

**IN THE CIRCUIT COURT OF THE
SEVENTENTH JUDICIAL
CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA**

GOVERNOR RICK SCOTT
OF FLORIDA,

Respondent/Appellant,

v.

CASE NO. CACE 16-5120 (25)

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

Petitioner/Appellee.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Governor Rick Scott of Florida, Respondent/Appellant, appeals to the Florida Fourth District Court of Appeal the Final Order Granting Petitioner's Amended Petition for Writ of Quo Warranto, entered on April 11, 2016. The nature of the order is a final order granting a petition for writ of quo warranto.

A copy of the order is attached.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that, on this 12th day of April, 2016, the foregoing was filed with the Clerk of the Court through the Florida Courts eFiling Portal, and thereby was served via e-mail on counsel of record

/s/ William H. Stafford III

William H. Stafford III

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

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

CASE NO: 16-005120 CACE (25)

JUDGE: CAROL-LISA PHILLIPS

Petitioner,

vs.

GOVERNOR RICK SCOTT OF
FLORIDA,

Respondent.

**FINAL ORDER GRANTING PETITIONER'S AMENDED PETITION FOR WRIT OF
QUO WARRANTO**

THIS CAUSE came before the court on Petitioner's Amended Petition for Writ of Quo Warranto. The court, having considered the amended petition, response, Executive Order 16-78, argument of counsel, and being otherwise duly advised in the premises, rules as follows:

This action arises out of the issuance of Executive Order Number 16-78 ("Executive Order"), dated March 18, 2016, by respondent, Governor Rick Scott ("Respondent") that resulted in the suspension of petitioner, David Di Pietro, as Chair of the North Broward Hospital District ("Petitioner"). On March 22, 2016, Petitioner filed the instant amended petition for writ of quo warranto, requesting Respondent to demonstrate the authority and legal basis for the issuance of the Executive Order. On March 22, 2016, the court issued an alternative writ, commanding Respondent to show cause as to why the relief requested in the amended petition should not be granted. On April 6, 2016, Respondent filed his response to the amended petition. A hearing was held before the court on April 8, 2016.

On September 9, 2011, Petitioner was appointed by Respondent to the Board of Commissioners for the North Broward Hospital District (“Broward Health”). Pursuant to the North Broward Hospital District Charter (“Charter”), which was established by a special act of the Florida Legislature in 2006, the Board of Commissioners (“Board”) was created to act as the governing body of Broward Health. The Board consists of seven members and is led by a single chairperson. Members of the Board are appointed by the Governor to serve a four year term. On December 20, 2013, Petitioner was re-appointed to serve as member with 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, and has been re-elected every year thereafter. On March 28, 2016, Respondent signed the Executive Order, resulting in Petitioner’s suspension from the Board.

Neither party disputes this Court’s jurisdiction to entertain the instant amended petition for writ of quo warranto. *See State ex rel. Vance v. Wellman*, 222 So. 2d 449, 449 (Fla. 2d DCA 1969) (noting “[o]rderly procedure dictates that we respect that philosophy and that petitions for extraordinary writs be heard first in the circuit court unless there is some compelling reason for invoking the original jurisdiction of an appellate court.”); *see also*, Art. V, §5(b), Fla. Const. and Fla. R. Civ. P. 9.030(c)(3) and 9.100(a). Further, Petitioner does not challenge Respondent’s authority to remove an official from office. Under Florida law,

the proper function of the writ [of quo warranto] is to provide the petitioner with the ability to challenge the state officer’s authority to act *without regard to the question of whether the officer properly exercised the authority he or she possesses*.

Florida House of Representatives v. Crist, 999 So. 2d 601, 621 (Fla. 2008) (emphasis in original).

Respondent is a state officer pursuant to Article IV, Section 1 of the Florida Constitution.

Rather, Petitioner asserts that the Executive Order is facially deficient because it fails to place Petitioner on notice of his wrongdoing. Article IV, Section 7 of the Florida Constitution, provides:

[b]y 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.

Art. IV, § 7, Fla. Const. The procedural methodology by which the provisions of Article IV, Section 7 of the Florida Constitution are exercised have been codified in section 112.41(1), Florida Statutes, which provides, in pertinent part:

[t]he 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.

§ 112.41(1), Fla. Stat. In the instant action, Respondent suspended Petitioner for alleged acts of malfeasance as described by a March 18, 2016 letter (“Letter”) drafted by Chief Inspector General Melinda M. Miguel (“Miguel”), and incorporated into the Executive Order. Under Florida law,

[m]alfeasance 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). The court has carefully reviewed the Executive Order and the Letter, and finds that the Letter is insufficient to place the Petitioner on notice of any alleged malfeasance. This Court acknowledges that the Respondent’s burden of

proof is low; however, the Executive Order and the Letter are devoid of any specific acts of malfeasance as it relates to the Petitioner. *See Hardie*, 155 So. at 133 (holding “if the 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.”); *see also*, *Crowder v. State ex rel. Baker*, 285 So. 2d 33, 35 (Fla. 4th DCA 1973) (“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.”). Further, under Florida law,

the allegation of fact contained in the executive order of suspension need not be as definite and specific as the allegations of an information or an indictment in a criminal prosecution, and the allegations will be adjudged as sufficient if, on the whole, they bear some reasonable relation to the charge made against the officer.

Crowder, 285 So. 2d at 35. In the Letter, which Miguel acknowledged was based on an incomplete review, raised ten separate concerns. In each of those ten concerns, Miguel asserts that the Board, *as a whole*, has done something wrong. Petitioner is only mentioned three times:

- [Miguel] informed the Chair of the Board of Commissioners that a review was to take place.
- At [Miguel’s] request, then 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.
- At a minimum, [Miguel believes] 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.

(A-15). The court determines that these three times where Petitioner is mentioned do not rise to the level of malfeasance such that the court could sustain the Executive Order. Further, reviewing

the Letter, *in toto*, reveals no allegations that bear a reasonable relation to the charge made against the Petitioner; rather, the Letter accuses the Board, *as a whole*, of acts of malfeasance without specific reference to the Petitioner.

Alternatively, Respondent argues that Petitioner violated the mandates of the Charter, which constitutes malfeasance. *See* Op. Att’y Gen. Fla. 2011-12 (2011) (“[t]he 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 Charter defines the Board’s governing authority as that of a corporate body, which includes the power to sue and be sued, contract, appoint a chief executive officer, among other powers. The Charter also defines the Board’s power of oversight, which provides, in pertinent part:

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**

§ 5(2), Chapter 2007-299, Laws of Florida (emphasis added). The Executive Order states that Petitioner violated the Charter by interfering with “any employee, officer, or agent under the direct or indirect supervision of the President/CEO.” (Executive Order at 1). As asserted by the

Respondent, the Letter “amply attests to interference in her investigation of the Board by the Board and its outside counsel.” (Response at 11). Despite Respondent’s argument to the contrary, such interference could not constitute a violation of the Charter, as Miguel is not an employee, officer, or agent under the direct or indirect supervision of the President/CEO. Further, any alleged interference of Lynn Barrett, General Counsel of Broward Health, could similarly not violate the Charter as Lynn Barrett reports directly to the Board, and not the CEO. Thus, this Court must conclude that the Executive Order fails to allege a single fact that bears a reasonable relation to the charge that the Petitioner violated the Charter.

Finally, the court rejects Respondent’s argument that “the notion that the suspension could only be based on acts committed directly by Petitioner and apart from the Board, and only on acts committed by him which directly interfered in a relationship between the CEO and an employee of Broward, is legally unsustainable.” (Response at 13). First, Respondent fails to provide legal support for its contention. Second, such a position is unsupported by Florida law, as the Florida Constitution and Florida Statute demand that a suspension of any elected or appointed official “shall specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension.” § 112.41, Fla. Stat. This Court concludes that the Executive Order fails to comply with section 112.41, Florida Statutes. Therefore, should the Respondent exercise his authority and reissue another executive order, such executive order must comply with Florida law.

Accordingly, it is hereby:

ORDERED that Petitioner’s Amended Petition for Writ of Quo Warranto is GRANTED.

IT IS FURTHER ORDERED that Executive Order Number 16-78 is hereby QUASHED.

IT IS FURTHER ORDERED that Respondent Governor Rick Scott restore Petitioner David Di Pietro to the Board of the North Broward Hospital District, forthwith.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 11 day of April, 2016.



CAROL MISA PHILLIPS
CIRCUIT COURT JUDGE

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