

# 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:

Kenn Ritzman  
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  
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 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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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*

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<sup>2</sup> 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 employees<sup>3</sup> 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.

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<sup>3</sup> 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.

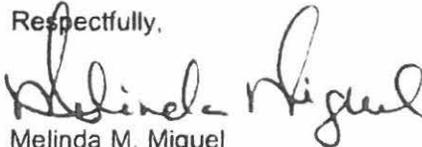
Although this review is not complete in any way, these matters raise concerns about interference and retaliation.

#### **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,

A handwritten signature in black ink, appearing to read "Melinda Miguel". The signature is fluid and cursive, with the first name being more prominent.

Melinda M. Miguel



RICK SCOTT  
GOVERNOR

STATE OF FLORIDA  
Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

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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**

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**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 to 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](mailto:vhall@browardhealth.org)

## Doyal, Marvin

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**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';  
'r5rodriguez@browardhealth.org'; 'cure@browardhealth.org';  
'svanhoose@browardhealth.org'; 'darryllamarkwright@gmail.com';  
'lmarrett@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



RICK SCOTT  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

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March 15, 2016

Vinnette Hall, Chief Internal Auditor  
North Broward Hospital District  
303 SE 17<sup>th</sup> Street  
Fort Lauderdale, FL 33316  
[vhall@browardhealth.org](mailto: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

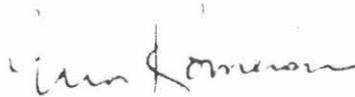
management of Broward Health

- 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

THE CAPITOL  
TALLahassee, FLORIDA 32304-3000

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850-488-7146  
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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

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**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](mailto:david@ddpalaw.com)>  
**Date:** March 16, 2016 at 12:22:16 AM EDT  
**To:** "Miguel, Melinda" <[Melinda.Miguel@eog.myflorida.com](mailto: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. I 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 SINGERMAN

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

March 16, 2016

VIA ELECTRONIC MAIL

(Melinda.miguel@eog.myflorida.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

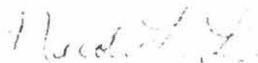
Re: Office of the Chief Inspector General: Administrative Review 2016-01280006

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:nl

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

20170602

## 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,

Pam Bondi  
Attorney General

PB/tgh

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[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] *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. 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."