

North Broward Hospital District Board of Commissioners  
1700 Northwest 49th Street, Suite #150, Ft. Lauderdale, FL 33309

**LEGAL AFFAIRS & GOVERNMENTAL RELATIONS COMMITTEE MEETING**  
**Immediately Following the Finance Committee Meeting,**  
**Wednesday, February 17, 2021**

The Legal Affairs & Governmental Relations Committee Meeting of the North Broward Hospital District was held on February 17, 2021, immediately following the Finance Committee Meeting, at the Broward Health Corporate Spectrum Location, 1700 NW 49<sup>th</sup> Street, Suite 150, Fort Lauderdale, Florida 33309.

1. **NOTICE**

Official notice and agenda of this meeting is attached to the minutes, titled EXHIBIT I and EXHIBIT II, as presented for consideration of the Committee.

2. **CALL TO ORDER**

There being a quorum present, the meeting was called to order by Chair Nancy W. Gregoire at 2:42 p. m.

3. **COMMITTEE MEMBERS**

*Present:*

Commissioner Ray. T. Berry  
Commissioner Marie C. Waugh  
Commissioner Stacy L. Angier, Vice Chair  
Commissioner Nancy W. Gregoire, Chair

*Senior Leadership*

*Additionally Present:*

Alan Goldsmith, Chief Operating Officer  
Alex Fernandez, Chief Financial Officer  
Linda Epstein, Corporate General Counsel  
Jerry Del Amo, Deputy General Counsel

4. **PUBLIC COMMENTS**

Chair Gregoire opened the floor for public comments, in which there were none.

5. **APPROVAL OF MINUTES**

Without objection, Chair Gregoire approved the minutes, dated January 20, 2021.

Motion *carried* without dissent.

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## 6. TOPIC OF DISCUSSION

- 6.1. Resolution FY21-15: Resolution to Amend the Codified Resolutions of the Board of Commissioners of North Broward Hospital District to Address the Expedited Process for Physician Appointments and Reappointments (Presenter – Brett Bauman, Sr. Associate General Counsel)

**MOTION** It was *moved* by Commissioner Angier, *seconded* by Commissioner Waugh, that:

The Legal Affairs and Governmental Relations Committee recommend that the Board of Commissioners of the North Broward Hospital District adopt Resolution FY21-15: Resolution to Amend the Codified Resolutions of the Board of Commissioners of the North Broward Hospital District to Address the Expedited Process for Physician Appointments and Reappointments, as presented.

Motion confirmed by roll call.

**YES** Commissioner Ray. T. Berry  
**YES** Commissioner Marie C. Waugh  
**YES** Commissioner Stacy L. Angier, Vice Chair  
**YES** Commissioner Nancy W. Gregoire, Chair

Motion *carried* 4/0.

Ms. Epstein introduced new Legal Department Associate General Counsel, Kimberly Murray, to the committee, whose tenure commenced January 2021.

Ms. Murray shared that she attended Michigan State University College of Law. Her first legal position was as a prosecutor for the 7<sup>th</sup> Judicial Circuit in Daytona Beach, Florida, followed by the Construction Industry Licensing Board (CILB), prosecuting construction licensees. Her most recent position was at the Agency for Health Care Administration (ACHA) within the Medicaid Program Integrity Unit, defending audits for various healthcare providers.

- 6.2. Office of Chief Inspector General Draft Report and Proposed Response

It was noted that Chief Inspector General, Melinda Miguel, and colleague, Mike Blackburn, were in attendance via WebEx.

Ms. Epstein shared that the investigation began January 2016, after the Office of the Chief Inspector General received notification of potential fraud, abuse, and waste occurring within the District. The investigation mainly focused on the District's procurement processes, contracting processes, and Board of Commissioners' responsibility regarding compliance to the charter.

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Chief Inspector General's recommendations listed below (page 25 of the Chief Inspector General Report).

1. The Board should have comprehensive policies to address detailed expectations of the Board as a whole and as individual Board members.
2. The Board should develop a specific policy to address the conduct and execution of "shade sessions" that complies with s.395.3035 of the Florida Statutes.
3. The Board should amend bylaws and/or charter to enhance current language regarding the role of the Board, which should not operate in the perceived role of management and all actions taken should be addressed by the Board as a whole.
4. The Board should amend bylaws and/or the charter to address accountability for actions by the Board or individual board members when their actions fall outside of their authority.
5. The Board should take steps to enhance the independence of the Audit Committee from operational and financial activities.
6. Board members should receive annual refresher training on all significant North Broward Hospital District/Broward Health policies.

In response to the above recommendations, the Legal Department drafted a letter to the Officer of the Chief Inspector General addressing the above recommendations and progress in establishing policies and guidelines governing the Board, Board members, and District operations. Response letter attached herein.

**MOTION** It was *moved* by Commissioner Angier, *seconded* by Commissioner Waugh, that:

The Legal Affairs and Governmental Relations Committee recommend that the Board of Commissioners of the North Broward Hospital District approve the Proposed Response Letter to the Office of Chief Inspector General's Report.

Motion confirmed by roll call.

- YES** Commissioner Ray. T. Berry
- YES** Commissioner Marie C. Waugh
- YES** Commissioner Stacy L. Angier, Vice Chair
- YES** Commissioner Nancy W. Gregoire, Chair

Motion *carried* 4/0.

Ms. Epstein noted that a modification would be made to the response letter with respect to the Audit Committee charter's reference to the makeup of the Audit Committee, in which the Board of Commissioners Secretary/Treasurer does not sit on the Audit Committee.

# MINUTES

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Chief Inspector General, Melinda Miguel, thanked the organization for its cooperation and the team for their hard work and for implementing processes prior to receiving the report.

## 7. ADJOURNMENT

There being no further business on the agenda, the Chair adjourned the meeting at 3:12 p.m.

Respectfully submitted,

Commissioner Marie C. Waugh, Secretary/Treasurer

APPROVED

# NORTH BROWARD HOSPITAL DISTRICT

Broward Health Community Health Services  
Broward Health Coral Springs  
Broward Health Foundation  
Broward Health Imperial Point  
Broward Health International  
Broward Health Medical Center  
Broward Health North  
Broward Health Physician Group  
Broward Health Urgent Care  
Broward Health Weston  
Salah Foundation Children's Hospital

February/March \_\_, 2021

Melinda Miguel

Executive Office of the Governor

Office of Inspector General  
Florida Department of State  
R. A. Gray Building  
500 S. Bronough Street  
Tallahassee, Florida 32399-0250

**RE: Chief Inspector General Report No. 201601280006**

Dear Ms. Miguel:

Thank you for providing me a copy of the Office of the Chief Inspector General's Review of Actions of the North Broward Hospital District (the "District") in which your office detailed its findings, conclusions, and recommendations (the "Report") regarding nine (9) selected contracts. Below, you will find the District's responses to the Report as well as supporting documentation enclosed for your review. While, as you mentioned, the individuals implicated in your Report are no longer with the District—thus preventing any remedial action of the individuals—we would like to provide you a summary of the changes made by the Board and the District over the past eighteen (18) months to address recurring issues and themes encountered by the District in the past.

In the Report, your office found and alleged that: (a) there was a minimal amount of comprehensive guidance for actions of the Board or individual Board members; (b) members of other committees of the Board also served as members on the Board's Audit Committee; (c) meetings were closed under § 395.3035(4), Florida Statutes, but did not meet the definition of a "strategic plan" as provided in § 395.3035(6), Florida Statutes; (d) there was agreement between Board members for particular strategic initiatives at closed non-public meetings in violation of § 395.3035(4), Florida Statutes; (e) closed non-public meetings were not recorded by a certified court reporter as required in § 395.3035(4)(b), Florida Statutes; (f) certain actions were taken by individual Board members in violation of section 5 of section 3 of ch. 2006-347, Laws of Florida, as amended (the "District's Charter"); and (g) certain contracts and arrangements were entered into without following the proper procurement procedures of section 24 of the District's Charter and the District's Master Procurement Code.

From your office's investigation, you provided the following recommendations: (a) policies should be established to address the expectations of the Board and Board members; (b) a policy should be established that governs non-public closed meetings held pursuant to § 395.3035(4), Florida Statutes; (c) the Board's Bylaws

and/or the District's Charter should be amended to enhance the language regarding the Board's role in collectively overseeing the District's activities while not operating in the perceived role of management; (d) the Board's Bylaws and/or the District's Charter should be amended to address situations where Board members act outside the scope of their role; (e) the Board should take steps to enhance the District's Audit Committee; and (f) Board members should receive annual refresher training on relevant District's policies.

Each one of the above findings and recommendations will be addressed in turn.

### **Guidance and Policies Governing Board Members and Separation of Management and Board Oversight**

In the Report, your office found that there was a minimal amount of comprehensive guidance for actions of the Board or individual Board members, and you recommended that policies should be established to address the expectations of the Board and Board members. You also found that certain impermissible actions were taken by Board members outside of their role and fiduciary duties and suggested that the Board's Bylaws and/or Charter should be amended to enhance the Board's role and to address situations whereby Board members act outside of their role.

Within the past eighteen (18) months, the Board has gone to great lengths to improve its governance over the District's affairs. First and foremost, the Board established the Amended and Restated Bylaws of the North Broward Hospital District ("Board's Bylaws") which updated the Board's governance structure to account for changes in Florida law and to provide more succinct and clear guidance to the Board members and to the public. In addition, the Board established a relationship with MuniCode to codify all changes to the District's Charter, the Board's Bylaws, and the District's Master Procurement Code. A link has been included on the District's website to provide easy access to members of the public interested in viewing these documents. For ease of reference, you can find these documents on MuniCode at the following link:

[https://library.municode.com/fl/north\\_broward\\_hospital\\_district\\_-\\_broward\\_health/codes/code\\_of\\_ordinances](https://library.municode.com/fl/north_broward_hospital_district_-_broward_health/codes/code_of_ordinances).

Among the changes to the Board's Bylaws was the Board's establishment, pursuant to Article VI. of the Board's Bylaws, of the Codified Resolutions of the Board of Commissioners of the North Broward Hospital District ("Codified Resolutions"). Most notable is the Board's establishment of various policies governing the conduct of individual Board members, the Board's role in District oversight, and the District's administration's role in operational affairs. For instance, the Board established guidelines governing the Board's educational requirements and prohibited financial arrangements and conflicts of interest. When Board members act outside

of the scope of their defined duties or where there may be a conflict of interest, the District's Compliance and Ethics Department commences an investigation of the matter (Section 2.7 and Section 6.2 of the Codified Resolutions). Likewise, the Board has promulgated other policies pertaining to the establishment of a separate Code of Conduct and Ethics governing Board members (Section 2.7 of the Codified Resolutions); a policy addressing the fiduciary responsibilities of the Board (Section 2.2 of the Codified Resolutions); policies setting forth the operational role of senior members of the District who report to the Board (Article IV. of the Board's Bylaws and Section 4.5 of the Codified Resolutions); an established procedure in Chapter 3 of the Codified Resolutions governing meeting agendas, emergency meetings, and records, to ensure that the public is provided with ample advance notice of Board actions prior to the commencement of a Board meeting; and various policies in Chapter 6 of the Codified Resolutions governing travel reimbursements, investigations, and public records, which all are applicable to the Board and the District's operations. All of these policies govern the role of the Board and the relationship of individual Board members and the District.

As demonstrated above, the Board has made significant improvements to better clarify and delineate its oversight responsibilities, and the Board will continue to establish policies and guidelines which augment and clarify the Board's and Board members' roles and responsibilities.

### **Enhancing the Independence of the Board's Audit Committee**

In the Report, your office notes that several members of the Board's Audit Committee also serve on other Board committees, and your office recommended that the Board take steps to enhance the independence of the Board's Audit Committee.

First, while the District has worked hard in conforming to subject-matter best practices, because the District is an independent special district, as such term is defined in § 189.012(3), Florida Statutes, the Board is limited in its ability to fully adapt to best practices in the community. This is illustrated in the example your office provided regarding Audit Committee members. The District's Board consists of seven (7) members appointed by the Governor of Florida as provided in Section 3 of the District's Charter. The Board is responsible for the oversight of the entire District's operations, which includes four (4) hospitals and various other medical and healthcare-related facilities, approximately 8,000 employees, and about 3,000 medical staff members. Given this wide expanse, the Board has established eleven (11) separate committees responsible for assisting the Board in its oversight responsibilities.

Because the District is unable to add any members on its own, and because all Board members have a responsibility to the District, excluding members serving on the Audit Committee from other committees is not feasible. That said, in order to accommodate this situation, the Board established a policy prohibiting the Board's Secretary-Treasurer from serving on the Audit Committee, and the Board has retained two (2) outside and independent expert consultants to maintain the Audit Committee's independence and further its goals and functions. *See* Section 3.12.(c)(1)a. of the Codified Resolutions.

Additionally, a major part of the Board's initiatives over the past eighteen (18) months revolves around the function, independence, and effectiveness of the Board's Audit Committee. In fact, the Board recently amended its Audit Charter which outlines the Audit Committee's function, independence, and duties. This Audit Committee Charter was adopted at the Board's February, 2021, Board meeting. The establishment of the newly-adopted Audit Charter was a joint effort between the Board, the District's Office of the General Counsel, an outside expert in internal audit who is a member of the Institute of Internal Auditors ("IIA"), and various other members of the District's administration. This newly-adopted Audit Committee Charter demonstrates that the Board and the Audit Committee are, and will always remain, committed to subject-matter best practices to the extent legally permissible and practical, and that the Audit Committee operates in-line with IIA's International Professional Practices Framework, including its Standards, Core Principles for the Professional Practice of Internal Auditing, and Definition of Internal Auditing.

## **Procurement Processes**

The Report notes several instances where former Board members and District employees entered into contracts and arrangements without following the proper procurement procedures of section 24 of the District's Charter and the District's Master Procurement Code.

As a long-overdue initiative, in October, 2019, the Board overhauled and amended the District's Master Procurement Code. Many of the changes provide clearer guidance and language, as well as increased oversight. For example, revisions were made to the District's Policy governing the selection and approval of professional consulting services. Many of the changes clarified the procedures and conditions to qualify for an exception to the policy. For instance, only the President/CEO of the District may waive the procedures of the policy if strategic in nature, and such exception must be noted in writing and signed by the President/CEO. Likewise, in circumstances where obtaining two (2) proposals would subject the District to undue financial or operational

risk, the procedures of the policy may be waived by following the procedures in the section of the Master Procurement Code entitled “Emergency Commitments and Internal Approvals”, which delineates a specific procedure including multiple levels of approvals based on documentation establishing the emergency.

Other safeguards have been implemented, including improvements to the District’s contracting review process. All contracts and arrangements are required to go through the District’s electronic contracts management database, where they are reviewed by the District’s Contracts Administration Department, the District’s Compliance and Ethics Department, and the District’s Office of the General Counsel. *See* District Policy No. GA-001-020, Review, Approval, and Administration of Contracts.

### **Conduct of Closed, Non-Public Meetings**

In the Report, your office notes that sometime in or about January 28, 2015, the then-serving General Counsel advised the Board that a certified court reporter was not required for meetings closed to discuss security and fire safety systems. This type of closed non-public meeting is governed under § 286.0113(1) and § 281.301, Florida Statutes. Unlike many other exemptions to the public meetings requirements of § 286.011, Florida Statutes (the “Sunshine Law”), these types of meetings do not require a record to be made by a court reporter. *See* Informal Fla. Att’y Gen. Op. to Craig B. Sherman, et al., July 2, 2018. That said, the District has made many changes to its meetings’ records practices. The current practice, which has been in place since late 2018, requires a court reporter to transcribe all public and non-public meetings regardless of whether a verbatim record is legally required.

Additionally, the Report mentions certain instances where then-serving Board members were “expressing their support” or “endorsing” certain strategic plans when such meetings were closed to the public pursuant to § 395.3035(4), Florida Statutes. Also, the Report notes that your office was unable to determine whether a written strategic plan was being reported on to the Board during such closed meeting as required under § 395.3035(4), Florida Statutes.

While the current Board does not wish to comment on the former Board’s actions, it should be noted that—while many exemptions to the Sunshine Law prohibit any sort of “agreement” during a non-public meeting—§ 395.3035(4)(a), Florida Statutes (emphasis added) provides (4)(a) that “[t]hose portions of a board meeting at which one or more written strategic plans ... are discussed, reported on, modified, or approved by the governing board are exempt from [the Sunshine Law].” Notwithstanding, and in an abundance of caution, the Board now

requires the District's Office of the General Counsel to be present at all open and closed meetings of the Board. During such meeting, the District's Office of the General Counsel is present to keep the discussion focused on permitted matters and to make sure that all policies and laws are complied with. The Board also, in maintaining its commitment to transparency and compliance with applicable law, has all agendas and documents—whether public or non-public—reviewed by the District's Office of the General Counsel before the Board meets and discusses such matters. The District's Office of the General Counsel reviews all documents to determine whether it is appropriate to hold a non-public closed meeting. Any and all non-public, closed meetings held under § 395.3035(4) contain “written strategic plans” since at least the end of 2018.

### **Annual Training**

The Report recommends that an annual training be provided to all Board members. In the recent changes to the Board's Bylaws and the adoption of the Codified Resolutions, the Board has created a requirement that ongoing continuing education be provided to all Board members. *See* Art. II, s. 4 of the Board's Bylaws and Section 2.4 of the Codified Resolutions. In addition, the Board receives ongoing compliance training throughout the year, and the District's Office of the General Counsel is currently working on this year's training for Board members regarding Board governance and obligations.

While the Board and District's responses to your Report is not an attempt to justify or excuse any historical actions, we do want the Office of Inspector General to be aware of all of the changes we have made, and will continue to make, since the Office of Inspector General began their investigation. We want to thank you for your office's Report and recommendations, and we look forward to continuing our progress in establishing policies and guidelines governing the Board, Board members, and District operations.

Sincerely,

Nancy Gregoire

Chair, Board of Commissioners of North Broward Hospital District

Enclosures