

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.:

**DAVID DI PIETRO,  
as Chair of the North  
Broward Hospital District  
d/b/a Broward Health**

**Petitioner,**

v.

**GOVERNOR RICK SCOTT  
OF FLORIDA,**

**Respondent.**

---

**AMENDED PETITION FOR WRIT OF QUO WARRANTO**

Petitioner, David Di Pietro, Chair of the North Broward Hospital District d/b/a Broward Health, respectfully petitions this Honorable Court for a Writ of Quo Warranto directed to Respondent, Rick Scott, in his capacity as Governor of the State of Florida, and states:

**I. BASIS FOR INVOKING JURISDICTION OF THE COURT**

This Petition seeks the issuance of a writ of quo warranto directing Governor Rick Scott to demonstrate the authority and legal basis for the issuance of Executive Order Number 16-78 dated March 18, 2016 suspending David Di Pietro,

a commissioner and Chair of the Board of Commissioners of the North Broward Hospital District. **A-1**.<sup>1</sup>

This Petition invokes the jurisdiction of the Court as specified Article V, Section 5(b) of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100(a). This Court has original jurisdiction of this proceeding. *State ex rel. Vance v. Wellman*, 222 So.2d 449 (Fla. 2d DCA 1969).

Quo warranto is “the proper method to test the exercise of some right or privilege, the peculiar powers of which are derived from the State.” *Martinez v. Martinez*, 545 So.2d 1338, 1339 & n.3 (Fla. 1989); *Fla. House of Reps. v. Crist*, 999 So.2d 601, 607 (Fla. 2008).<sup>2</sup>

---

<sup>1</sup> An Appendix is submitted herewith pursuant to Fla. R. App. P. 9.220. Appended documents are identified as “A-\_\_\_” for the ease of the Court.

<sup>2</sup> The Florida Supreme Court has “held that the power vested in the Governor to suspend an officer under Section 15 of article 4 of the Constitution is executive.” *Owens v. Bond*, 83 Fla. 495, 91 So. 686. Generally, “so long as the Governor acts within his jurisdiction as charted by organic law, his action may not be reviewed by the courts. *State ex rel. Holland v. Ledwith*, 14 Fla. 220; *State ex rel. Attorney General v. Johnson*, 30 Fla. 433, 11 So. 845, 18 L. R. A. 410; *State ex rel. Attorney General v. Johnson*, 30 Fla. 499, 11 So. 855; *People ex rel. Johnson v. Coffey*, 237 Mich. 591, 213 N. W. 460, 52 A. L. R. 1; *In re Guden*, 171 N. Y. 529, 64 N. E. 451; 12 R. C. L. 1008. As with most general rules, however, there are exceptions that in this instance serve as an important check and balance on the authority of the Executive Branch from abuses of power. Here, the general rule is “modified by the exception that such exercise of power being that affecting the lawful rights of individuals, the jurisdictional facts, in other words, the matters and things on which the executive grounds his cause of removal, may be inquired into by the courts.” *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934). Under the facts

This Petition is, therefore, properly filed as an original action in the Circuit Court, because Respondent, Rick Scott, is the Governor of the State of Florida, a state officer pursuant to Article IV, Section 1, Florida Constitution, whom Petitioner claims has exercised executive powers in a manner inconsistent with the Constitution and substantive Florida Laws of the State of Florida. In accordance with Fla. R. App. P. 9.030(c)(3), this Court is empowered to “issue . . . all writs necessary to the complete exercise of its jurisdiction” and, pursuant to Article V, Section 5(b), this Court has “the power to issue writs of ... *quo warranto* ... and all writs necessary or proper to the complete exercise of their jurisdiction.”

## **II. SPECIFIC FACTS UPON WHICH PETITIONER RELIES**

On September 9, 2011, Petitioner was appointed by Governor Rick Scott to the Board of Commissioners (“the Board”) for the North Broward Hospital District (aka “Broward Health”). Pursuant to the North Broward Hospital District Charter (“the Charter”), which was enacted by a special act of the Florida Legislature in 2006, a Board of Commissioners was created to act as the governing body of Broward Health. It consists of seven members and is lead by a single chairperson. Members of the Board are appointed by the Governor and serve for terms of four (4) years each. On December 20, 2013, Petitioner was appointed to serve as

---

detailed below, coupled with an insufficient basis in law, this Court has the authority to review the improvident suspension of Chair Di Pietro.

commissioner of one of the two designated at-large commissioner positions for a term ending on June 27, 2017. On October 23, 2013, Petitioner was elected in a unanimous vote to serve as Chair of the Board of Commissioners and re-elected every year thereafter by the Commissioners of the North Broward Hospital District.

The North Broward Hospital District boundaries consist of Griffin Road to the South and the county line to the north of Broward County, Florida. The Hospital District has seven appointed commissioners to the Board of Commissioners of the North Broward Hospital District. Five of the commissioners must reside within a designated district within the North Broward Hospital District. The Hospital District also has two at-large commissioners that can reside in any district within the geographical boundaries of the North Broward Hospital District. Each Commissioner has a specific term for which they are appointed. Each commission term lasts for a period of four (4) years and said terms are staggered at expiration. Pursuant to Section 4(1), the North Broward Hospital District's "declared public purpose is to provide the healthcare needs of the people within its district." As a special taxing district, the North Broward Hospital District is empowered "to order and require the county property appraiser of said county to assess, and the county tax collector of said county to collect, the amount of taxes so assessed or levied by the board" to pay necessary expenses of the North Broward Hospital District. **A-2.**

The Bylaws of the North Broward Hospital District provide that “[t]he Board shall be responsible for the oversight of Broward Health 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 Board’s oversight function shall be exercised as a whole body and not through the actions of any one commissioner.” *See Sec. 1-4 of the Bylaws of the North Broward Hospital District.*

### **A-3.**

The Charter defines the Board’s governing authority as that of a corporate body, which includes such powers as the ability to sue and be sued, contract and be contracted with, appoint a Chief Executive Officer, purchase or lease real property, and others.

However, the most important function of the Board is its power of oversight. To that end, the Board is tasked with making sure Broward Health functions in accordance with law and in accordance with the terms and conditions of its Charter.

In regards to the Board’s power of oversight, the Charter states as follows:

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 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 purpose of inquiry or information or

information, a member of the board of commissioner 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.

In April 2015, Chair Di Pietro received a tip about fraud and kickbacks in the Broward Health purchasing department. As a former prosecutor, a licensed attorney, and most importantly, as the Chair of the Board of Commissioners for Broward Health tasked with oversight, Di Pietro immediately reported the information to Broward Health's CEO, DR. NABIL EL SANADI ("Dr. El Sanadi"). At Chair Di Pietro's suggestion, Dr. El Sanadi retained a very well regarded and experienced fraud investigator – Mr. Wayne Black.

Mr. Black is a former law enforcement supervisor from Janet Reno's public corruption unit in Miami and successfully investigated prior acts of corruption in the North Broward Hospital District. In 2003, evidence he uncovered was used to successfully prosecute the former chief financial officer for embezzlement and other corruption related offenses.

Over the months and weeks that followed, Mr. Black encountered two things: First, he discovered evidence of "obvious corruption," kickbacks, and other crimes, which were summarily turned over to the Federal Bureau of Investigation.

Second, Mr. Black encountered great resistance and obfuscation by Broward Health's General Counsel, LYNN BARRETT ("Barrett"), when she refused to turn

over key evidence to the FBI. This evidence included a laptop computer and a cellular phone device which was conveniently “lost”.

Additionally, the subject of Mr. Black’s criminal investigation focused on a person named BRIAN BRAVO (“Bravo”). Bravo was the head of the purchasing department for Broward Health. Dr. El Sanadi terminated Bravo in December 2015.

However, unknown to Chair Di Pietro, Dr. El Sanadi inexplicably authorized the payment of a \$75,000 severance as well as payment for the value of Bravo’s unused personal leave time. The total value of Bravo’s severance package, by Dr. El Sanadi, exceeded \$90,000.

Not only was this highly unusual for an employee terminated after being suspected engaging in criminal conduct, but neither Lynn Barrett nor Dr. El Sanadi ever reported the matter to Chair Di Pietro.

Sadly, on January 23, 2016, Dr. El Sanadi shocked everyone by committing suicide. Immediately following and because of his death, rumors began to circulate about the FBI’s pending criminal investigation, disarray in the leadership of Broward Health, and allegations of corruption and additional misconduct.

On January 29, 2016, Wayne Black sent a scathing email to Lynn Barrett chastising her for obstructing the FBI’s investigation by failing to divulge Bravo’s computer to them. **A-4** He was additionally enraged by the fact that Bravo’s work cell phone had been mysteriously lost.

After Mr. Black's email circulated through the leadership of Broward Health, the laptop was *finally* divulged to the FBI at Lynn Barrett's direction.

Mr. Black's email also spurred Chair Di Pietro to demand a copy of Bravo's severance agreement. It was not until he saw the agreement for himself that he first learned of Bravo's \$90,000 plus severance pay.

On the same day as Wayne Black's email to Lynn Barrett, MELINDA M. MIGUEL ("Miguel"), the Chief Inspector General from the Executive Office of the Governor, sent a letter to Chair Di Pietro advising him she was conducting a review of every contract entered into by Broward Health since July 1, 2012. **A-5**

Chair Di Pietro immediately responded in writing by pledging his absolute support for her endeavor and by assigning a liaison from Broward Health to assist in the review. **A-6** The person assigned to be the liaison was Broward Health's auditor, VINNETTE HALL ("Hall").

On January 31, 2016, the Acting President/CEO of Broward Health, KEVIN FUSCO ("Fusco"), emailed Chair Di Pietro advising him that he unilaterally appointed Lynn Barrett to act as the liaison in her capacity as general counsel – even though the Office of the Governor explicitly asked Di Pietro to assign a liaison and despite the fact that appointing the independent auditor was the most sensible choice. **A-7**

On February 1, 2016, Chair Di Pietro advised CEO Fusco, “As we do not know the precise nature of the OIG request, to ensure the integrity of the process, it is mandatory that Ms. Hall’s independence from all Broward Health staff members, including the Acting CEO and the General Counsel, be preserved.” **A-8**

On February 10, 2016, Chair Di Pietro called a special meeting of the Board to address the allegations made by Wayne Black in his email to Lynn Barrett dated January 29, 2016. **A-4** Di Pietro was extremely concerned that Barrett was obstructing the FBI’s criminal investigation and was aiding in the cover up of fraud, kickbacks, and other corrupt practices in Broward Health.

At the Board meeting, Lynn Barrett recommended to the Board that the allegations concerning her misconduct be held in a “shade meeting.” Pursuant to Fla. Stat. §286.011, all boards or commissions of any state agency or authority, must conduct their meetings in a public forum. However, pursuant to Fla. Stat. §286.011(8), a board may meet in private with the entity’s attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency. This type of private meeting is called a “Shade Meeting.”

However, the following conditions must be met:

- i. The board’s attorney must advise the board at a public meeting that he/she desires advice concerning the litigation;
- ii. The private meeting must be limited to discussions about settlement negotiations or strategy sessions relating to litigation expenditures;

- iii. The entire meeting shall be recorded by a certified court reporter and no portion of the meeting can be off the record;
- iv. The board must give reasonable public notice of the time and date of the attorney-client session and the names of the people who will be attending the meeting;
- v. The transcripts of the meeting become public record upon the completion of the litigation.

As General Counsel, Lynn Barrett knew or should have known that a “shade meeting” was completely inappropriate, unwarranted, and simply unlawful as the special meeting called by Chair Di Pietro did not concern any pending litigation, but allegations of her own misconduct.

In a 5 to 2 vote, the Board agreed to do the Shade Meeting subject to obtaining a legal opinion stating that a Shade Meeting would be lawful.

The two people who voted AGAINST the shade meeting were the same two people Governor Scott suspended by Executive Order: Chair Di Pietro and Board Member Darryl Wright.

On February 15, 2016, Lynn Barrett wrote Attorney General Pam Bondi to determine “Does the existence of an investigation and subpoena provide sufficient grounds for the Board to conduct a shade meeting under Florida Statutes 286.118 to obtain advice from its legal counsel on that matter?” **A-9** On February 17, 2016,

Attorney General Bondi provided an informal legal opinion stating that the shade meeting would be unlawful. **A-10**

At this point in time, Broward Health was in a serious state of disarray.

As Chair of the Board of Commissioners, Di Pietro's most vital role is one of oversight. In light of Dr. El Sanadi's abrupt suicide, Wayne Black's discovery of fraud, kickbacks, and other corrupt practices, Lynn Barrett's obstruction of the FBI investigation, and the Chief Inspector General's review concerning reported allegations of possible improprieties or inappropriate actions, Di Pietro knew the Board had a duty to take action.

To that end, Chair Di Pietro invited attorney MITCHELL BERGER ("Berger") from the law firm BERGER SINGERMAN, L.L.P., to present a proposal to the Audit Committee on February 17, 2016. Following the proposal, the Audit Committee approved the following three motions in a 4 to 1 vote:

- i. Motion to retain independent counsel to work with the Internal Auditor to review the Audit Committee Charter and report any recommendations to reflect best practices;
- ii. Motion to recommend to the Board that Berger Singerman law firm be retained as special independent legal counsel for the Audit Committee to work with the Internal Auditor on the Chief Inspector General's review and other investigations as necessary; and
- iii. Motion to recommend to the Board that Berger Singerman work with the Internal Auditor to develop a proposed budget for the Audit Committee to properly respond to the Chief Inspector General's investigation, including related legal costs.

On February 24, 2016, the Board ratified the recommendations of the Audit Committee in a 4 to 3 vote as to the first two motions and in a 5 to 2 vote as to the last motion regarding the budget. It must be emphasized that Berger Singerman was retained by the Board and not by Chair Di Pietro or any other member of the Board acting in a unilateral capacity.

Chair Di Pietro voted for Berger Singerman for a very specific reason: Seeing that Broward Health was in the midst of a massive credibility and corruption scandal, he knew that **integrity of process and transparency** were the most important factors in conducting an independent review.

Berger Singerman was chosen not only for its stellar reputation in the community, but because they are not politically beholden to anyone in Broward Health or the Governor's Office. Chair Di Pietro casted his vote for Berger Singerman because he knew that no matter where their investigation lead, Berger Singerman's findings would not be tainted by politics, fiduciary relationships or promises for later reward.

On March 1, 2016, the Chief Inspector General wrote Chair Di Pietro a letter requesting that he advise all Broward Health employees to contact their investigators if they have any information to provide that may help with the review process.

Following receipt of this letter, Wayne Black contacted Chair Di Pietro via telephone and advised him that the Chief Inspector General, Melinda Miguel, threatened to involve the Florida Department of Law Enforcement (“FDLE”), if Berger Singerman continued to be involved in the independent review.

On March 2, 2016, Chair Di Pietro drafted a letter to all of Broward Health’s employees advising them of the following:

In recent days, it has come to my attention that some of you may feel concerned or afraid to come forward with information pertaining to rules or ethics violations, including reports to governmental agencies and law enforcement.

As Chair of the Board of Commissioners, **I want to personally encourage you to report anything that concerns you to the appropriate government agency directly. You are not required to tell your supervisor or anyone at Broward Health before or after you make any report whatsoever. Furthermore, you may also speak confidentially with the Governor’s Office of Inspector General directly, without fear of adverse personnel or retaliatory action.** That office can be reached by contacting Marvin Doyal or Erin Romeiser at (850) 717-9264. Should you choose, you may also confidentially contact Mr. Carlos Perez, Broward Health’s Chief Ethics Officer.

## **A-11**

Chair Di Pietro emailed this letter to CEO Fusco for dissemination to all of Broward Health’s employees, which was accomplished within three minutes via employee email. **A-12** The next day, Chair Di Pietro sent a letter to the Chief Inspector General advising her that he communicated the above content to Broward Health’s employees. **A-13** On March 3, 2016, Chief Inspector General emailed

Chair Di Pietro back thanking him for taking the position he did and for sending the letter to the employees. **A-14**

From the period of time that elapsed between Dr. El Sanadi's suicide on January 23, 2016 and March 16, 2016, a variety of Broward Health employees contacted Chair Di Pietro to express their grave concern regarding legal and regulatory compliance problems and delays in the contracting process causing problems with patient care.

These employees included the CEO's of the local Broward Health hospitals, Broward Health's internal auditor, compliance officer, and numerous physicians. For instance, the Chief Compliance Officer, DONNA LEWIS ("Lewis") stated that she was "Frightened, scared, and disgusted" and that she had never heard of more allegations of retaliation by management (not the Board) in her 16 years of employment. Her comments were later reiterated at a public meeting of the Board.

At approximately 12:00 p.m. on March 15, 2016, Chair Di Pietro met with Lewis and she urged Di Pietro to move the Board to replace Broward Health's CEO, Kevin Fusco, and to terminate its General Counsel, Lynn Barrett. Lewis urged the removal of the CEO and termination of the General Counsel, due to the various concerns noted above by Broward Health's employees.

At 8:16 p.m. that night, the Chief Inspector General emailed Chair Di Pietro stating that she became aware of the Board's intent to remove Fusco and Barrett. In

her letter, she suggested that the Board's action in removing these problem employees was due to retaliation. In reality, she had no idea why these employees needed to be removed and had no business interfering with the oversight functions of the Board in guaranteeing that Broward Health's Charter is fulfilled.

On March 16, 2016, the Board met and voted to replace CEO Fusco and terminate General Counsel Lynn Barrett. Chair Di Pietro and Board Member Darryl Wright both voted in favor of these motions. Although the Board voted in the affirmative to replace CEO Fusco, Lynn Barrett was placed on 30 day review.

Petitioner dutifully served until March 18, 2016, when Governor Scott executed Executive Order 16-78 purporting to suspend Chair Di Pietro for "giving direction to or interfering with any employee, officer, or agent under the direct or indirect supervision of the President/CEO," which such acts, according to chapter 2007-299, Laws of Florida and section 5(2) of the North Broward Hospital District Charter, constitute "malfeasance within the meaning of Art. IV, s. 7(a) of the Florida Constitution."<sup>3</sup> **A-2.**

### **III. NATURE OF RELIEF SOUGHT**

---

<sup>3</sup> Malfeasance has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful, which he has no right to perform or which he has contracted not to do. *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (Fla. 1934).

Petitioner seeks the issuance of a writ of quo warranto to require Governor Rick Scott to demonstrate both his authority and the jurisdictional basis to issue Executive Order 16-78 dated March 18, 2016 which suspended David Di Pietro, an appointed commissioner of and Chair of the Board of Commissioners of the North Broward Hospital District, without a specific and stated factual basis. Petitioner challenges the sufficiency of the legal basis in that there are no identified acts of misconduct attributable to David Di Pietro. Petitioner seeks an order cancelling/nullifying Executive Order 16-78 and forthwith reinstating Petitioner to his position as a commissioner and Chair of the Board of Commissioners of the North Broward Hospital District.

#### **IV. ARGUMENT**

**Quo Warranto.** The Florida Constitution authorizes the courts of Florida, including this Court, to issue *writs of quo warranto*. *Whiley v. Scott*, 79 So.3d 702, 707 (Fla. 2011). The term “quo warranto” literally means “by what authority” and the writ is the proper means for inquiring into whether a particular individual has improperly exercised a power or right derived from the State. *Id.* Writs of quo warranto are properly utilized to challenge the Governor’s authority to issue an executive order. *Id.*

The Governor’s authority to remove an official from office is derived from Art. IV, Section 7 of the Florida Constitution, which provides:

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, ..., 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 procedural methodology by which the provisions of Art. IV, Section 7 of the Florida Constitution are exercised by the Governor have been codified in §112.41(1), Fla. Stats., which provides:

The order of the Governor, in suspending any officer pursuant to the provisions of s. 7, Art. IV of the State Constitution, shall specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension.

“The power of suspension, being solely in the Governor, must be limited to the grounds stated in the Constitution.” *State ex rel. Hardie v. Coleman*, 155 So. 129, 134 (Fla. 1934).

Thus, the Governor may only act to remove an appointed officeholder pursuant to the authority of Art. IV, Section 7 of the Florida Constitution and §112.41(1), Fla. Stats., if objective palpable facts demonstrate that the officeholder committed malfeasance, misfeasance, neglect of duty, drunkenness, incompetence or demonstrated permanent inability to perform official duties, or commission of a felony. Art. IV, Section 7 of the Florida Constitution. Assuming arguendo the existence of one or more of the foregoing reasons then the Governor

is required to specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension. §112.41(1), Fla. Stats.

Executive Order Number 16-78 does not comply with either Art. IV, Section 7 of the Florida Constitution, or §112.41(1), Fla. Stats., where compliance with both is mandatory.

### **BASIS FOR RELIEF SOUGHT**

#### **Basis #1: Insufficient Predicate for Suspension**

The predicate for the suspension of Chair Di Pietro was a letter from Chief Inspector General, Melinda M. Miguel, also dated March 18, 2016, **A-3**, which does not identify **a single instance of conduct specifically attributable to Chair Di Pietro which interfered with persons under the supervision of the President/CEO.**<sup>4</sup> Consequently, Governor Scott lacked jurisdiction or legal basis to suspend Chair Di Pietro in that the recitations of Chief Inspector General, Melinda M. Miguel, **A-15**, on which Governor Scott relied in connection with the execution of Executive Order 16-78, do not constitute grounds or cause for suspension under section 5(2) of the North Broward Hospital District Charter,

---

<sup>4</sup> The same letter from Chief Inspector General Miguel recommends the suspension of **both** Chair Di Pietro and Commissioner Darryl Wright, Chair of the Audit Committee of the Board of Commissioners, but does not articulate any factual basis or specify any misconduct attributable to Chair Di Pietro or Commissioner Wright, or specify who among them committed any particular act(s).

§§112.51 & 112.511, Fla. Stats. or Article IV, section 7, Florida Constitution as detailed below.

It is well-settled law that the “sufficiency of an executive order of suspension . . . [is] ultimately a judicial question, because it affect[s] the rights of individuals.” Accordingly, the Courts are “authorized to inquire into the jurisdictional facts on which the Governor’s order of suspension was predicated.” Only if an Executive Order “names one or more of the grounds embraced in the Constitution and clothes or supports it with alleged facts *sufficient to constitute the grounds or cause of suspension*, it is sufficient.” *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934). Although an Executive Order need not “be as definite and specific as the allegations of an information or an indictment in a criminal prosecution,” a “*mere arbitrary* or blank order of suspension **without supporting allegations of fact**, even though it named one or more of the constitutional grounds of suspension, would not meet the requirements of the Constitution.” *Id.* Chief Inspector General, Melinda M. Miguel’s letter, **A-15** (the “IG Letter”), is the sole basis for the execution of Executive Order 16-78. A fundamental precept of due process is that the individual whose rights are being affected or deprived “be charged therewith clearly and in such manner and with such reasonable certainty as to be given reasonable opportunity to defend against the attempted proof of such charges.” *State ex rel. Hawkins v. McCall*, 29 So.2d 739, 741 (Fla. 1947). “Simple justice

requires that there be at least enough specificity as to fairly apprise the accused officer of the alleged acts against which he must defend himself.” *Crowder v. State ex rel. Baker*, 285 So.2d 33, 35 (Fla. 4<sup>th</sup> DCA 1973). “[T]he allegations of fact must be sufficiently specific and clear to apprise the accused officer to the extent that he may have a fair opportunity to meet and disprove or to explain the act complained of.” *Hawkins v. McCall, supra.* at 742).

Neither Executive Order 16-78 nor the IG Letter specify facts sufficient to advise Chair Di Pietro as to the charges made or the basis of the suspension. Indeed, there is no distinction whatsoever between any purported misconduct which might be attributable to Chair Di Pietro or Commissioner Wright, who are left with no choice but to engage in guess-work about what specific misconduct they are alleged of having committed. Even if sufficient facts had been alleged, the evidence must be able to substantiate the offense or malfeasance. In *Hawkins v. McCall, supra*, the Supreme Court concluded that the suspension of a police officer by a City Commission was unlawful because there was no evidence in the record showing that a suspended police officer actually accepted any sum of money for an illegal purpose or knowingly failed to enforce the law. The Supreme Court reiterated that which Governor Scott and Chief Inspector General have apparently forgotten: an officer’s suspension “cannot be based on guess work and suspicion.” *Hawkins v. McCall, supra.* For the judiciary to rubber-stamp and

uphold Executive Order 16-78, which is neither based in law or fact, would be to accept the Chief Inspector General's purely illusory "concerns" as legal bases for an executive suspension. The Chief Inspector General's comment in the IG Letter that "[a]t **minimum** . . . David Di Pietro, and Darryl Wright" should be suspended based on her generalized "concerns" amounts to a threat directed at sitting commissioners of Broward Health that they could be next.

Analysis of the IG Letter expresses **ten (10) concerns** (each of which appear on the second page of the IG Letter under the subheading "Concerns"), none of which, not one, attributes any misconduct to Chair Di Pietro, and the bulk of which express concern regarding the decision of the Board as a whole to engage counsel (Berger Singerman). The "concerns" expressed by the Inspector General are:

- i. In the first paragraph the Inspector General queried (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; and (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.
- ii. In the second paragraph the Inspector General referred to unspecified statements of unidentified persons who alleged that "Board members may have overstepped the authority granted the Board in the charter.
- iii. In the third paragraph the Inspector General identified the fact that the Board voted to hire special independent legal counsel (Berger Singerman) to work with the Broward Health Internal Auditor on the IG review.
- iv. In the fourth paragraph the Inspector General referred to correspondence from attorney Mitchell Berger.

- v. In the fifth paragraph the Inspector General expressed concern that an attorney from the Berger Singerman law firm appeared on February 25, 2016 for interviews.
- vi. In the sixth paragraph the Inspector General refers to “some members of the Board singled out for dismissal or removal two Broward employees 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.”
- vii. In the seventh paragraph the Inspector General expressed concern “... about the Board hiring outside special counsel, escalating costs for this representation, and this firm requesting that witness interviews and documents (sic) requests be routed through them could intimidate employees that may want to come forward.”
- viii. In the eighth paragraph the Inspector General also expressed concern “... about this firm hired by the Board providing advice that as a condition of cooperation, ‘cooperation must be directed and coordinated through 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.” (sic).
- ix. In the ninth paragraph the Inspector General expresses concern regarding “... the continued intervention of the firm ‘to manage’ this review for them ...” and “... 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 by the public testimony that there is fear, lack of leadership and instability at Broward Health.”
- x. In the tenth paragraph the Inspector General expresses concern “... about interference and retaliation.”

None of these “concerns” rise to the level of misconduct expressed in Art. IV, Section 7 of the Florida Constitution nor provide a factual basis as required by

§112.41(1), Fla. Stats.<sup>5</sup> The “concerns” will each be addressed in the order that they were made by the Inspector General.

The three “concerns” which are the subject of the first paragraph of the “Concerns” which begin on the second page of the IG Letter do not ascribe any misconduct to anyone, let alone, Chair Di Pietro. Rather, they are, at best, queries and nothing more. Consequently, no further dialog is warranted.

The second paragraph is particularly troublesome because it clearly states “However, we’ve not yet confirmed the facts associated with these allegations.” That is to say, the Inspector General recognizes the need to confirm facts, but has not done so. The second paragraph of the IG Letter blatantly fails to specify what Board members interfered with what employees, agents, or officers under the direction of the President/CEO. The only rational conclusion that can be reached, given this confession by the Inspector General, is that there is no actual basis to support any conclusion that anyone overstepped the authority granted the Board in the charter, much less Chair Di Pietro.

---

<sup>5</sup> Six of the “concerns” expressed by the Inspector General (in the third, fourth, fifth, seventh, eighth and ninth paragraphs of the IG Letter) all relate to the decision of the Board (not Chair Di Pietro) to engage the Berger Singerman firm and the perception of the Inspector General that the retention of the Berger Singerman firm would be costly and unproductive. Engagement of counsel, a right of constitutional magnitude, cannot, under any set of circumstances, be construed as an act of misconduct.

The third paragraph, like the fourth, fifth, seventh, eighth and ninth paragraphs, are critical of the decision of the Board (and not Chair Di Pietro) to engage the Berger Singerman firm. Accordingly, each of the third, fourth, fifth, seventh, eighth and ninth paragraphs will be addressed together. Fundamentally any party under any set of circumstances is entitled to informed professional representation. The engagement, by the Board (not Chair Di Pietro) is not an individual act of Chair Di Pietro warranting, or which could ever warrant, suspension from office. Board-wide support for the engagement of Berger Singerman is evident from the unanimous approval by the Board of the Berger Singerman retainer agreement. The fervent dislike of the Inspector General with the decision of the Board to engage the Berger Singerman firm is not an act of malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony by Chair Di Pietro. Thus, each of the concerns in the third, fourth, fifth, seventh and eighth paragraphs of the IG Letter are insufficient and do not, and cannot, under any circumstances, warrant the draconian action of Governor Scott. The “concern” of the Inspector General that her investigation might, somehow, in some unspecified way, be hampered (or be at public expense), cannot ever warrant the inference or the perception that the engagement of counsel, a right in a free society, might be sanctionable. The suspension of Chair Di Pietro was unlawful and wrong, and not

within the parameters of the Florida Constitution. Governor Scott lacked authority to suspend Chair Di Pietro.

The sixth paragraph does not identify any culpable behavior by Chair Di Pietro. Rather, it clearly discloses that Chair Di Pietro did exactly what the Inspector General wanted, to wit: "... 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 without fear of retaliation of adverse personnel action." It is untenable to imagine that doing the very thing that the Inspector General requested could ever constitute sanctionable conduct which rises to the level of conduct proscribed by Art. IV, Section 7 of the Florida Constitution. Nevertheless, this was one of the reasons for the suspension of Chair Di Pietro, which was excessive and wrongful.

The ninth paragraph (which addresses not only the engagement of the Berger Singerman firm but also focuses on the removal by the Board (not Chair Di Pietro) of the person who assured employees that there would be no retaliation) warrants further comment. A decision of the Board is not a singular act of Chair Di Pietro and even if it was, it is not conduct contrary to Art. IV, Section 7 of the Florida Constitution. Any Board Member is free to cast a vote on any subject before the Board in any way that he/she sees fit, and casting a vote is not an act of misconduct. Indeed, the removal of the referenced individual may well have been for other

prudential reasons having nothing to do with the Inspector General's investigation, but, because of the absence of any factual foundation that assessment cannot be made and thus no inference by the Inspector General is warranted, who, by the way, still has the ability to conduct an interview with that person. The suspension of Chair Di Pietro related to a Board vote was unlawful and wrong, and not within the parameters of the Florida Constitution. Governor Scott, once again, lacked authority to suspend Chair Di Pietro.

The tenth paragraph, which indicates that the "... review is not complete in any way" but still refers to the various "concerns" once again does not identify a single fact attributable to Chair Di Pietro. The suspension of Chair Di Pietro in the face of an incomplete review process which ascribes absolutely nothing to Chair Di Pietro is likewise unlawful and wrong, and not within the parameters of the Florida Constitution. Governor Scott, was wrong to have suspended Chair Di Pietro.

Any course of action other than a declaration that Executive Order 16-78 was unlawful would essentially demote elected and appointed officials to purely at-will officers who serve at the pleasure but also the politically motivated whims of a sitting Governor, rather than for their appointed terms as intended. Upholding the Governor's illegal Executive Order would also result in a dilution of the mandatory requirements of the Florida Constitution and Florida Statutes with respect to the suspension of appointed officials. As explained above, an order of suspension must

be based on actual misconduct that has been committed and not on mere suspicions or “concerns.”

**Basis #2: Statutory Non-Compliance and Lack of Authority**

Petitioner contends that the suspension of Chair Di Pietro (a) does not fulfill the mandatory requirements of §112.41(1), Fla. Stats.<sup>6</sup>, and (b) exceeded the authority granted to the Governor by Art. IV, Sec. 7 of the Florida Constitution.<sup>7</sup> This is so because the Governor:

- (i) based Executive Order Number 16-78 on tenuous and vague conclusions (which do not even rise to the level of a hunch, let alone “facts” as required by §112.41(1), Fla. Stats.) that are so vague and indefinite that they fail to fairly apprise Chair Di Pietro (or anyone else) of specific acts of impropriety. Rather they postulate that potential *future* conduct (or, as Melinda M. Miguel characterized it, “... their *perceived* ability to retaliate/interfere or to operate in a *perceived* management role of Broward Health.” and because suspension “... would send a strong

---

<sup>6</sup> The order of the Governor, in suspending any officer pursuant to the provisions of s. 7, Art. IV of the State Constitution, shall specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension.

<sup>7</sup> 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, ..., 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.

message to the Broward Health Employees that interference, retaliation, and malfeasance will not be tolerated.”) (A-15) might constitute violation(s) of the non-interference clause of Section 5(2) of the North Broward Hospital District Charter (which was specifically intended to regulate the relationship between the Board of Commissioners and the President/CEO and inferior employees, officers, and agents that directly or indirectly respond to the President/CEO);

- (ii) likened “perceived” (subjective) “concerns” which have not occurred, and may never transpire, to actual, identifiable and articulable violation(s) of the non-interference clause of section 5(2) of the North Broward Hospital District Charter;
- (iii) relied on subjective contentions (not facts) which, when applied to section 5(a) of the North Broward Hospital District Charter, fail on all levels to substantiate, document, identify or specify the existence of past conduct which could trigger a jurisdictional basis for the issuance of Executive Order 16-78.

**Basis #3: No Direct or Indirect Supervision Under President/CEO**

Section 5(2) of the Charter regulates the relationship between the Board and “employee[s], officer[s], or agent[s] under the direct or indirect supervision of the President/CEO”. The Chief Inspector General of the State of Florida has

alleged that Chair Di Pietro inappropriately interfered with her investigation as a basis for his suspension. However, the Chief Inspector General is *not* an “employee, officer, or agent under the direct or indirect supervision of the President/CEO” of Broward Health. Rather, she is an employee of the Office of the Governor. Therefore, it is *impossible* for Chair Di Pietro to violate the Charter, thereby warranting suspension, by interfering with her investigation – even if that false allegation were true. Section 5(2) does not regulate her office or her independent review, nor could it, since the Florida Office of Inspector General is not within the purview of the North Broward Hospital District. §20.055, Fla. Stats.

Lynn Barrett, General Counsel of the North Broward Hospital District, is an officer directly appointed and employed by the Board of Commissioners, and who reports directly to the Board of Commissioners. The General Counsel is *not* an “employee, officer, or agent under the direct or indirect supervision of the President/CEO” of the North Broward Hospital District. Assuming that the Chief Inspector General intended to include Lynn Barrett in the list of persons allegedly interfered with, the General Counsel is not under the direct or indirect supervision of the President/CEO of the North Broward Hospital District. Therefore, it is *impossible* for Chair Di Pietro to violate the Charter vis-à-vis Lynn Barrett, who is directly answerable to the Board of Commissioners.

Kevin Fusco, then acting Chief Executive Officer, appointed and employed by the Board of Commissioners and who reports to the Board of Commissioners directly, was also not a member of the protected class under section 5(2) of the North Broward Hospital District Charter because by very definition the President/CEO cannot also be an “employee, officer, or agent *under* the direct or indirect supervision of the President/CEO” of the North Broward Hospital District (emphasis added). In other words, it is *impossible* for Chair Di Pietro to violate the Charter vis-à-vis its President/CEO because the President/CEO of the North Broward Hospital District is not nor could he be *under* the direct or indirect supervision of himself.

The law firm of Berger Singerman, including lead partner Mitchell W. Berger, Esq., was appointed and employed by the Board of Commissioners as a whole to serve as independent Special Legal Counsel to assist the Audit Committee in responding to inquiries from the Chief Inspector General, but neither the law firm of Berger Singerman, nor any of their attorneys or agents, are “member[s] of the board of commissioners.” Therefore, Berger Singerman are not members of the class of persons governed or regulated by the requirements of section 5(2) of the North Broward Hospital District Charter. Berger Singerman’s representation of the Board of Commissioners, and consequent participation in the Chief Inspector General’s independent review, was for the purpose of “inquiry or information” and

it's action(s) as Counsel to the Board of Commissioners cannot possibly be imputed to any individual member of the Board of Commissioners.

In sum, the express language of Section 5(2) of the North Broward Hospital District Charter upon which Governor Scott relied in support of the suspension of Chair Di Pietro was intended to regulate the relationship between commissioners and management, not the relationship between non-commissioners and management or between commissioners and an independent state officer or agency that operates outside the purview and jurisdiction of the North Broward Hospital District.

Accordingly, even if specific facts attributable to Chair Di Pietro were in existence, the allegations of interference upon which Governor Scott relied are insufficient as a matter of law since the parties allegedly interfered with are not within the ambit of Section 5(2) of the North Broward Hospital District Charter.

The dearth of "facts" as mandated by §112.41(1), Fla. Stats. warrants the immediate reinstatement of Commissioner Di Pietro to his position on the Board of Commissioners. Even if Governor Scott had articulated a factual basis (which he did not), as a matter of law, the persons with whom it is argued there might have been interference, are not within the scope of persons with whom interference is prohibited. The suspension of Chair Di Pietro was wrongful, precipitous and unwarranted.

The Court should not countenance such an assault on the Florida Constitution and Florida Statutes. Executive Order 16-78 should be declared an invalid exercise of power by the Governor and forthwith cancelled.

**WHEREFORE**, Petitioner, David Di Pietro, respectfully requests that this Court issue its Order to Show Cause to Rick Scott, Governor of the State of Florida, to show cause, if any there be, why Executive Order Number 16-78 dated March 18, 2016 (**A-1**), should not be invalidated, why David Di Pietro should not be forthwith reinstated as a commissioner of, and Chair of, the Board of Commissioners of the North Broward Hospital District, in accordance with Fla. R. App. P. 9.040(c), if the Court determines that Petitioner has sought an improper remedy treat this matter as though the proper remedy had been sought, award David Di Pietro his attorney fees and costs incurred in accordance with §112.44, Fla. Stats., together with all such other and further relief which, as to this Court, may seem just and proper.

**CERTIFICATE OF COMPLIANCE**

I certify that this document was generated by computer using Microsoft Word with Times New Roman 14-point font in compliance with Fla. R. App. P. 9100(l).

Dated this 22nd day of March, 2016.

Respectfully Submitted,

*ATTORNEYS FOR PETITIONER*

**BRUCE DAVID GREEN, P.A.**  
1313 South Andrews Avenue  
Ft. Lauderdale, FL 33316  
Phone: 954-522-8554  
Fax: 954-522-8555  
[bgreen@bdgreenpa.com](mailto:bgreen@bdgreenpa.com)

/s/ Bruce D. Green

**BRUCE D. GREEN, ESQ.**  
Florida Bar No.: 262048  
Email: [bgreen@bdgreenpa.com](mailto:bgreen@bdgreenpa.com)

**LAW OFFICES OF BRIAN SILBER, P.A.**  
12 S.E. 7<sup>th</sup> Street Suite 705  
Ft. Lauderdale, FL 33301  
Phone: 954-462-3636  
[SilberLaw@gmail.com](mailto:SilberLaw@gmail.com)

/s/ Brian Y. Silber

**BRIAN Y. SILBER, ESQ.**  
Florida Bar No.: 640646  
Email: [SilberLaw@gmail.com](mailto:SilberLaw@gmail.com)

**JAY SPECHLER, P.A.**  
Museum Plaza – Suite 900  
200 South Andrews Avenue  
Ft. Lauderdale, FL 33301  
Phone: 954-922-4031  
[jay@jayspechler.com](mailto:jay@jayspechler.com)

/s/ Jay S. Spechler

**JAY S. SPECHLER, ESQ.**  
Florida Bar No.: 27032  
Email: [jay@jayspechler.com](mailto:jay@jayspechler.com)

**CERTIFICATE OF SERVICE**

I certify that a copy of this Petition has been furnished to Timothy M. Cerio, General Counsel, Office of the Governor, The Capitol, 400 S. Monroe Street, Room 209, Tallahassee, FL 32399-0001 by hand delivery this \_\_\_ day of March, 2016.

**BRUCE DAVID GREEN, P.A.**  
1313 South Andrews Avenue  
Ft. Lauderdale, FL 33316  
Phone: 954-522-8554  
Fax: 954-522-8555  
[bgreen@bdgreenpa.com](mailto:bgreen@bdgreenpa.com)

**LAW OFFICES OF BRIAN SILBER, P.A.**  
12 S.E. 7<sup>th</sup> Street Suite 705  
Ft. Lauderdale, FL 33301  
Phone: 954-462-3636  
[SilberLaw@gmail.com](mailto:SilberLaw@gmail.com)

*/s/ Bruce D. Green*

**BRUCE D. GREEN, ESQ.**

Florida Bar No.: 262048

Email: [bgreen@bdgreenpa.com](mailto:bgreen@bdgreenpa.com)

*/s/ Brian Y. Silber*

**BRIAN Y. SILBER, ESQ.**

Florida Bar No.: 640646

Email: [SilberLaw@gmail.com](mailto:SilberLaw@gmail.com)

**JAY SPECHLER, P.A.**

Museum Plaza – Suite 900

200 South Andrews Avenue

Ft. Lauderdale, FL 33301

Phone: 954-922-4031

[jay@jayspechler.com](mailto:jay@jayspechler.com)

*/s/ Jay S. Spechler*

**JAY S. SPECHLER, ESQ.**

Florida Bar No.: 27032

Email: [jay@jayspechler.com](mailto:jay@jayspechler.com)