergersingerman.com | [bio](#) | [vcard](#)

website: www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



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.....

March 24, 2016

VIA ELECTRONIC MAIL
(VHALL@BROWARDHEALTH.ORG)Ms. Vinnette Hall
Chief Internal Auditor
North Broward Hospital District
1700 N.W. 49th Street
Ft. Lauderdale, FL 33309

Re: Inspector General's Request for Information

Dear Ms. Hall:

Based on the Board's direction that our law firm have no further contact with the Chief Inspector General ("IG") about Broward Health, we unfortunately are not in a position to meet with the IG to clarify or narrow her requests or to otherwise assist you in complying with the most recent information requests made by the IG.

Based on our discussions, I wanted to outline for you some of the issues that you must resolve in order to comply with the IG's "information" request letter dated March 15, 2016 ("Request"). It is unclear whether you are being asked for documents, electronically stored information ("ESI") which includes emails or whether you are being asked for all information that may be possessed by anyone at Broward Health. If you are expected to conduct a search for emails, the IG should collaborate with you on search terms. As they stand, the requests are so vague and overbroad that you cannot be expected to know what the IG is really looking for. For all of these reasons, we believe a judge, if asked, would grant a motion for protective order and require the IG to narrow and properly specify her requests. This is particularly so in this instance where the IG has limited jurisdiction and has refused, as of this date, to have a meeting to coordinate her review with the Board as required by Florida law. We understand that you and Commissioner Ure will again seek to meet with the IG to try to resolve the scope of the review directly. I hope this information will be helpful to you in your meeting.

We point out the following concerns: First, the Request asks for "information" in its first paragraph as opposed to documents. A request for "information" implies that you are required to provide a narrative explanation on the seven listed topics. This needs to be clarified. If the IG wants "information" she and her staff will need to conduct interviews of the persons who possess information; if the IG wants "documents," she should request them as such. You should not be required by this request to conduct your own interviews or to speculate as to how to respond to the request.

Second, the Request seeks information in the first two bullet points about Board members, Committee members, and "Broward Health officials." The term "Broward Health officials" is not a defined term (in fact, the Request contains no defined terms). You should not have to guess what the IG is seeking. It is important to gain an understanding of exactly what people the IG is referring to so that you are not later accused of failing to respond fully or accurately.

Third, the Request in the fourth bullet point asks for, but does not contain a definition of, "opinions," "guidance" or "interpretations" as distinct from "legal advice," all of which are requested. This issue is the same as the first one above: if the IG wants all information, opinions, and interpretations, as distinct from formal written legal opinions or written legal advice, the IG would need to conduct extensive interviews. If the IG is seeking all emails that may have gone to anyone at Broward Health from legal related to the topics listed by the IG, an extensive IT search would be necessary which would be greatly aided if you are able to negotiate search terms with the IG or at least agree on which custodians' ESI should be searched. Depending upon the extent of the IG's request, there may be ongoing legal matters for which a privilege review may be required. The Request contains other undefined and vague terms, such as "contemplated recusals" and "perceived lobbying activities." You cannot be expected to know what someone contemplated or what someone perceived unless they told you directly or made it plain in a document. It would be much easier for you to comply if you obtain agreement from the IG that your production is limited to documents and you can agree upon search terms and specific custodians whose ESI would be searched.

Fourth, the Request does not specify time parameters in all cases. In the fifth request, there are no time parameters at all; in the sixth, the time parameter modifies the second half of the request, but not the first. Without time parameters, the IG's Request is temporally overbroad. Conceivably, you are being asked to provide information and documents dating back to the date the District was created.

Fifth, the last item in the Request is flawed for a number of reasons. In her last request, the IG seeks:

Complete personnel files as well as employment applications, resumes, employment contracts, termination agreements, settlement agreements, reports of internal or external investigations in which the individual was the subject, as well as correspondence and any other documentation required to provide a full understanding of the following individuals' relationship to Broward Health: Lynn Barrett, Brian Bravo, Kevin Fusco, Calvin Glidewell, Vinnette Hall, Donna Lewis, Robert Martin, Frank Nast, Mike Palaez, and Maria Panyi.

Here again, you are being asked to guess what information the IG is actually seeking, only this time, to respond appropriately, you will need to evaluate whether a piece of "correspondence" or "any other documentation" is "required to provide a full understanding of the following individuals' relationship to Broward Health." Ideally, you would try to limit the documents to

the specific type of documents listed rather than be required to speculate whether other documentation would be necessary to provide a “full understanding.”

Further, as we have discussed with Melanie Hatcher, section 395.3025(9), Florida Statutes, specifically states:

A licensed facility may prescribe the content and custody of limited-access records which the facility may maintain on its employees. Such records shall be limited to information regarding evaluations of employee performance, including records forming the basis for evaluation and subsequent actions, and shall be open to inspection only by the employee and by officials of the facility who are responsible for the supervision of the employee. The custodian of limited-access employee records shall release information from such records to other employers **or only upon authorization in writing from the employee or upon order of a court of competent jurisdiction.** Any facility releasing such records pursuant to this part shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records. Such limited-access employee records are exempt from the provisions of s. 119.07(1) for a period of 5 years from the date such records are designated limited-access records.

(Emphasis added).

In accordance with section 395.3025(9) and the policies followed when responding to Chapter 119 public records requests, Broward Health has designated certain records in employee personnel files to be “limited access” records. (HRAM Policy 2.30). Therefore to comply with the statute, you will need to obtain the written permission of the listed employees before releasing their information. If you are unable to obtain such permission, then you will need to tell the IG that she must seek a court order before you can release the “limited access” records to the IG without consent.

The IG has requested that you “liberally construe these requests in favor of transparency and cooperation . . .” While the Board has stated on numerous occasions that it intends to proceed with transparency and cooperation, and in our view has done so, we are concerned that these requests for information are vague, overbroad, burdensome, and potentially invasive of employee rights and that they do not give you sufficient guidance to know what needs to be produced. Additionally, they obviously require an enormous undertaking for compliance. Because of the vagueness and enormity of the task, you can never be sure that an objective standard will be used to determine if compliance has been achieved.

It is our experience that when a party is asked to respond to a request such as this one, there is a good faith attempt to resolve issues like those identified with the requesting party. If this is done before spending time and resources, the chances of lessening conflict with the requesting party are increased exponentially. In this case, you may wish to provide to the IG those documents you have accumulated in response to the request, indicating that your production does not

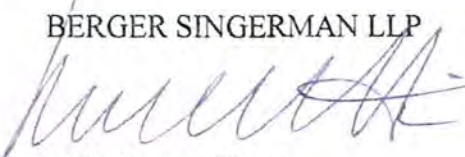
Ms. Vinnette Hall
March 24, 2016
Page 4

remove the need for clarification and simplification. Toward that end, we have Bates labelled and indexed the documents you have provided us so that you can forward them on to the IG. We will provide you with a link to an electronic copy of the documents for this purpose.

We are available to answer any questions you or Commissioner Ure may have regarding the content of this letter.

Sincerely,

BERGER SINGERMANN LLP

A handwritten signature in cursive script, appearing to read "Melanie Ann Hines".

Melanie Ann Hines

MAH:apw

cc: Commissioner Christopher T. Ure (w/encl. Last Request of I.G.)



RICK SCOTT
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
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March 15, 2016

Vinnette Hall, Chief Internal Auditor
North Broward Hospital District
303 SE 17th Street
Fort Lauderdale, FL 33316
vhall@browardhealth.org

RE: Chief Inspector General Case # 201601280006

Dear Ms. Hall:

Please provide the following information to the Office of the Chief Inspector General to assist with our ongoing review:

- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding disclosures of any potential or actual conflicts of interest and/or recusals or contemplated recusals by members of the North Broward Hospital District (Broward Health) Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present. Please include any and all disclosures made by Broward Health Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to lobbying activities (actual or perceived) of members of the Broward Health Board of Commissioners, members of Board committees, and Broward Health officials from 2012 to present.
- Any and all contracts and invoices for legal services and/or investigative services for the Broward Health Board of Commissioners, committees of the Board to include the Broward Health Internal Audit Committee, the Broward Health General Counsel, and the Broward Health Chief Internal Auditor from 2012 to present. Please include names, dates of service, type of services expected or provided, the scope of work, as well as invoices and payments rendered or expected/projected to be rendered for services from 2012 to present.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials pertaining to Board governance, Board committee structure, composition, authority, voting procedure, disclosures, independence, independence statements, and compliance with sunshine laws and/or public meeting rules.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials relating to the separation of authorities of the Board oversight activities versus operational

- management of Broward Health.
- Any and all records, policies, procedures, opinions, guidance, evaluation, analysis, interpretations, legal advice, communications and training materials regarding the use of "shade" meetings by the Broward Health Board of Commissioners and/or any committee of the Board. Please include a listing of all meetings conducted in the "shade" by the Broward Health Board of Commissioners and/or any committee of the Board; dates of the meeting; justification for conducting the meeting or portions of the meeting in the "shade" for the period of 2012 to present.
 - Complete personnel files as well as employment applications, resumes, employment contracts, termination agreements, settlement agreements, reports of internal or external investigations in which the individual was the subject, as well as correspondence and any other documentation required to provide a full understanding of the following individuals' relationship to Broward Health: Lynn Barrett, Brian Bravo, Kevin Fusco, Calvin Glidewell, Vinnette Hall, Donna Lewis, Robert Martin, Frank Nast, Mike Palaez, and Maria Panyi.

Please provide all records in electronic form using Microsoft software or .pdf (searchable). Also, please liberally construe these requests in favor of transparency and cooperation with this office, and please anticipate additional requests as we continue our review.

Thank you for your assistance. In the event you have any questions, please feel free to contact me or Marvin Doyal at (850) 717-9264.

Sincerely,



Erin Romeiser
Investigations Manager
Office of the Chief Inspector General

Tab 9

PRELIMINARY BUDGET

The below is a preliminary estimate to facilitate the investigation and to assist the board in determining whether any impropriety or unlawful conduct has taken place with respect to the following items. The following lawyers have been assigned to the items listed below: Mitchell W. Berger, Sharon Kegerreis, Melanie Ann Hines, Pamela C. Marsh, Dawn M. Meyers, and Nicole L. Levy (see attached biographies). This is a preliminary budget and the items below may expand, contract, or otherwise change as more information is obtained.

	CATEGORIES	ASSIGNED	AMOUNT
1	Oversight vs. Management (Florida OIG Review)	Dawn/Melanie	\$18,000
2	General Contracting Issues Related to OIG Review	Sharon/Melanie	\$12,000
3	3(a) - ESI/Wayne Black/Lynn Barrett/ Foley Lardner/alleged obstruction of justice issue <hr/> 3(b) - Brian Bravo issues and termination	Mitchell/Pam	\$18,000
4	Wayne Black Hiring and Supervision	Mitchell/Sharon	\$12,000
5	Termination of CFO Bob Martin	Sharon/Melanie	\$12,000
6	Zimmerman Contract	Sharon/Melanie	\$18,000
7	Michael Pelaez termination (fired compliance officer issue)	Nicole/Dawn	\$9,000
8	Zachariah Zachariah Contract	Sharon/Melanie	\$12,000

	CATEGORIES	ASSIGNED	AMOUNT
9	Security Services Contract (G4S/Wackenhut)	Mitchell/Nicole	\$12,000
10	Abaline Distribution Contract	Mitchell/Pam	\$9,000
11	Imperial Hospital LLC and MedAssets	Mitchell/Pam	\$9,000
12	JHD Health Care Partners	Sharon/Melanie	\$9,000
13	Salsa/William Hubbell (owner and former employee)	Dawn/Nicole	\$3,000
14	Hotline Complaint re "Town Hall Meeting"	Sharon/Melanie	\$1,300
15	Mark R. Hillstrom Voicemail Forwarded by Wayne Black	Mitchell	\$1,200
16	Investments and opinion on investments from Trip Scott and investment policy concerns.	Mitchell	\$12,000
	TOTAL Preliminary Estimate		\$ 167,500.000

The above budgeted numbers are estimates only and might be less or more than the amount budgeted. We will endeavor to report to the board and audit committee if more resources are needed or if more topics need to be included as part of the assignment.