

NOTICE OF MEETING

NORTH BROWARD HOSPITAL DISTRICT

BOARD OF COMMISSIONERS

A Legal Affairs and Governmental Relations Committee meeting will be held on Wednesday, November 18, 2020, at 10:00 a.m., at the Broward Health Corporate Spectrum Location: 1700 Northwest 49 Street, Fort Lauderdale, Florida, 33309. The purpose of this Committee meeting is to review and consider any matters within the Committee's jurisdiction.

For the most updated information, please check our website as schedules may change for reasons beyond our control: <https://www.browardhealth.org/pages/board-calendar>

Persons with disabilities requiring special accommodations in order to participate should contact the District by calling 954-473-7481 at least 48 hours in advance of the meeting to request such accommodations.

Any person who decides to appeal any decision of the District's Board with respect to any matter considered at these meetings will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes testimony and evidence upon which the appeal is to be based.

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

LEGAL AFFAIRS AND GOVERNMENTAL RELATIONS COMMITTEE MEETING 10:00 a.m., Wednesday, October 21, 2020

The Legal Affairs and Governmental Relations Committee Meeting of the North Broward Hospital District was held on October 21, 2020 at 10:00 a.m., via WebEx video conference.

1. NOTICE

Official notice and agenda of this meeting is attached to the Minutes, as 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 10:00 a.m.

3. COMMITTEE MEMBERS

Present:

Commissioner Christopher T. Ure
Commissioner Marie C. Waugh
Commissioner Stacy L. Angier, Vice Chair
Commissioner Nancy W. Gregoire, Chair

Not Present:

Commissioner Ray T. Berry

Senior Leadership

Additionally Present:

Gino Santorio/President/Chief Executive Officer,
Alan Goldsmith/Chief Administrative Officer,
Alex Fernandez/Chief Financial Officer,
Linda Epstein/Corporate General Counsel,
Jerry Del Amo/Deputy General Counsel

4. GOVERNOR'S EXECUTIVE ORDER ANNOUNCEMENT

General Counsel delivered the Governor's Executive Order for the record.

"This public board meeting is being conducted through communications media technology in accordance with the Governor's Executive Order No. 20-69, as extended by the Governor's Executive Order No. 20-246 and Section §120.54(5)(b)2 of the Florida Statutes. This meeting is open to the public who are able to attend this meeting via telephone conference call. The conference call information is currently posted on Broward Health's website. All the requirements of the Florida Sunshine Law are still in effect, including memorialization of minutes. While not a requirement under Florida law, we will attempt to record this meeting and post it on Broward Health's website for the public and for those who may not be able to attend this live telephone conference."

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5. PUBLIC COMMENTS

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

6. APPROVAL OF MINUTES

Without objection, Chair Gregoire approved the Legal Affairs and Governmental Relations Committee Meeting Minutes for September 8, 2020.

Motion *carried* without dissent.

7. TOPICS OF DISCUSSION

7.1. General Legal Department Updates - presented by Linda Epstein, General Counsel

Ms. Epstein introduced the following new staff members to the legal department:

- Legal Analyst, Sandy Lopez, transferred from the Board of Commissioners Office to the Legal Department in October 2020.
 - Ms. Lopez will be focused on public records requests and other administrative responsibilities.
 - Ms. Lopez introduced herself and shared that she has worked for Broward Health for a year and a half as an executive secretary for the Board of Commissioners' Office.
- Sr. Associate General Counsel, Nick Ortiz, started at Broward Health in October 2020.
 - Mr. Ortiz will be working with Managed Care and the Federal Trade Commission (FTC) investigation and be acclimated to other legal areas.
 - Mr. Ortiz introduced himself shared that he previously worked for Lash Goldberg, a health care law firm in Miami-Dade, where he represented large hospital systems, physician practice groups, and commercial and regulatory matters. He went to Dartmouth for undergraduate studies and Colombia for law school. Mr. Ortiz worked for the FTC clerked for a federal judge in New York.

It was noted that there were no new legal engagement letters or firms to present.

Chair Gregoire read the introduction for the Attorney-Client Shade Session: An Attorney-Client Shade Session was requested at the Regular Board Meeting on September 24, 2020 to seek the Board's advice pertaining to settlement negotiations and strategy sessions related to the District's litigation expenditures of pending litigation to which the District is a party, specifically Case No. CACE20014487, *Lynn Barrett v. North Broward Hospital District, et al*, currently pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

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Pursuant to Section 286.011(8)(d), Florida Statutes, the closed meeting began. The attendees included: Commissioner Nancy W. Gregoire, Commissioner Stacy L. Angier, Commissioner Marie C. Waugh, Commissioner Ray T. Berry, Commissioner Christopher T. Ure, President/CEO, Gino Santorio, General Counsel, Linda Epstein, Senior Associate General Counsel, Brett Bauman, District's Outside Legal Counsel, Bill Sher, and Certified Court Reporter, Sandra Suarez

The Legal Affairs and Governmental Relations Committee Meeting was recessed for an Attorney-Client Shade Session at 10:13 a.m.

The Legal Affairs and Governmental Relations Committee Meeting was reconvened at 11:24 a.m.

- 7.2.** Approval of Resolution FY-21-06: Resolution of the Board of Commissioners of North Broward Hospital District Approving Payment of Reasonable Attorney's Fees for Litigation – presented by Linda Epstein, 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 Approve Resolution FY21-06, Payment of Reasonable Attorney's Fees for Litigation up to and including (\$400.00) per hour.

Motion confirmed by roll-call vote:

YES Commissioner Christopher T. Ure
YES Commissioner Marie C. Waugh
YES Commissioner Stacy L. Angier, Vice Chair
YES Commissioner Nancy W. Gregoire, Chair

Motion *carried* 4/0.

8. **ADJOURNMENT**

There being no further business on the agenda, the Chair adjourned the meeting at 11:28 a.m.

Respectfully submitted,
Commissioner Marie C. Waugh, Secretary/Treasurer

Resolution FY21-08

**Resolution of the Board of Commissioners of North Broward Hospital District
Approving Payment of Private Counsel for Certain Named Defendants in Pending
Litigation; Delegating Authority to the General Counsel**

WHEREAS, North Broward Hospital District (the “District”), a special district as defined under § 189.012(6), Florida Statutes, was established in 1951 by virtue of authority granted by the Florida Legislature under ch. 27438, Laws of Florida, which was recodified in ch. 2006-347, Laws of Florida, as amended;

WHEREAS, the District, as a special district of the State of Florida, is subject to certain Florida laws governing the conduct of public entities;

WHEREAS, from time to time, Board members, officers, employees, and agents (collectively, “Public Officials”) may be subjected to a lawsuit when such Public Officials, while acting in the scope of their public duties, were protecting the public’s interests and fulfilling the mission and purpose of the District;

WHEREAS, there exists a common law right in Florida, independent of statute, ordinance, or charter, to furnish or pay fees for counsel to defend Public Officials subjected to attack in civil proceedings where the conduct complained of arises out of or in connection with the performance of his or her official duties and while serving a public purpose;

WHEREAS, in addition to the common law requirement of defending Public Officials, Florida’s Legislature passed § 111.07, Florida Statutes, authorizing public entities to provide legal representation to such Public Officials to defend civil actions arising from an act or omission of the Public Officials’ job function unless such Public Official acted in bad faith, malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property;

WHEREAS, Article VII.(c) of the Board’s Amended and Restated Bylaws of the North Broward Hospital District (the “Bylaws”) provides that the District shall indemnify, defend, and hold harmless Board members to the extent that such Board member is liable for an act or omission arising out of and in the course of the performance and scope of such Board member’s duties and responsibilities to the District provided such indemnification is consistent with Florida Law and the Bylaws;

WHEREAS, the former General Counsel of the District, Lynn Barrett, has filed a lawsuit against the District in Broward County naming the District and certain Public Officials in their individual capacities as parties to the lawsuit for certain acts they took during the course and scope of their employment or function with the District (the “Pending Litigation”); and

WHEREAS, unless context otherwise requires, capitalized terms used but not defined herein have the meanings ascribed to such terms in the Bylaws and its accompanying Codified Resolutions of the Board of Commissioners of the North Broward Hospital District.

NOW, THEREFORE, BE IT RESOLVED, by the Board, that:

1. The Board makes a finding and concludes that the conduct complained of in the Pending Litigation against the Public Officials involves conduct that the Public Officials performed while fulfilling public duties and while serving a public purpose.

2. To the extent permitted under the District's Bylaws and section 111.07, Florida Statutes, common law, and other applicable law, and subject to the other provisions of this Resolution, following Board approval to pay for court costs and reasonable attorney's fees for a specific Public Official named in the Pending Litigation, the District may expend fees for court costs, reasonable attorney's fees, and other reasonable legal costs for the individual Public Official who was approved by the Board for such payment of court costs, reasonable attorney's fees and other reasonable legal costs to defend such Public Official in the Pending Litigation during the pendency of the Pending Litigation and continuing through any appeals until the Pending Litigation is dismissed with prejudice and/or a final judgement enters inclusive of, to the extent permissible under applicable law, any related post-judgement proceedings (the "Pendency of the Pending Litigation").
3. Notwithstanding any other District resolution, policy or procedure, the Board hereby delegates to the District's General Counsel the authority to negotiate rates and sign any contracts or engagement letters with outside private counsel for the purposes of defending each of the Public Officials during the Pendency of the Pending Litigation. Any contracts or engagement letters executed by the General Counsel pertaining to the defense of the Public Officials during the Pendency of the Pending Litigation shall be for and on the behalf of the District and shall be a binding obligation of the District.
4. Any contract or engagement letter entered into by the District to pay reasonable attorney's fees and reasonable legal costs for a Public Official during the Pendency of the Pending Litigation shall include language that (a) the District shall not pay for unreasonable fees and/or costs billed; (b) any disputes regarding the reasonableness or unreasonableness of fees or costs shall be resolved with the District and not with the particular Public Official; (c) any actions or litigation pertaining to disputes concerning the reasonableness or unreasonableness of fees or costs billed shall only be taken against the District and shall not be taken against any Public Official; (d) that the prevailing party of any action or litigation pertaining to disputed fees and/or costs shall be entitled to reimbursement of all court costs and reasonable attorneys' fees; and (e) that the law firm and/or attorney shall not attempt to collect from any Public Official any shortfall between the fees or costs paid by the District and what the law firm and/or attorney charged in any bills.
5. To the extent permissible under section 111.07, Florida Statutes, and other applicable law, if a Public Official retains his or her own private counsel and the Board does not approve, and the District does not pay the reasonable fees and costs of the Public Official's private counsel during the Pendency of the Pending Litigation, the District shall reimburse such reasonable attorney's fees and court costs to the Public Official if the Public Official prevails and successfully defends against the allegations made in the Pending Litigation, provided such Public Official did not act in bad faith, with a malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
6. This Resolution does not prohibit the District from recovering any and all attorney's fees from a Public Official to the extent the attorney's fees are paid from public funds and the Public Official is found to be personally liable by virtue of acting outside the scope of his or her

employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

7. With the exception of Resolution FY21-06 (Resolution of the Board of Commissioners of North Broward Hospital District Approving Payment of Reasonable Attorney's Fees for Litigation), this resolution hereby supersedes, amends, replaces and repeals any conflicting resolution or conflicting policy previously adopted by the Board.

DULY ADOPTED this ____ day of November, 2020.

Time Adopted _____ PM

Resolution FY21-09

Resolution to Amend Certain Provisions of the Amended and Restated Bylaws of Broward Health ACO Services, Inc.

WHEREAS, North Broward Hospital District (the “District”) is a special taxing district of the State of Florida established for the health care needs of the residents of the District and is authorized and empowered to maintain hospitals and supportive facilities for the care and treatment of the people of said District, as well as establish subsidiary and affiliate organizations which foster the administration of such services;

WHEREAS, the District established Broward Health ACO Services, Inc. (“ACO”) as a Florida not-for-profit corporation duly organized pursuant to the Florida Not For Profit Corporation Act, § 617.01011, *et seq.*, Florida Statutes;

WHEREAS, the Amended and Restated Articles of Incorporation of Broward Health ACO Services, Inc. (“Articles of Incorporation”), the ACO’s corporate charter, establishes the ACO and provides that the District is the sole member of the ACO;

WHEREAS, Art. VII of the Articles of Incorporation and Art. IX of the Amended and Restated Bylaws of Broward Health ACO Services, Inc., effective as of September 25, 2019 (the “Bylaws”), reserve the sole power to the District to make any alterations or amendments to the Bylaws;

WHEREAS, the District wishes to amend certain provisions of the Bylaws as set forth herein; and

WHEREAS, unless context otherwise requires, capitalized terms used but not defined herein have the meanings ascribed to such terms in the Amended and Restated Bylaws of the North Broward Hospital District and its accompanying Codified Resolutions of the Board of Commissioners of the North Broward Hospital District.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of North Broward Hospital District, that:

1. The Bylaws are hereby amended as provided below. Words ~~stricken~~ are deletions; words underlined are additions.
2. Art. III, s. 6. of the Bylaws is hereby amended to read as follows:

Section 6. Quorum and Voting. A majority of the number of Directors fixed by or in accordance with these Bylaws shall constitute a quorum for the transaction of business at any meeting of Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present shall be the act of the Board of Directors. In addition to physical presence, for the purposes of these Bylaws, “present” shall also mean a presence via electronic communications technology, provided that all Directors are able to simultaneously hear each other during the meeting and such meetings otherwise comply with the requirements of § 286.011, Florida Statutes.

3. Art. III, s. 8. of the Bylaws is hereby amended to read as follows:

Section 8. Meetings.

(a) Regular and special meetings of the Board of Directors shall be held at the principal place of business of the Corporation or at any other place and/or via any electronic means

appropriate for the Board of Directors to conduct its business, within or without the State of Florida, designated by the President. Meetings of the Board of Directors may be called by any member of the Board of Directors or by the President. A majority of the Directors present, regardless whether a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of an adjourned meeting shall be given to the Directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the Directors who were present.

(b) Members of the Board of Directors may participate in a meeting of the Board by means of a telephone conference or similar communications equipment through which all persons participating may simultaneously hear each other during the meeting, provided a ~~physical~~ quorum is established.

4. This resolution is effective immediately upon its ratification by the Board of Commissioners of North Broward Hospital District (the "Board").
5. This resolution hereby supersedes, amends, replaces and repeals any conflicting resolution or conflicting policy previously adopted by the Board.

DULY ADOPTED this ___ day of November, 2020.

Time Adopted _____ PM