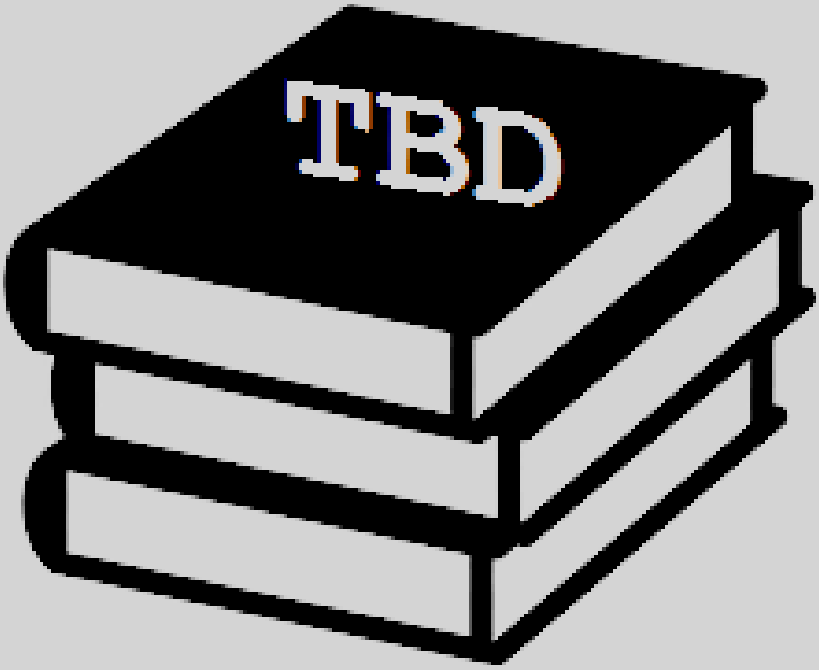
BUY™	SELL™	SHOP™



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)

BUY™	SELL™	SHOP™

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF HEALTH,

Respondent.

CASE NO.:

LOWER TRIBUNAL NO.: 02-400 RU Dnm

PETITION FOR REVIEW OF NON FINAL AGENCY ACTION AND IN THE ALTERNATIVE FOR WRIT OF PROHIBITION AND MANDAMUS

Petitioner, Columbia Hospital Corporation of South Broward d/b/a Westside Regional Medical Center ("Westside") petitions this Court pursuant to F. S. 120.68(1) and F. R. A. P. 9.100(c)(3) for review and in the alternative pursuant to F. R. A. P. 9.100(e) petitions for a Writ of Prohibition and Writ of Mandamus directed to the Department of Health ("the Department") and states:

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to F. S. 120.68(1) and F. R. A. P. 9.100(c)(3) to review non-final agency action under the Administrative

Procedures Act. In the alternative Petitioner seeks pursuant to F. R. A. P. 9.100(e) a Writ of Prohibition and Mandamus directed to the Department of Health.

2. Review is sought of the non-final order of the Division of Administrative Hearings (DOAH) dated on or about February 20, 2002 and confirmed by the Deputy Chief Judge of DOAH on February 27, 2002, returning Westside's Petition for Formal Hearing to the Department of Health.

FACTS

3. On February 4, 2002 Westside filed a Petition for Formal Administrative Proceeding with the Department of Health. (A 1-37). Pursuant F. S. 120.569(2)(a) the Department was required to grant or deny the request for a formal administrative hearing within 15 days of receipt.

4. On February 19, 2002 the Department notified Westside and DOAH that it was granting Westside's request for hearing and referring the matter to DOAH. (A 38-39).

5. On February 20, 2002 at 2:13 p.m. DOAH received the referral from the Department and the DOAH Clerk's Office entered its date stamp on such referral and the accompanying petition of Westside. (A 40).

6. At some point in time thereafter, the Department apparently changed its mind regarding referral of the matter to DOAH and unilaterally sought, without

following the procedures applicable to a party litigant, the return of Westside's Petition from DOAH. Someone at DOAH struck through the initial date stamp, inserted the stamp "Not for Administrative Hearings", and returned the matter to the Department. (A 40, 43-45). Westside was not notified of the Department's request for return of the Petition and the Department did not file any written motion or request for the return or remand with DOAH as required by Florida Statute, 120.569(2)(a) - "The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant. . ." (A 43-45).

7. On February 21, 2002 the Department received a letter from counsel for Westside, who had been advised after the fact of the Department's unilateral request return of the matter from DOAH, advising the Department of the requirements of F. S. 120.569(2) that the Department only take such action as a party litigant, and requesting that the Department notify DOAH that any unilateral attempt to obtain return of the matter was erroneous. (A 41-42).

8. On February 21, 2002 counsel for the Department notified counsel for Westside that the referral had indeed been date stamped in by the Clerk's Office at DOAH but that the Department did not consider the return erroneous since it was the Department's position that pursuant to F. S. 120.569(2) only the assignment of an Administrative Law Judge vested DOAH with jurisdiction, not the action of filing the

matter with DOAH's Clerk's Office and having the same date stamped. (A 43-45).

9. On February 22, 2002, upon the purported return of the matter to the Department, the Department filed a Motion to Dismiss before itself, not DOAH, requesting dismissal of the proceeding. (A 46-62). The Department is therefore seeking to usurp jurisdiction which properly remains with DOAH.

10. On February 25, 2002 counsel for Westside brought this jurisdictional matter to the attention of the Director of DOAH. (A 63-67).

11. On February 27, 2002 the Deputy Chief Judge of the Division of Administrative Hearings in response advised Westside's counsel:

> At this juncture, since the Division of Administrative Hearings Clerk's Office has apparently returned the referral in question to the Department of Health, the Division of Administrative Hearings is not prepared to take any further action in this matter at this time. (A 68).

12. DOAH alone is properly vested with jurisdiction of this matter. The Department by unilaterally obtaining return of the matter from DOAH without any prior notice to Westside and without having moved for relinquishment of jurisdiction, in the capacity of a party litigant, as required by F. S. 120.569(2), is without jurisdiction in this matter.

13. The February 20, 2002 action of DOAH in improperly returning the

Westside Petition and Referral to the Department effectively constitutes a preliminary procedural or intermediate order of DOAH, as affirmed by the February 27, 2002 correspondence of the Deputy Chief Judge, which is immediately reviewable since review of the final agency decision would not provide an adequate remedy.

14. In the alternative, the Department is improperly seeking to usurp jurisdiction vested in DOAH and has failed and refused to perform its ministerial duty of returning the petition and referral to DOAH. DOAH is refusing to perform its ministerial duty of exercising jurisdiction of which it became vested on February 20, 2002.

NATURE OF THE RELIEF SOUGHT

15. Westside seeks an order of this Court reversing the action of DOAH on February 20, 2002 in returning Westside's Petition for Formal Hearing and the accompanying Referral to the Department, which action of DOAH was confirmed on February 27, 2002 by the Deputy Chief Judge of DOAH, and directing the Department to return the Petition for Formal Hearing and Referral to DOAH. In the alternative Westside seeks a Writ of Prohibition and Mandamus directed to the Department prohibiting its exercise of jurisdiction over such proceeding and compelling return of the Westside Petition for Formal Hearing to DOAH.

ARGUMENT IN SUPPORT OF PETITION

16. In Nicolitz v. Board of Optitionary, 609 So.2d 92, 94 (Fla. 1st DCA 1992) the Court ruled:

> Once a referral to DOAH is made, however, 'the referring party shall take no action with respect to the formal proceeding except as a party litigant.'

17. In Ryan v. Florida Department of Business and Professional Regulation, 798 So.2d 36, 38 (Fla. 4th DCA 2001) this Court reaffirmed this principle:

> Here, the administrative law judge did not relinquish jurisdiction for formal action to be taken by the Board at its April 16, 1999 meeting. *See* § 120.569(2)(a), Fla. Stat. (2000) (The referring agency shall take no further action with respect to a proceeding under section 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceedings under section 120.57(1); *see Nicolitz v. Bd. of Opticianry*, 609 So.2d 92 (Fla. 1st DCA 1992) (Once a referral to DOAH is made, the referring agency shall take no action with respect to the formal proceedings except as a party litigant. Jurisdiction could only revest in the in the referring agency without a recommended order from the hearing officer by obtaining a favorable ruling on a motion for relinquishment of jurisdiction.).

18. Westside's Petition for Formal Hearing was duly referred to DOAH and filed by the Clerk's Office. Subsequent to 2:13 p.m. on February 20, 2002, the point of filing of the referral, the Department lost jurisdiction and was thereafter required by F. S. 120.569(2)(a) to take "no further action" with respect to such proceeding

"except as a party litigant." This the Department admittedly failed to do.

19. The action of the Department in seeking return of the Westside Petition and Referral upon its unilateral request, not made in the capacity of party litigant, is contrary to F. S. 120.569(2)(a) and deprived Westside of the requisite notice and opportunity to be heard on such issue.

20. Jurisdiction of this Court to review the matter under F. S. 120.68(1) and F. R. A. P. 9.100(c) is proper. Tieger v. School Board of Palm Beach County, 717 So.2d 172 (Fla. 4th DCA 1999) - denial of request for a formal DOAH hearing is reviewable as non-final agency action. See also Carrow v. Department of Professional Regulation, 453 So.2d 842, 843 (Fla. 1st DCA 1984) and Beckman v. Department of Professional Regulation, 427 So.2d 276, 277 (Fla. 1st DCA 1983) - jurisdictional errors may be a basis for judicial review of an intermediate order.

21. Prohibition is that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi judicial powers from exceeding its jurisdiction in matters over which it has cognizance or usurping matters not within its jurisdiction to hear or determine. See The Florida Bar, 329 So.2d 301, 302 (Fla. 1974).

22. The purpose of a Writ of Prohibition is to prevent doing of something, not to compel the undoing something already done. See Hamlin v. East Coast

Properties, Inc., 616 So.2d 1175, 1176 (Fla. 1st DCA 1993).

23. In the instant matter, the Department is seeking to usurp jurisdiction over a matter within the jurisdiction of DOAH.

24. Mandamus requires a showing that the petitioner has a clear legal right to performance of the particular action sought and that respondents have a clear legal duty of performance for which no adequate legal remedy exists. See Plymel v. Morris, 770 So.2d 242, 246 (Fla. 1st DCA 2000).

25. In the instant matter, the Department of Health unilaterally and improperly obtained a return of the matter from DOAH other than in a capacity as a party litigant contrary to the express requirements of F. S. 120.569(2). Such Referral and Petition thus properly belong at DOAH. The Department, having improperly obtained return of the matter from DOAH, is under a mandatory duty to return the Petition and Referral to DOAH.

26. Should this Court not deem the matter one appropriate for jurisdiction under F. S. 120.68(1), jurisdiction would be proper for issuance of a Writ of Prohibition and Mandamus to the Department to prohibit the Department from exercising jurisdiction and to compel return of the matter to DOAH and for issuance of a Writ of Mandamus to DOAH to compel exercise of jurisdiction over this matter.

WHEREFORE, it is respectfully prayed that this Court accept jurisdiction and

enter an appropriate Order or Writ prohibiting the Department from exercising jurisdiction and compelling the Department to return the proceeding to DOAH.

STEPHEN A. ECENIA
Florida Bar Number 0316334
HAROLD F. X. PURNELL
Florida Bar Number 148654
Rutledge, Ecenia, Purnell & Hoffman, P. A.
Post Office Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788

Barbara Auger
Florida Bar Number 0946400
The Auger Law Firm
P. O. Box 471
Tallahassee, Florida 32302
(850) 224-7800

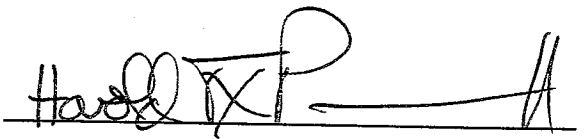
ATTORNEYS FOR COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing together with the Appendix was served by hand delivery on this 7th day of March, 2002, to the following.

William Large, General Counsel
Florida Department of Health
2585 Merchant's Blvd.
Tallahassee, Florida 32399

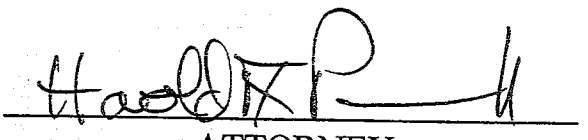
James York, Deputy Chief Judge
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060



ATTORNEY

CERTIFICATE OF COMPLIANCE

In compliance with 9.210(a), Fla. R. App. P., the font size used in this Answer Brief of Appellee is Times New Roman, size 14.



ATTORNEY

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF HEALTH,

Respondent.

CASE NO.:

LOWER TRIBUNAL NO.:

APPENDIX

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs.

CASE NO.: _____

STATE OF FLORIDA, DEPARTMENT OF HEALTH,

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER (Westside) pursuant to F. S. 120.569 AND 120.57(1), AND Rule 28-106.201, F. A. C., files this Petition for a Formal Administrative Hearing, before the Division of Administrative Hearings contesting the agency action reflected in the Department of Health's (Department) letter dated January 15, 2002 withdrawing its prior final agency action amending the plan of the Broward County Trauma Agency and states:

1. Westside is an acute care general hospital licensed by the State of Florida, Agency for Healthcare Administration, pursuant to Part 1 of Chapter 395, Florida Statues. Westside's address is 8201 W. Broward Boulevard, Plantation, Florida 33324. For purposes of this proceeding, Westside's address is that of its undersigned counsel.

2. The Department is a state agency created pursuant to F. S. 20.43. Pursuant to Part 2 of Chapter 395, F. S., the Department is vested with the primary responsibility for the planning and establishment of a statewide trauma system. Such authority includes the determination of the location of nineteen trauma service areas (TSAs) in this state and allocation by rule of the number of trauma centers needed for each TSA.

3. Westside is located in TSA 18 which is comprised exclusively of Broward County. See F. S. 395.402(1)(a) and rule 64E-2022(3). TSA 18 currently has three state approved trauma centers (SATC), two Level I SATCs and one Level II SATC. In accordance with F. S. 395.402(3)(b), the Department has at all times material determined by rule 64E-2.022(3), F. A. C., that the number of trauma centers needed for TSA 18 is not less than four.

4. There are three categories of state approved trauma centers (SATC), a Level 1 SATC which must be a state licensed general hospital and must meet both the standards for a state approved pediatric trauma referral center and for a Level I SATC; a Level II SATC, which must be a hospital and meet the standards for a Level II SATC; and a state approved pediatric trauma referral center (SAPTRC) which must be a hospital and meet only the SAPTRC standards. See F. S. 395.40(5)-(8) and rule 64E-2.023(2)-(4).

5. Florida Statute 395.40(10) and 395.401 provide for local or regional trauma agencies whose purpose is to administer the trauma system. See also rules 64E-2.019-2.021, F. A. C. The local trauma agency for TSA 18 is the Broward County Trauma Agency. Each such local or regional agency is directed by F. S. 395.401(1)(b) to develop and submit to the Department a plan for its trauma service system which must include as one of the components the number and location of needed SATCs. The Department must approve such plans based on compliance with Ch. 395 F. S. an Rule Ch. 64E-2, F. A. C. Florida Statute 395.402(3)(b) and rule 64E-2.022, F. A. C. reserve to the Department the authority to allocate by rule the number of trauma centers needed for each TSA.

6. The Department pursuant to F. S. 395.0425(2)(a) is required to annually notify each acute care general hospital and each regional trauma agency that the Department is accepting Letters of Intent from hospitals that are interested in becoming state approved trauma centers. In accordance with such statute, the hospital's Letter of Intent "must certify that its intent to operate as a state approved trauma center is consistent with the Trauma Services Plan of the local or regional trauma agency, as approved by the Department."

7. Prior to October 1, 2001, the Department had notified the Broward County Trauma Agency

that its Plan was not in accordance with rule 64E-2.022(3), F. A. C., in that the Department by such rule had determined that four trauma centers were needed in TSA 18 while the Agency's plan reflected the need for three trauma centers. The Department notified the Agency that its Plan was therefore amended to provide for need for four trauma centers in TSA 18. The Broward County Trauma Agency was thereafter provided notice of Administrative Procedure Act remedies to contest the Department ordered correction in its plan. The Agency by vote of its governing authority elected not to challenge such change. The Department is vested with authority, pursuant to F. S. 395.401(3), to prescribe to the agency such corrective action. See Exhibits A-C.

8. Westside filed on October 1, 2001 its Letter of Intent reflecting its interest in becoming a SATC in TSA 18. Letters of Intent were also filed by two other hospitals, Coral Springs Medical Center, a part of the North Broward Hospital District and Memorial West Hospital, a part of the South Broward Hospital District.

9. On January 15, 2002, the Department unilaterally withdrew its earlier final agency action in amending the Broward County Trauma Agency plan, thus purporting to restore the local plan to its previous status of reflecting need for only three trauma centers within TSA 18. A copy of such letter is attached as Exhibit D.

10. The Department's action in withdrawing its earlier final agency action amending the Broward County Trauma Agency plan is without statutory authority and is contrary to law, including, but not limited to F. S. 395.401(3) and 395.402(3)(b). Such statutes mandate reversal of the proposed agency action set forth in Exhibit D.

11. The Department in withdrawing its final agency action amending the Broward County Trauma Agency plan, has further effectuated a defacto amendment to rule 64E-2.022(3), to provide need for 3 rather than 4 trauma centers in TSA 18. The existing rule further compels reversal of the proposed agency action.

12. Petitioner is substantially affected by the Department's action reflected in Exhibit D for the

reason that such action would purport to render its Letter of Intent in non-compliance with the local plan. The Department is further required by F. S. 395.4025(1)(c)4 to obtain written confirmation from the Broward County Trauma Agency that Westside's application for selection as a STAC is consistent with its local plan. The Department's unwritten rule that, contrary to law, there is a need for 3 SATC in TSA 18, would purport to prevent obtaining the required F. S. 395.4025(1)(c)4 confirmation.

13. The disputed issues of material fact entitling Westside to a formal administrative hearing include, but are not limited to, the following:

a. Whether the Department is authorized to unilaterally withdraw its final agency action amending the Broward County Trauma Agency plan, which final agency action was not contested by such Agency.

b. Whether the Department has erroneously interpreted its administrative rule and governing statutes concerning the correction of local plans and the need for trauma centers in TSA 18.

c. Whether the Department has changed its interpretation of an administrative rule without initiating rulemaking as required by Chapter 120 of the Florida Statutes.

d. Whether Westside relied upon the final agency action f the Department correcting and amending the plan concerning the need for trauma centers in TSA 18.

14. Westside seeks as relief the withdrawal, dismissal or nullification of the proposed agency action set forth in the Department's January 15, 2002 letter attached as Exhibit D.

WHEREFORE, it is respectfully prayed that the Department forward this Petition to the Division of Administrative Hearings for the conduct of a formal hearing.

Respectfully submitted this 4th day of February, 2002.

STEPHEN A. ECENIA
Florida Bar Number 0316334
HAROLD F. X. PURNELL
Florida Bar Number 148654
Rutledge, Ecenia, Purnell & Hoffman, P. A.
Post Office Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788

and

BARBARA AUGER
Florida Bar Number 0946400
The Auguer Law Firm
P. O. Box 471
Tallahassee, Florida 32302
(850) 224-7800

ATTORNEYS FOR COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

John O. Agwunobi, M.D., M.B.A.
Acting Secretary

Certified Mail # Z 362 115 584
Return Receipt Requested
September 28, 2001

George Danz, Director
Broward County Trauma Agency
5301 Southwest 31st Avenue
Fort Lauderdale, FL 33312

Dear Mr. Danz:

It has recently come to my attention that the trauma services systems plan approved by the Bureau for the Broward County Trauma Agency conflicts with the provisions of *Fla. Admin. Code R. 64E-2.022(3)*. The plan recommends three state approved trauma centers or pediatric trauma referral centers for trauma service area 18 while the Administrative Code Rule provides for four.

The Legislature has assigned responsibility for determining the number of trauma centers allocated to each trauma service area to the Department of Health. *See § 395.402(3)(b), Fla. Stat. (2000)*. The Department has allocated, by rule, four centers for your area therefore, the trauma services systems plan for Broward County Trauma Agency is amended in accordance with the law to provide for four centers.

Sincerely,

Charles Bement
Bureau Chief

4052 Bald Cypress Way, Bin C-18 • Tallahassee, FL

EXHIBIT
tabbies
"A"

TOTAL P.03

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

John O. Agwunobi, M.D., M.B.A.
Secretary

November 5, 2001
VIA CERTIFIED MAIL
#7000 0600 0027 1553 7720

Tamara M. Scrudders, Esquire
Office of the County Attorney
Broward County
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, FL 33301

RE: Your correspondence of October 15, 2001

Dear Ms. Scrudders:

In response to the above-referenced correspondence from you on behalf of the Broward County Trauma Agency (BCTA), this will confirm Mr. Charles Bement's September 28, 2001, notice to you of the amendment of the BCTA plan as required by *§ 395.401(1)(c), Fla. Stat. (2001)*. The amendment, as you know, provides for a minimum of four (4) trauma centers as outlined in *Fla. Admin. Code R. 64E-2.022(3)*, rather than three (3) as recommended in the BCTA plan.

Further, this letter is notice that Mr. Bement's determination is final agency action for purposes of *§ 120.569, Fla. Stat. (2000)*; and, if the BCTA believes its substantial interests have been determined by this action, it has twenty-one (21) days from the date of your receipt of this letter to petition for an administrative hearing by sending it to the Agency Clerk at 4052 Bald Cypress Way, BIN #A02, Tallahassee, FL 32399-1703. Failure to file a petition within 21 days shall constitute a wavier of BCTA's right to a hearing on this agency action. Should the BCTA choose to waive its right to this proceeding, the amendment of the BCTA plan shall become a final order appealable within 30 days as provided in *§ 120.68, Fla. Stat. (2001)*.

Your letter mentioned BCTA possibly petitioning for a variance or waiver of the rule at issue under *§ 120.542, Fla. Stat. (2001)*. Such petitions are governed by *Florida Administrative Code Chapter 28-104*. The Bureau of Emergency Medical Services staff will consider the petition and written evidence and make a decision to grant or deny the petition and submit a final order to the Secretary of the Department of Health for signature. As you know, the Department can grant a variance or waiver of this rule only upon a showing that it violates principles of fairness or creates a substantial hardship. Among the factors considered would be the application of the rule to BCTA and how it differs from like situated entities.

In the alternative, BCTA might explore the exception provision outlined in *§ 395. 401(1)(e), Fla. Stat. (2001)*. That provision states, "The Department may grant an exception to a portion of the rules adopted pursuant to this section or § 395.4015 if the local or regional trauma agency proves that, as defined in the rules, compliance with that requirement would not be in the best interest of the persons served within the affected local or regional trauma area." This "best interest" standard might be more appropriate to meet the needs of your client and the citizens of Broward County as opposed to the standards established in *§120.542, Fla. Stat. (200*[illegible] Department has not, in recent memory, conducted such a proceeding but has received adopted the recommendations of the General Counsel's office for such a proceeding.

000007

EXHIBIT
"B"

If BCTA seeks the *§ 395.401(1)(e), Fla. Stat. (2001),* exception to the minimum number of four (4) trauma centers for trauma service area 18, the Department will conduct a non-adversarial public hearing for receipt of evidence in Broward County. The presiding officer shall be a Department employee, assisted by staff and counsel. Ideally, the hearing will draw participants from BCTA and other persons and entities. The Department would conduct this hearing as soon as feasible to obtain maximum participation. The Department is very interested in considering the input of medical experts and documentation of statistical analyses to make an informed and effective decision.

In addition, the General Counsel's office has recommended the Bureau initiate rulemaking to amend *Fla. Admin. Code R. 64E-2.022*, which appears appropriate to address issues indicated from comprehensive input from interested groups throughout the state. I anticipate the Bureau will pursue this recommendation sometime in the spring of 2002.

If you wish to discuss these options in further detail, please contact the Bureau's attorney, Janine B. Myrick. The BCTA and Bureau of Emergency Medical Services have long enjoyed a collaborative and cooperative relationship. On behalf of the Department of Health, please be assured that the Bureau remains committed to working in partnership with local communities to deliver the highest quality emergency medical care to Florida's citizens and visitors.

Sincerely,

Art Clawson
Division Director
Emergency Medical Services
and Community Health Resources

AC/mak
cc: Charles Bement, Bureau Chief, Bureau of Emergency Medical Services
William Large, General Counsel, Department of Health
Janine B. Myrick, Esquire, Attorney for the Division
Theodore Henderson, Esquire, Agency Clerk

COUNTY ATTORNEY

55. MOTION TO AUTHORIZE County Attorney to file a petition with the Division of Administrative Hearings, on behalf of the Broward County Trauma Agency, to challenge the State Department of Health's decision to amend the Broward County Trauma Plan to provide for an additional trauma center in Broward County.

ACTION: (Time-11:28 AM) No Board action was taken. *See Page 61.*

COUNTY ADMINISTRATOR

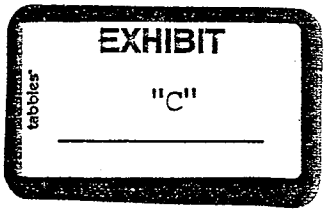
56. MOTION TO APPOINT additional representatives to the Site Selection Committee for the new Family Court Facility for the purpose of advising the Board regarding site selection criteria and the most appropriate site for the facility.

ACTION: (Time-12:17 PM) Appointed the following additional representatives to serve on the Site Selection Committee for the new Family Court Facility: a BSO representative, State Attorney General representative, Human Services Department representative and a DPEP representative. Further, the Board confirmed the Board of County Commissioner appointments to the Committee; namely, Commissioners Eggelletion, Lieberman and Wasserman-Rubin. *See Page 87.*

COUNTY COMMISSION

57. MOTION TO NOMINATE Reverend Joe C. Johnson to the World War II Memorial Project Board. (Commissioner Wasserman-Rubin)

ACTION: (Time-11:13 AM) Approved. (Moved to the Consent Agenda.)



VOTE PASSES UNANIMOUSLY.
THE CHAIR: We did item 57. It went to Consent.

AGENDA ITEM 55

COMMISSIONER LIEBERMAN: Sorry. Could we do 55?

THE CHAIR: Item Number – and we are going to take 55. And we have several speakers. If you'll just remember, our first speaker is Barbara Seltzer, followed by Gwen Hankerson, followed by Diane Glasser, followed by Belle Sheiner. So instead of timing you if you could keep it to a couple minutes. First is Ms. Seltzer, would you please come forward? And when you come to our mike would you reintroduce yourselves and tell us who you represent?

MS. SELTZER: My name is Barbara Seltzer, and I am here on behalf of the 1359 homes at Lauderdale West in Plantation. We strongly urge the County Commission to support the state in their decision to provide for a fourth trauma center to serve the residents of western Broward County. That's everything west of I-95.

Last night there was a unanimous vote of the homeowners in favor of providing sorely needed trauma care in West Broward. We really appreciate your support for those of us who live west of the Turnpike who may be in need of trauma care. As much as those who are now served by three sites on the east side of town. Thank you very much for your time and consideration.

THE CHAIR: Thank you, Ms. Seltzer. Next is Gwen Hankerson, followed by Diane Glasser. Ms. Hankerson.

DR. HANKERSON: Thank you, Madam Chair. Dr. Gwen Hankerson, President of Eastgate Homeowners' Association and President of the Broward County Democratic Black Caucus. As a Broward County native, I would like to say to you that we have seen services come and services go. Our county is growing and our city is growing and the west is growing. Growing up in Central Fort Lauderdale was wonderful, but now there are people that are so far west that are needing trauma

services that are much closer than the ones that we have. So I am asking and appealing to you and your better judgment to please consider supporting the state as it agrees to give us a fourth trauma center in the west. Thank you.

THE CHAIR: Thank you, next is Diane Glasser, and Ms. Glasser will be followed by Bill Shiner.

MS. RICHARDVILLE: Can I ask, she had to leave and asked me to take her place is that okay?

THE CHAIR: Certainly.

MS. RICHARDVILLE: My name is Sally Richardville, and I'm appearing before you as just a citizen, not representing anyone. But I have a couple of questions that kind of as a taxpayer have stymied me. I don't understand how anybody can fight not having a trauma center that's out closest to the people. As a taxpayer and I read that 80 percent of the people that are picked up are west of 95, are west of the Turnpike. I don't understand that. My tax dollars are paying for a helicopter to pick up, even if they picked up only 50 percent of the people and took them all the way to the east. My tax dollars are paying for that.

As a citizen, I feel like we should have a trauma center in every section of this county. It's growing. I know because I drive it. I see it every day, something is happening out west. We're having overcrowded. We're having more people. A trauma center couldn't hurt. If 50 percent of the people are taken by ambulance instead of by helicopter, we're saving money right there for the taxpayers of this county. I don't know if it's a savings, if it's worth it or not. I just know that it would be convenient if I was one of those people that was hurt out there and could just quickly or quicker get to a hospital for help. As a taxpayer, I'm asking you to consider that. If you're hurt out there, wouldn't you want to go to the closest hospital or trauma center? I know I would, and God forbid, I know I'd want my family there. Thank you.

THE CHAIR: Thank you. Next is Barbara Effman. Ms. Effman is followed by Lillian Kirshenberg, followed by Henrietta Margolis. Ms. Effman.

MS. EFFMAN: You said Bill Sheiner was next, and she would like not to be skipped.

THE CHAIR: I'm sorry, I must have flipped two. I apologize. How could I miss her? She's a former union president, teacher's union.

MS. SHINER: That's so. And retired also formed a retired teacher's organization down here. I'm also president of my condo association, but I'm here to talk as a citizen and as the head of one of the local political parties. Maybe I'm very naive, because I understand the state has allowed Broward County to have four trauma centers. Why there should even be a debate about building the fourth one is beyond me. It's not costing Broward County any more by having this built. It certainly would create jobs which we can use.

And you know, as well as I do, that most of the development in the last several years has been in the west, and as the previous speaker pointed out, if you are in need of trauma care, to first waits for a helicopter to come and transport you is ridiculous, because every moment at that point counts. And I must be missing something, because I can't understand what the rivalry would be from three other trauma centers opposing another trauma center in the western area. And I live in the western area and I'm amazed of all the development that is going on still west of where I live. So I ask you very much to consider building the fourth trauma center. It is needed. It will be a benefit to the county, and it certainly will be to your credit to approve it. Thank you.

THE CHAIR: Thank you. And I apologize for missing you. Next is Ms. Effman. Ms. Effman is followed by Ms. Kircshenberg.

MS. EFMAN: I'd like to congratulate you and say that you really do know how to move a meeting. My name is Barbara Efman. I'm currently a community activist, 25-year resident of the West Broward. President of the West Broward Democratic Club, a member of the Broward County Regional Health Planning Council, a Trustee of Westside Regional Medical Center as well as I hold an MPH which is a Masters of Public Health from the University of Illinois Medical School in Chicago.

Today I speak on behalf of improved health care in Broward County. There are three trauma centers in Broward County, all on the east side of town, all on or east

of I-95. They are located at Broward General, North Broward Medical Center, and Memorial Regional Hospital. At the same time, nearly 60 percent of our population lives west of the Turnpike.

In South Florida, I wonder what would happen if we had a major hurricane. The plan says evacuate the east, send all the people to the west. The trauma care doctors remain on the east side. All the people are on the west side, and I wonder how the western half of the county are going to be able to serve those people. Is this what we want for our county? Is that an effective trauma plan? Is that an effective hurricane evacuation plan? Is that kind of plan the residents that Broward County deserves?

The Florida Department of the health approved four trauma centers for Broward. Your county backup material on the Internet says that there is no cost impact to the county. It says fiscal impact cost summary, none. So it wouldn't cost you any money. Finally, we will have a trauma center services to serve the residents of western Broward County as they've done for so many years on the east side of town. The facts are very simple.

There are no trauma services west of the I-95. All sites now are east of I-95. Sixty percent of the population lives west of the Turnpike. The law authorizes four trauma centers in Broward County. There would be no increased cost to the county. The provider pays for the service. The residents would have a higher level of service and feel safe. I see that as a win/win situation.

How can you in good conscience even consider saying no to these services and no to the residents? I strongly encourage you not to ask the state to limit trauma care to the existing three sites. According to the Department of the Health in the year 2000, there were 265 air lifts for trauma care in Broward County, 86 percent of those air lifts came from west of the Turnpike.

THE CHAIR: Eighty-six Percent.

MS. EFFMAN: There were 265 air lifts and 86 percent of them came from west of the Turnpike. I strongly encourage you not to ask the state to limit trauma care to the

existing three sites. Residents want and demand a higher level of service. The State of Florida says the need is there. In fact, according to both newspapers, both hospitals districts and a private hospital have applied to offer this service. All knowing they must meet the standards of care and all knowing they must fund the project if chosen. In a county of over 1.6 million residents. We deserve the highest level of care. Let's move forward and provide trauma care to all the residents of the Broward County. I thank you for your time, your consideration and for your vote for the welfare of the people of Broward. Thank you.

(Applause.)

THE CHAIR: Thank you. Okay. Thank you. Ms. Kirschenberg. Ms. Kirschenberg, will be followed by Henrietta Margolis.

MS. KIRCSHENBERG: My name is Lillian Kirschenberg. I am a 23-year resident of the City of Sunrise.

THE CHAIR: And a former (Inaudible.)

MS. KIRCSHENBERG: I'm also a Vice President of the West Broward Democratic Club and I've been appointed to the State Advisory Council for the Department of the Elder Affairs representing all of the seniors of Broward County. During the past week, I have met with hundreds of seniors, and they do not want to have to think of either driving cross county or taking a helicopter in the case of a tragedy or trauma. If the state approved four trauma center for Broward, I think it's time for us to get the services we need to enjoy our golden years with the comfort of knowing that if needed, services are available in our community. Please do not wait for a catastrophe to happen to realize that we need one desperately in the west section of Broward. Thank you.

THE CHAIR: Thank you.

Next -- excuse me, I appreciate your enthusiasm, but we don't applaud in the County Commission meetings, unless we're congratulating someone.

MS. MARGOLIS: My name is Henrietta Margolis, and I've lived in Plantation for 25 years. I'm speaking here on behalf of the Westside Regional Hospital. I have been here when they were Bennett, and they have really grown and grown, and they have developed and I really feel that this opportunity should be given to the Broward – to Westside Regional Hospital for the trauma center, and I now would like to speak on a personal note.

About two years ago a dear friend of mine was riding a bicycle two blocks from my home and was hit by a car. He had aye to wait almost a half-hour before he was transported to the Broward General Trauma Center. I'm sorry to tell you he passed away. I don't know if he had been taken to a closer trauma center would he have lived, but I really feel the necessity is to have one so close to us and not have them on the east side of the county. Thank you and I hope you will consider all of this.

THE CHAIR: Thank you, Ms. Margolis. Next is Mr. Johnson, followed by Ms. Thomas, followed by Mr. Blossar.

MR. JOHNSON: Greetings, Madam Chair, Madam Vice Chair. My name is Percy Johnson. I'm coming to you just as a citizen of the Broward County. I would like for the County Commission to really think about the population of Broward County is increasing and every day it's increasing every even more. It will probably quadruple in the next ten years, and we need to establish an additional trauma center west of the Turnpike for those citizens.

Right now we only have three existing trauma centers, and they're all east of 95 and I just really feel that with the population being 55 percent of our population living west of Broward County – west of the Turnpike, I think that we need to establish an additional trauma center west of the Turnpike. Thank you. I yield my time.

THE CHAIR: Thank you, Mr. Johnson. Next is Ms. Thomas, followed by Mr. Blossar, followed by Dr. Lottenberg.

MS. THOMAS: Good morning, and thank you for allowing me to speak to you a little bit this morning, and I'm concerned of course about the trauma center that is being – well, that you're questioning whether it should be established west of 95. Considering that over half of the population of this county lives west of 95,

considering that with the increase in population, transportation, traffic, et cetera, et cetera, is, indeed, increased. Considering that with increased transportation and movement, then you have more chances for accidents. Considering that then, we have a viable need for an additional trauma center to be established west of 95.

The three that are currently in existence are east of 95. Population is west of 95. We would simply ask that you consider establishment of another trauma center west of 95, especially since it will be at no cost to you, and especially since statistics have shown that there is a great need. We don't want to have the tragedy that happened 9-11 and not be prepared for it. I would just urge your support for it. Thank you.

THE CHAIR: Thank you, Ms. Thomas. Next is Mr. Blossar. Mr. Blossar is followed by Dr. Lottenberg. Dr. Lottenberg is followed by Mr. Menton. Mr. Brossar.

MR. BLOSSAR: Thank you, Madam Chair, Commissioners, my name is Jim Blossar, and I am representing the South Broward Hospital District and North Broward Hospital District today. Obviously this is a very complex and involved issue. Certainly there are emotional overtones to it, because we have life and death issues at stake here. However, I must tell you that this has come up was a rather quick item through the Department of Health. You have an agency of experts, professionals, your Trauma Management Agency that is bringing a recommendation forward to you today. We would ask and support that recommendation in your very careful consideration of that recommendation. These are very expensive centers to man, to establish, to create.

THE CHAIR: Don't some women work there? Thank you.

COMMISSIONER LIEBERMAN: Staff.

THE CHAIR: Staff.

MR. BLOSSAR: Sorry.

THE CHAIR: They are not manned, they are staffed. Women are doctors too.

MR. BLOSSAR: Thank you. Dade County had one such center, Jackson Memorial Hospital to serve a population much larger than Broward County. As I understand the administrative hearing filing deadline is this Thursday. I think that you need to be sensitive to that depending on your consideration here today, and I would ask that if there are open issues that before we rush to judgment, that one possible consideration would be to allow the agency, your County Attorney's Office to go forward with an appropriate involvement in this administrative hearing, and then subject to further consideration by this Commission at a subsequent date should there be issues unanswered that you need answers to. So we support your trauma agency recommendation and we're here to be responsive to questions that may come up. Thank you very much.

THE CHAIR: Thank you. Next is Dr. Lottenberg, followed by Mr. Menton. Mr. Menton will be followed by Doctor -- is it Ivan Puente?

MR. PUENTE: Yes.

THE CHAIR: And our last speaker will be Mr. Scott.

DR. LAUTENBERG: Good morning, ladies and gentlemen. I'm Larry Lottenberg. I'm the Director of the Trauma Center at Memorial Regional. I'm speaking on behalf of the South Broward Hospital District. I'm speaking on behalf of the Broward County Trauma Agency, and I'm also speaking on behalf of the American College of Surgeons.

I've been a surgeon for over 25 years. I've been in this county for over 22 years. I've built, ran, run, built up the entire trauma center at Memorial Regional. We need to set aside emotional issues and look at the facts. The facts are that the trauma system in Broward County is currently one of the most outstanding trauma systems in the country. The trauma system is currently looking at all the facts 24 hours a day about who what where and how trauma is transported in this county.

This is more than emotional issue. The figure of 55 percent of the population west of 95 is absolutely meaningless. As it turns out, most of the trauma population comes from east of 95, but if you look at the facts and all of the people in front of me have not looked at the facts or presented the facts to you, the transport of trauma patients from West Broward into our trauma centers currently has not affected the outcomes of these patients in an adverse fashion. In fact, the outcome of the trauma patients in our county is outstanding and better than almost all the counties in Florida and better than many of the areas in the United States. I know that because I'm a surveyor for the American College of Surgeons.

I also adhere by the rules for trauma centers for the American College of Surgeons. Those rules state clearly that an average trauma center must have at least 1200 severely injured patients a year in their trauma center in order for the trauma center to function and function in a normal capacity. None of the three trauma centers in our county have that number. Recently several of the trauma centers in our county were surveyed by the State of Florida. The site surveyor who was a surgeon from Pennsylvania who was representing the State of Florida commented both to me and to my colleagues that our volume is not adequate, and, in fact, could stand for an increase.

There is no way that we should put a fourth trauma center in this county. We said that for many years at the county trauma agency. We said that for many years to the state. The state has abided by those rules. Unfortunately because of political consequences, the state has been forced into looking at it from another view.

But currently, the state has been a little bit of a back road and they've allowed us to have an opportunity to have a hearing in front of them and discuss not emotions, but facts. The facts remain, we only need three trauma centers in this county. That is what we intend to support, both in the hospital district and from the American College of Surgeons. It would be foolish to dilute the care of the patients currently in the trauma centers by opening a fourth center. This would allow the people who are working in the three trauma centers, two of which are level one trauma centers and there's only six of those in the entire State of Florida, to have less patients come to them and have less acuity and potentially decrease the ability for that good patient care. I appreciate your time. If you have any questions I'm always available.

THE CHAIR: Yes, Dr. Lottenberg. Wait a minute Dr. Graber, excuse me, Commissioner Graber.

COMMISSIONER GRABER: Thank you. I have a couple of questions. You said you needed about 1200 patients to meet certification. Is it possible that if you do not attain that some of these centers may lose their certification?

DR. LOTTENBERG: It's not possible that they'll lose the certification. What the American College of Surgeons says, Dr. Graber, is you need 1200 patients who have an injury severity score of greater than 15. That means that they're severely injured. Now all the trauma centers have more than 1200 patients, but not all of them or none of them have 1200 patients with an injury severity score of greater than 15.

COMMISSIONER GRABER: Now, you said two of the centers are level one, one is a level two.

DR. LOTTENBERG: Yes, sir.

COMMISSIONER GRABER: And the two level ones, that's Hollywood and Broward General; is that correct?

DR. LOTTENBERG: Yes, sir.

COMMISSIONER GRABER: They're not located that far apart from each other. Is that a concern?

DR. LOTTENBERG: Not a concern. They're geographically divided.

COMMISSIONER GRABER: And to reach the number of severity of 15 level, the fact that you have three centers, is that one of the reasons you're not reaching that number?

DR. LOTTENBERG: That may be one of the reasons.

COMMISSIONER GRABER: So are you saying with three centers, you might already have too many?

DR. LOTTENBERG: We're pushing, yes, sir.

COMMISSIONER GRABER: You're pretty close.

DR. LOTTENBERG: Pretty close.

COMMISSIONER GRABER: And you said the location doesn't make a difference. Now, whether all of these are located near I-95 in some way or other --

DR. LOTTENBERG: Absolutely no difference.

COMMISSIONER GRABER: It makes no difference because of helicopter transport.

DR. LOTTENBERG: Both helicopter and ground. As a matter of fact, in the south district, less than 20 percent of our total transports are by helicopter. Most of our transports are by ground. Most of those do come from the west, from Miramar and Pembroke Pines.

COMMISSIONER GRABER: Let me clarify one thing. Most hospitals have emergency rooms that do trauma. What's the difference between a trauma center and an emergency room trauma?

DR. LOTTENBERG: The difference between a trauma center and an emergency room that does trauma is there's a surgeon that meets the patient upon arrival of the patient to administer care to the patient, to stop bleeding and save the patient's life. Not only is that one surgeon required, but the entire team of anywhere from 12 to 15 people are mobilized every time there is a trauma patient that shows up.

COMMISSIONER GRABER: So that team is in-house at all times. Twenty-four, seven.

DR. LOTTENBERG: At all times. Twenty-four, seven.

COMMISSIONER GRABER: Whereas in a regular emergency room, a doctor could be at home.

DR. LOTTENBERG: That's correct.

COMMISSIONER GRABER: That's correct.

DR. LOTTENBERG: In a regular emergency room, the doctor could be at home.

COMMISSIONER GRABER: And finally, the trauma centers, they sort of like transplant centers or specialty centers that if they don't have enough volume, they don't have enough experience.

DR. LOTTENBERG: Absolutely.

COMMISSIONER GRABER: Like heart transplants they don't do those every place.

DR. LOTTENBERG: Absolutely.

COMMISSIONER GRABER: It's in the same category as that.

DR. LOTTENBERG: It's in exactly the same category. The nurse's acuity, the ancillary services acuity and the physician's acuity to take care of patients drops as the number of patients gets diluted.

COMMISSIONER GRABER: So you are saying that if we had four trauma centers we may have four trauma centers, but the care may not be as good at all four.

DR. LOTTENBERG: That's exactly what I'm saying.

COMMISSIONER GRABER: Thank you.

COMMISSIONER RODSTROM: I have –

THE CHAIR: Commissioner Rodstrom.

COMMISSIONER RODSTROM: If you were going to open a fourth trauma center, how would it be determined where the patient would go and a follow-up to that, would whether they were able to pay their medical bills versus being indigent, would that have any bearing on where that patient might be transported?

DR. LOTTENBERG: Well, interestingly enough, I didn't get into that because I think other people are getting into that. There's been some argument here that trauma centers don't cost you the county any money. Realize now that currently all three trauma centers are in the tax supported hospitals of the county, and that the indigent care that's being delivered through the County Commission floating indigent care tax millage feeds right back into those trauma centers. And the answer to your question about payment, that's a difficult problem because there are going to be indigent patients showing up at a trauma center perhaps that is not part of the tax supported system that are going to be kept responsible for those bills. The state and the country does not pay for trauma care.

COMMISSIONER RODSTROM: You're not quite answering my question. What I'm trying – given the fact that you have three trauma centers that are tax supported now, and assuming that you were to have a fourth one that was free enterprise, what would happen then with a patient who was indigent? Would they be denied, or how would that patient be determined where that patient would go? How would they make that determination? With a fourth hospital that's not part of that system.

DR. LOTTENBERG: Let's look at how the determination is made currently. The determination is made currently based on geographic boundaries approved by the trauma agency and then approved by the County Commission. So if a fourth center came up, the geographic boundaries would obviously have to change in one way or another. They would affect all three of the current trauma centers for the fourth center.

How the indigent patients would be cared for at those centers, I have no idea, Mr. Rodstrom. I really don't, and I think that that would be one burden that perhaps the county would be saddled with, and I think it's a very important comment that you make. I'm as concerned about that as you are, overall. You know, if there's a private enterprise trauma center and an indigent patient goes in there, they're either

going to have to write off that money or they're going to attempt to bill those patients or attempt to lien those patients to try and get payment.

THE CHAIR: Don't y'all do the same thing?

COMMISSIONER RODSTROM: Well, I mean – I guess –

(COMMISSIONER EGGELLETION LEFT THE ROOM.)

DR. LOTTENBERG: Well, within the tax millage, yes, we do.

COMMISSIONER RODSTROM: Commissioner Parrish, the thing this touches upon is my concern that all the self-pay patients will end up at the one hospital that's run by free enterprise, and all the indigent care, all the indigent patients will tend to be shifted towards the government-type of hospitals. So the taxpayers will be paying.

DR. LOTTENBERG: There's no question about it.

COMMISSIONER RODSTROM: – because the tax districts right now rely heavily on the self-pay patients. The indigent care is ancillary, and that hurts their balance sheet, but the self-pay patients are the ones that keep them afloat. And so if you take all the self-pays away, then you're going to hurt something that's already in existence.

DR. LOTTENBERG: I don't disagree with you.

THE CHAIR: Thank you. I don't think that there was a question there, but I appreciate it, Dr. Lottenberg.

DR. LOTTENBERG: Okay. Thank you.

THE CHAIR: Our next speaker is Mr. Menton, followed by Dr. Furente, followed by Mr. Scott.

MR. MENTON: Yes, thank you. I'm the CEO at Broward General Medical Center and I am here to speak in support of the action which is requested, which is to challenge the State Department of Health to amend the Broward County trauma system. I

really want to reiterate what Dr. Lottenberg said earlier. We do here in Broward County have a model trauma system, and I say system because it involves the three trauma centers that have been discussed as well as pre-hospital as well as an outreach program that reaches every corner of the community.

(COMMISSIONER EGGELLETION RETURNED TO THE ROOM.)

MR. MENTON: Statistically over the last several years since '94 we've seen an average of five percent decrease per year in the number of trauma cases that come in. A lot is due to outreach that has taken place. Many of you are aware of helmet training that we've done for kids in schools, the roads task force which has been involved in removing road debris throughout the county and an number of other initiatives. Seventy-two thousand people have gone through programs to educate them on the trauma awareness.

As Dr. Lottenberg mentioned, there are standards that we must meet. One of the guidelines is that we have 1200 trauma cases per year. We are not reaching those targets, and I think adding another trauma center would certainly dilute further the ability to meet those critical numbers. There is a correlation between outcomes and volume in most all clinical fields, particularly this area of trauma.

In addition to that, the trauma agency has been very effective over the years in overseeing the trauma program here in Broward County. As some of you may know, there was a pediatric trauma center initially which decided to close because as I believe economic reasons, the volumes just did not support that. As we continue to move forward, I think we do look at the delivery times, the average transport times for all patients throughout the county, north to south, east to west. Any direction, and at this time we are averaging 14 minutes for patients to be transported to one of our trauma centers here in Broward County.

So in conclusion, I think one of the earlier speakers talked about making sure the service is available, and I want to reassure you that they are available and this trauma system is second to none in the state. Thank you.

THE CHAIR: Thank you. Our next speaker is Dr. Furente, followed by Mr. Joe Scott. Dr. Furente.

DR. FURENTE: Good morning, and thank you, Madam Chair, and the rest of the Commission for the opportunity to take the floor. I am just going to touch on a few points to reenforce what's been said and to clarify some of the issues that have been brought forward with facts and not feelings.

I am the Trauma Medical Director of Broward General. I'm sorry. I'm also the Trauma Medical Director at Delray Medical Center. So I'm actually involved with trauma care in two counties. I have been doing trauma care for roughly about 15 years now. I've been in Broward County for about seven.

The first thing I wanted to make sure is that we clarify what trauma is versus ER care, and I think that that is very important especially for the citizens that presented earlier. The patients that come to us as trauma patients are a select group of severely injured patients. Those are the patients that across the nation represent the third leading cause of death from a medical problem and the first leading cause of death for people younger than 40 years of age. So we're talking about people who are very severely injured. The majority of individuals who are going to be involved with car accidents and other traumatic events in the county will still be going to their local hospitals. We're not talking about taking those patients away.

We have heard this morning the questions about timing and the access to care. And as part of the system that we have in Broward County, because it is a trauma system. It's not an individual group of hospitals working by themselves. We all work under the umbrella of the Trauma Agency, which is a county agency. As part of this system, we do continuous quality assessment of how are we delivering the care. Part of that quality assessment is the timing of the delivery of care to patients. We have on a yearly basis established that the average time it takes for a patient to get to our hospitals from the point that the injury is identified as regarding trauma care to the point that they get to our hospital is 14 minutes. That's an excellent delivery time.

The difference between patients on the east and west of the I-95 is four minutes. So we're talking about a difference of four minutes between a patient that is injured east of 95 versus west of 95. When you look at the way the patients with trauma injuries die, they die in what we call a tri-modal distribution which means they either die right at the scene because they have injuries that are so severe that we can't repair or they die within — the second group dies within the first hour, what we call the Golden Hour. And those are the patients that we try to get to the trauma center within that first hour. And clearly we're doing a very good job getting to those patients

And then the third group of patients are those patients that will go on to die weeks later on in the intensive care unit. Now that third group of patients also requires a very extensive specialized care and that's what the trauma center provides. Well, what we have put together in this county is three very strong trauma centers, two level ones. Two out of the six that we have in the whole state are operating already in this county. As Dr. Lottenberg mentioned before, recently we had a survey from this Department of Health where we were surveyed for two days at each center, and we both received excellent recommendations, excellent commendations, I'm sorry. But actually one of the commendations that was mentioned was the fact that we were not seeing enough severely injured patients.

And I'm going to provide some statistics real quick. The American College of Surgeons recommends that each center sees a minimum of 1200 trauma patients with an ISS score greater than 15. Broward General we had 1143 last year and North Broward 743 and Memorial 949. Clearly all three centers below what is recommended. In addition to that, the Florida State statutes recommend that each center sees at least a thousand patients with an ISS of 9 or greater. At Broward we had 388 and North Broward, 297 and Memorial 531. So, again, we're way below the statistics of what has been recommended.

There were some facts mentioned — there were some comments made earlier today about this — statistics showing that we need —

THE CHAIR: Dr. Furente, I certainly don't want to rush you, sir, but if you could kind of wrap it up.

DR. FURENTE: Okay. I will wrap it up. In summary, I think – what I want to let you all know is that we have a very strong system in place already. What we are asking is for the opportunity to present to the state our side of why we don't think we need a fourth trauma center. Thank you, very much.

THE CHAIR: Thank you. All right. Our last and final speaker is Mr. Joe Scott.

MR. SCOTT: Good afternoon, thank you, Commissioner. While this is really an emotional issue and it looks like it's the east versus the west here, but I think in listening to everybody's side of the story, I think one of the things that we need to be most considering of is the outcomes that our patients have as a result of the trauma centers and the infrastructure that's currently in place. Clearly putting a fourth trauma center in Broward County is going to affect those outcomes. You need a certain volume of patients in order to have quality care in our county. I think it's imperative that we look at the quality of care that's being provided.

I think if you look at our Trauma Management Agency, you'll see that the quality of care is excellent, can be bench marked against anyone in the country. And we really and truly want to make sure that that is maintained throughout the county. So I would hope that you would support the issue here which is really diluting trauma care when we add a fourth trauma center and focus on what the outcomes are of our patients. Thank you.

THE CHAIR: Thank you. Is there anyone in the audience who did not sign up that would like to address the Commission? All right. Thank you, please come forward. Anyone else? Okay. This will be our last and final speaker. Thank you, ma'am, would you please give us your name.

MS. MONDE: Yes, my name is Stella Monde, and I live in Sunrise.

THE CHAIR: Thank you.

MS. MONDE: And I represent, I hope, the mature population there. I am very thrilled to hear and arouse my interest in speaking to you about the wonderful care at the

three existing trauma centers. However, if I'm laying in the street somewhere, I want those 14 minutes that are going to get me to a center where it happened in my area of West Broward, and I think the patient who has the problem has to get picked up and delivered. This isn't about the wonderful or not wonderful care. This is about getting us there, and when I'm laying there or I'm unconscious and my family is with me, we want you there. Fourteen minutes is a whole life to us. Thank you.

THE CHAIR: Thank you. Okay. That will conclude the public portion of this agenda item. Our speakers that we have signed up so far is Commissioner Lieberman, followed by Commissioner Gunzburger, followed by Commissioner Jacobs, followed by Commissioner Diana Wasserman-Rubin, followed by Commissioner Graber, followed by Commissioner Eggelletion. Okay. Commissioners, we have an appointment at 1:00.

COMMISSIONER LIEBERMAN: Thank you, Madam Chair. Madam Chair, my motion is that's we move the agenda and that we not instruct the County Attorney's Office to file suit for the following reason. As amply stated by many of the speakers today, 88 percent of the patients transported live in the west. This appears to be a classic example of where the population has moved west and the services need to meet the population.

As many of the speakers spoke today, the place where this issue is going to be decided is in Tallahassee. The state is going to hear everybody's arguments. The state is going to make a decision, and the state is ultimately going to decide who is, quote, right on this issue. I think it is premature for us to take any position at this point. Everyone is welcome to go to Tallahassee and present their position. I can tell you as someone who has ridden in an ambulance with a child in the back who was in imminent danger of dying, seconds make a difference, let alone minutes. And I want to make sure the services are where the people live. So my motion is to simply move the agenda and not instruct the County Attorney to file suit at this time.

THE CHAIR: Thank you. I'm going to hold that -- is there a second to that motion?

COMMISSIONER GUNZBURGER: Second.

THE CHAIR: Seconded by Commissioner Gunzburger and others. Okay. We're going to hold that motion and we're going to move to Commissioner Gunzburger, followed by Commissioner Jacob.

Commissioner Gunzburger.

COMMISSIONER GUNZBURGER: Thank you. I'm brief.

Commissioner Lieberman has said everything I would say.

THE CHAIR: Thank you.

COMMISSIONER GRABER: Ditto.

THE CHAIR: Here's the first person that said they were going to be brief up here and really were.

Commissioner Jacobs, followed by Commissioner Wasserman-Rubin.

COMMISSIONER JACOBS: I am going to be brief in stating that I support the motion, and the reason that there was a statement made that there are also hospitals on the east side that are looking for a fourth trauma. So every argument about how we don't need more than three seems moot when you consider that the very hospitals on the east side are also considering a fourth trauma center which would say to me that we still need one.

THE CHAIR: Thank you. Vice Chair Wasserman-Rubin, followed by Commissioner Graber, followed by Commissioner Eggelletion, Vice Chair Wasserman-Rubin.

COMMISSIONER WASSERMAN-RUBIN: I don't need the title, thanks, my name is long enough.

THE CHAIR: I'll do W R.

COMMISSIONER WASSERMAN-RUBIN: Diana is fine. I support the motion.

THE CHAIR: Thank you. Next is Commissioner Graber, followed by Commissioner Eggelletion.

Commissioner Graber.

COMMISSIONER GRABER: I think what we heard today is very clear that there is a lag in time between moving people from the west to the east, even if it's only four minutes. As one of the physicians mentioned, four minutes is significant. I think what's going to happen, the larger picture is that if we have four trauma centers, we're going to change the categories. There are level one, level two, different levels of trauma, and each one is required to see different types of patients, but the truth of the matter is that all of them run along I-95. They probably were misplaced there in the first place, and it's very possible if we open a fourth one, one of those trauma centers will close, and it will be redistributed.

Commissioner Rodstrom brought up a very good point about indigent patients. The hospital which is absent here today, Northwest Regional -- I'm sorry, it's Westside Regional.

THE CHAIR: They're here.

COMMISSIONER GRABER: Oh, they're here? Is there someone from Westside Regional.

THE CHAIR: Charlotte Mathers is now Westside Regional, not Broward General or North Broward.

COMMISSIONER GRABER: Madam Chairman, may I ask her a question?

THE CHAIR: Sure.

COMMISSIONER GRABER: Charlotte, you want to answer something?

MS. MATHERS: Sure.

COMMISSIONER GRABER: It seems to me that a trauma center is very expensive, and for a hospital to get into the trauma business, they have to have a good reason for it. The question that Commissioner Rodstrom brought up about indigent care about where the dollars flow from, you know, are dollars going to be flowing from the district hospitals to the private sector? One of the biggest problems we have is dumping up patients now by private hospitals now onto the district. And if a private center is opened on the west side, are we going to experience more of that type of dumping, where they going to be selecting their patients rather than everyone who comes through the door.

And if they treat everyone who comes through the door are they going to be expecting compensation even though it's not necessarily available from the county, is another question, and finally if we are going to choose a fourth center, why should this one hospital have the opportunity to do it? There's many hospitals who may want to do it, and maybe we should open that process and let everyone compete for it. Can you explain your position?

THE CHAIR: Excuse me, Ms. Mathers, you need to tell us who you are and who you represent for the record.

MS. MATHER: I'm Charlotte Mather, and I'm the Marketing Public Relations, Government Relations Director for the Westside Regional Medical Center. I may not be able to answer all the questions because I'm still new. I will answer the best I can, and whatever I can't answer right now, I'll get you the information.

The process for applying to be a trauma center is open to all hospitals and we chose to apply just as Coral Springs Medical Center, and I believe Memorial West did. So all the hospitals did have the option to apply to be a center. So people did have the option to apply and three chose to do that. So that would be the answer to that.

COMMISSIONER GRABER: So there are three applications right now?

MS. MATHER: There are three applications, correct. The question of dumping of patients, I don't know the answer to that. It's not my understanding that we dump patients. From what I've learned thus far, we actually do quite a bit of indigent care, and the exact number I cannot give you at this time, but I know it's in the millions of dollars, and that we provide a lot of indigent care. I do also know by law that patients are not allowed to dump patients that come to the emergency room. You take the patient and you treat them and you treat them properly.

If we are a trauma center, if we would be selected, again, that's undecided at this time because again we're one of three applicants. It could be any hospital that would get this application. We have to be viewed on our merits. If we have a trauma patient that's brought to us, we will treat that patient.

And the idea of having a trauma center out west is that we cut down on the transport time, better opportunity for the patient to get to a center quicker and get the treatment they need quicker. And we don't look at whether the patient, when the trauma transport brings it there, we don't say paying, not paying. We take the person as a human being and we treat them. And I invite any of you to come see our ER. It's beautiful. We have a fabulous staff there. They're right on top of it. Does that answer all your questions?

COMMISSIONER GRABER: It does. Madam Chair, I also support allowing the process to go forward.

THE CHAIR: Thank you. Next is Commissioner Eggelletion, followed by Commissioner Rodstrom.

COMMISSIONER EGGELLETION: Well, I think with Commissioner Lieberman's motion, it will make my question moot. So I'll just not even question.

THE CHAIR: Thank you, it's Commissioner Rodstrom. Commissioner Rodstrom?

COMMISSIONER RODSTROM: Well, I can see where this is headed, but I will just ask that as this process go forward that we keep a watchful eye on it, for two reasons. I think the indigent care issue to me is a significant issue. The other issue is that

these trauma centers currently only operate at about 60 percent capacity, and it's like a –

THE CHAIR: Thank God.

COMMISSIONER RODSTROM: Well, thank God, but it's like a certificate of need. That's the reason we go through that process now because we have too many hospital beds in this county. And I wouldn't want to see the opening of this fourth trauma center, if it does come to pass, have a negative impact on the existing hospital districts and tax supported hospitals that there are now. So I think we really have to keep a watchful eye going forward that this doesn't do more harm. Even though we intended it to do good. It doesn't harm the existing trauma centers that are up in operation.

I think that Commissioner Graber, you know, maybe you're on the right track. Maybe they have to categorize these things differently if there is a fourth one at different levels to provide different levels of service. So maybe the severest, the most critically injured will go to maybe one preferred location where they will have the attendant care that they can receive. And there will be different levels. Maybe that's the way you get there. But to me it doesn't sound like from a cost perspective that this is an efficient way to do business, because you're going to have too much capacity.

THE CHAIR: Thank you. Commissioner Scott.

COMMISSIONER SCOTT: I just wanted before we vote to clear a possible conflict. My law firm tells me that they represent –

THE CHAIR: He has a possible conflict.

COMMISSIONER SCOTT: A conflict, so I want to abstain from voting on this matter.

THE CHAIR: Okay. Thank you. Okay.

And finally, my comments would be, first of all, I don't see that this is our fight. I don't know why this is the County Commission's fight.

Secondly, I spoke to Mr. Dion – well, I sent a memo to him yesterday and then spoke with him this morning. To be perfectly honest, the information placed on our Agenda for us to make a decision of this magnitude is woefully inadequate, in my opinion, if I am to make something that has a direct impact on someone's life literally. It was not very adequate.

The other thing I heard things today, you know, why if there's three and we don't need anymore, than why are they all in the east when all of us live in the west. The other thing is if they call it –

No, no, no. If they call it Urgent Care and you need 14 minutes, well, maybe I'd take 14 minutes for me, but God forbid it was a little one or somebody I loved, 14 minutes would seem like a lifetime. And I know that many emergency room specialists have talked to us about the first four minutes in children's lives. So that's a concern to me.

Anyway, I'm not sure I agree with Commissioner Lieberman's motion because I'm not sure why this is a battle of the County Commission, and if there are political consequences at a state level, we'll fight your battle there, because I can't imagine as a representative of West Broward –

COMMISSIONER GUNZBURGER: That's what were motion is –

THE CHAIR: No, that's what I'm saying. I was saying – they're saying political consequences. I can't imagine why as a resident of West Broward that we wouldn't want to give anyone their shot. I mean, it's in our best interest. And I also wonder if some of the standards like 1200 patients and all that, I wonder if those standards are based on cash as opposed to medical care.

So rather than belabor the point, I completely agree with all the previous speakers. So the motion is on the floor. The motion is to move the agenda, which means we

are taking no action on this item. It's been moved by Commissioner Lieberman, seconded by Commissioner Gunzburger.

All those in favor, please signify by saying aye.

All those opposed same sign.

Show that the County Commission did not take action on the item.

VOTE PASSES UNANIMOUSLY WITH COMMISSIONER SCOTT ABSTAINING.

AGENDA ITEM 53

THE CHAIR: Okay. The next item -- and we thank you all for coming.

The next item on our agenda is Item Number 53.

COMMISSIONER LIEBERMAN: Yes.

THE CHAIR: Commissioner Lieberman.

COMMISSIONER LIEBERMAN: Yeah, I want to move 53, but with a clarification. I sent this over to Broward Days, and apparently this contract is not the same as the one from last year, because it says that on this contract, remember, the legislators' in our circle, and the legislators --

THE CHAIR: Excuse me, ladies and general men, we thank you, but would you please exit as quietly as possible. Thank you.

COMMISSIONER LIEBERMAN: Okay. In order to be in that inner-circle, our donation is to be 10,000. So we just need to strike that reference because it wasn't in the original contract. We are the sponsor of the legislative delegation luncheon as well as the private reception for sponsors and steering committee members, but we are not part of the inner-circle which requires a $10,000 donation because we're making 4500. So with that correction I will move the agreement.

TWK

FLORIDA DEPARTMENT OF HEALTH

Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Acting Secretary

January 15, 2002

CERTIFIED MAIL

George Danz, Director
Broward County Trauma Agency
5301 Southwest 31st Avenue
Fort Lauderdale, FL 33312

Re: Final Agency Action Notice dated November 5, 2001

Dear Mr. Danz:

Be advised that this correspondence is the official withdrawal by the Department of Health of its amendment of the Broward County Trauma Agency (BCTA) plan. More specifically, the Department withdraws its letter of September 28th 2001 to the BCTA. Likewise, the Department withdraws its Notice of final agency action of November 5th, 2001. It has been determined that the Department lacked the authority to unilaterally amend the BCTA plan after it had been approved by the Department on July 11th, 2001.

This withdrawal of the letters of September 28th and November 5th, 2001 is final agency action for purposes of § 120.569, Fla. Stat. (2001); and, if the BCTA believes its substantial interests have been determined by this action, it has twenty-one (21) days from the date of your receipt of this letter to petition for an administrative hearing, by sending it to the Agency Clerk at 4052 Bald Cypress Way, Bin #A02, Tallahassee, FL 32399-1703. Failure to file a petition within 21 days shall constitute a waiver of BCTA's right to a hearing on this agency action. Should the BCTA choose to waive its right to this proceeding, the withdrawal of the amendment of the BCTA plan shall become a final order appealable within 30 days as provided in § 120.68, Fla. Stat. (2001).

Sincerely,

A.F. Clawson, Director
Division of Emergency Medical Services
and Community Health Resources

WWL:ma

cc: Charles Bement, Bureau Chief, Bureau of Emergency Medical Services
William W. Large, General Counsel, Department of Health
Janine B. Myrick, Esquire, Attorney for the Division

EXHIBIT
tabbies
"D"

Theodore Henderson, Esquire, Agency Clerk, Department of Health
Tamara Scrudders, Esquire, Attorney for Broward County Trauma Agency
George N. Meros, Esquire, Attorney for North Broward Hospital District
Michael Riley, Esquire, Attorney for North Broward Hospital District
William R. Scherer, Esquire, Attorney for North Broward Hospital District
Wendy A. Delvecchio, Attorney for North Broward Hospital District
Gary Barber, Esquire, General Counsel, South Broward Hospital District
Stephen A. Ecenia, Esquire, Attorney for Westside Regional Medical Center
Thomas W. Konrad, Esquire, Attorney for Westside Regional Medical Center
Barbara Auger, Esquire, Attorney for Westside Regional Medical Center

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs.

Case No.:

DEPARTMENT OF HEALTH,

Respondent.
_____/

NOTICE

TO: Sharyn L. Smith, Director/Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Please be advised that the Department of Health has received a request for an administrative hearing from the above-designated Petitioner. The Department requests the Division of Administrative Hearings (DOAH) to assign this matter to an Administrative Law Judge to conduct a fact-finding hearing pursuant to Sec. 120.57(1), Florida Statutes, and to submit a Recommended Order to this Agency. Two copies of papers and/or pleadings heretofore filed in this cause are attached to this Notice.

APPEARANCES

FOR AGENCY

William W. Large, General Counsel
Department of Health
Office of the General Counsel
4052 Bald Cypress, BIN A02
Tallahassee, FL 32399-1703

FOR PARTY REQUESTING HEARING

Stephen A. Ecenia, Esquire
Harold F. X. Purnell, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302-0551

and

Barbara Auger, Esquire
The Auguer Law Firm
Post Office Box 471
Tallahassee, FL 32302

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs. Case No.:

DEPARTMENT OF HEALTH,

Respondent.
_____/

NOTICE

TO: Sharyn L. Smith, Director/Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Please be advised that the Department of Health has received a request for an administrative hearing from the above-designated Petitioner. The Department requests the Division of Administrative Hearings (DOAH) to assign this matter to an Administrative Law Judge to conduct a fact-finding hearing pursuant to Sec. 120.57(1), Florida Statutes, and to submit a Recommended Order to this Agency. Two copies of papers and/or pleadings heretofore filed in this cause are attached to this Notice.

APPEARANCES

FOR AGENCY

William W. Large, General Counsel
Department of Health
Office of the General Counsel
4052 Bald Cypress, BIN A02
Tallahassee, FL 32399-1703

FOR PARTY REQUESTING HEARING

Stephen A. Ecenia, Esquire
Harold F. X. Purnell, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302-0551

and

Barbara Auger, Esquire
The Auguer Law Firm
Post Office Box 471
Tallahassee, FL 32302

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-5515

R. DAVID PRESCOTT
HAROLD F.X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE

GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

February 20, 2002

VIA TELEFAX

R. S. Power, Esquire
Agency Clerk
Department of Health
BIN A02
4052 Bald Cypress Way
Tallahassee, FL 32399-1703
Dear Mr. Powers:

Re: Columbia Hospital Corporation of South Broward. d/b/a Westside Regional Medical Center v. State of Florida. Department of Health,

Dear Mr. Power:

Our firm is counsel for Columbia Hospital Corporation of South Broward d/b/a Westside Regional Medical Center ("Westside"). On February 4, 2002, Westside filed a petition for formal administrative proceedings with the State of Florida, Department of Health. (a date stamped copy of the petition is attached hereto) Section 120.569 (2), Florida Statutes, requires an agency to grant or deny a request for an administrative hearing within 15 days of receipt. Accordingly, on February 19, 2002, the 15th day after receipt of Westside's petition, the Department of Health notified Westside and the Division of Administrative Hearings that it was granting Westside's request for hearing. On February 20, 2002, undersigned counsel received the Department of Health's Notice requesting that an administrative law judge be assigned to conduct a fact finding hearing pursuant to Sec. 120.57 (1), Florida Statutes, and to submit a Recommended Order to the Department of Health (a copy of the Notice is also attached hereto with our firm's date stamp affixed).

Through a conversation with William Large, General Counsel for the Department of Health, the undersigned learned that sometime after transmitting the Notice to the Division of Administrative Hearings, and service of the Notice on counsel for Westside, the Department requested withdrawal of the Notice from the Division of Administrative Hearings. Section 120.569 (2) further provides:

> On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57 (1). (Also see Nicolitz vs. Board of Opticianry, 609 So.2d 92, 94 (Fla. 1st DCA 1992)

Accordingly, given that the Department of Health granted Westside's petition for formal proceedings on the 15th day after it was filed, and provided formal notice to both Westside's counsel and the Division of Administrative Hearings of its decision to grant a hearing, it then lacked jurisdiction to withdraw such notice, and its actions in that regard are legally in error. Please immediately notify the Division of Administrative Hearings, that the Department's attempted withdrawal of the Notice was erroneous, and that its request for a hearing on Westside's Petition should be filed and referred to an administrative law judge as requested.

Thank you for your prompt attention to this matter.

Sincerely,

Stephen A. Ecenia

cc: William Large, Esquire
Sharyn L. Smith, Director/Chief Judge DOAH
Faxed w/o Attachments (February 20, 2002)
Hand Delivered w/ Attachments (February 21, 2002)

FLORIDA DEPARTMENT OF HEALTH

Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Secretary

February 21, 2002

VIA FACSIMILE (850) 681-6515

Steven A Ecenia
RUTLEDGE ECENIA PURNELL
& HOFFMAN, P.A.
215 South Monroe Street, Suite 420
Tallahassee, Florida 32301

Dear Mr. Ecenia:

I am in receipt of a carbon copy of your letter to my agency clerk, R. S. Power. Please be advised that Westside's Petition for Formal Administrative Hearing was inadvertently sent to the Division of Administration Hearing (DOAH) yesterday. In sum, the petition was not sent to DOAH with the authority of the Department. As such, the petition will not be resent to DOAH until my agency clerk has an opportunity to rule on all pending motions.

As you will further recall, just prior to yesterday's hearing, I indicated to you that the Petition had not been date-stamped in by DOAH. As an officer of the Court, I need to make you aware that after reviewing the documents sent to DOAH, it appears that DOAH date-stamped the petition as follows: "02 FEB 20 PM 2:13 DIVISION OF ADMINISTRATIVE HEARINGS" In addition, it appears as if someone at DOAH crossed out the date stamp and used a subsequent stamp to indicate the following: "NOT FOR ADMINISTRATIVE HEARINGS." (See attached). Please be advised that these facts do not change the Department's position that the Petition for Formal Administrative Hearing was inadvertently sent to DOAH and that DOAH does not have jurisdiction over this proceeding.

As you are aware, F.S. 120.569(2)(a) provides in part:

> On the request of any agency, the division shall assign an administrative law judge [(ALJ)] with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1).

In sum, F.S. 120.569(2)(a) contemplates that an ALJ will be assigned prior to DOAH having jurisdiction over a particular matter. In the instant case, an ALJ was NOT assigned; therefore jurisdiction was not conferred upon DOAH. Florida Statutes 120.57(1)(a), in turn, provides in part: "Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by the division shall conduct all hearings under this subsection . . .". As with F.S. 120.569(2)(a), this section also contemplates that an ALJ must be assigned prior to conferring jurisdiction upon DOAH.

I look forward to seeing you at tomorrow's depositions. Of course, should you have any questions or comments please do not hesitate to contact me.

With best regards, I remain

Cordially yours,

William W. Large
General Counsel

WWL:ma

Attachment

cc: Sharyn L. Smith, Director/Chief Judge DOAH
Barbara Auger, Esquire, Attorney for Westside Regional Medical Center
Michael E. Riley, Esquire, Attorney for North Broward Hospital District
R. S. Power, Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs. Case No.:

DEPARTMENT OF HEALTH,

Respondent.
_____/

NOTICE

TO: Sharyn L. Smith, Director/Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Please be advised that the Department of Health has received a request for an administrative hearing from the above-designated Petitioner. The Department requests the Division of Administrative Hearings (DOAH) to assign this matter to an Administrative Law Judge to conduct a fact-finding hearing pursuant to Sec. 120.57(1), Florida Statutes, and to submit a Recommended Order to this Agency. Two copies of papers and/or pleadings heretofore filed in this cause are attached to this Notice.

APPEARANCES

FOR AGENCY

William W. Large, General Counsel
Department of Health
Office of the General Counsel
4052 Bald Cypress, BIN A02
Tallahassee, FL 32399-1703

FOR PARTY REQUESTING HEARING

Stephen A. Ecenia, Esquire
Harold F. X. Purnell, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302-0551

and

Barbara Auger, Esquire
The Auguer Law Firm
Post Office Box 471
Tallahassee, FL 32302

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs.

Case No.:

STATE OF FLORIDA, DEPARTMENT OF HEALTH,

Respondent.
_____/

MOTION TO DISMISS
PETITION FOR FORMAL ADMINISTRATIVE HEARING

The Department of Health, Bureau of Emergency Medical Services, ("Department"), by and through its undersigned attorney, pursuant to Rule 28.106.204 (2), Florida Administrative Code, hereby files this Motion To Dismiss Columbia Hospital Corporation of South Broward, d/b/a Westside Regional Medical Center (Westside's) Petition for Formal Administrative Hearing and as grounds therefore states:

1. Westside is a Hospital in Broward County Florida. Westside's address is 8201 W. Broward Boulevard, Plantation, Florida 33324. Westside is located in Trauma Service Area (TSA) 18, which consists of Broward County. See § 395.402(3)(a)18 (2001). See also Fla. Admin. Code R. 64E-2.022(3).

2. The Department is the state agency charged with the primary responsibility for the planning and establishment of a statewide inclusive trauma system. See § 395.40(3), Fla. Stat. (2001). See also Fla. Admin. Code R. 64E-2.001 *et seq.* The Department has the authority to determine the location of nineteen TSAs in the state.

3. The Broward County Trauma Agency (BCTA) is the Department approved agency established for the purpose of administering an inclusive regional trauma system. See § 395.4001(1), Fla. Stat. (2001). See also Fla. Admin. Code R. 64E-2.021.

4. On May 2, 2001, The BCTA sent to the Department a BCTA plan update. On May 24th, 2001, the Department sent a letter to George Danz, Director of BCTA, stating, "We have concluded our review for completeness of the Broward County Trauma Agency Plan Update that was received May 2, 2001. (Exhibit 1). The document was found to include a majority of required elements." However, the Department asked the BCTA for clarification on the following issues: (1) an objective for developing an annual performance evaluation; (2) when the objectives and tasks would be completed; (3) the identity of the names of the board of directors and each member's affiliation; (4) the location of copies or descriptions of inter-hospital transfer agreements; (5) whether the trauma transport protocols . . . were consistent

with the most current rule revisions for adult and pediatric trauma triage criteria; and (6) a copy of any county ordinance governing the transport of trauma patients within the defined geographic area of the proposed trauma agency.

5. On July 11, 2001, The Department through its Bureau of Emergency Services Bureau Chief, Charles Bement, sent a letter to the BCTA stating, "We have completed the review of the Broward County Trauma Agency Plan Update submitted to this office on May 2, 2001 with the changes and additions we had requested in our letter to you May 24, 2001. We are pleased to inform you that your plan update is approved effective as of the date of this letter." (Exhibit 2).

6. On September 28th, 2001 the Department sent a letter to the BCTA addressed to Mr. Danz asserting the following, "It has recently come to my attention that the trauma services systems plan approved by the Bureau for the Broward County Trauma Agency conflicts with the provisions of Fla. Admin. Code R. 64E-2.022(3). The plan recommended three state approved trauma centers or pediatric trauma referral centers for trauma service area 18 while the Administrative Code Rule provides for four... The Department has allocated, by rule, four centers for your area therefore, the trauma services systems plan for Broward County Trauma Agency is amended in accordance with the law to provide for four centers." (Exhibit 3).

7. On November 5th, 2001, the Department sent a letter signed by Art Clawson, Emergency Medical Services Division Director, to Tamara M. Scrudders, Esquire asserting, "Mr. Bement's determination is final agency action for purposes of § 120.569, Fla. Stat. (2000); and if the BCTA believes its substantial interests have been determined by this action, it has twenty-one (21) days from the date of your receipt of this letter to petition for an administrative hearing." (Exhibit 4).

8. On January 15th, 2002, the Department sent a letter signed by Art Clawson to the BCTA indicating the following, "Be advised that this correspondence is the official withdrawal by the Department of Health of its amendment of the Broward County Trauma Agency (BCTA) plan. More specifically, the Department withdraws its letter of September 28th 2001 to the BCTA. Likewise, the Department withdraws its Notice of final agency action of November 5th, 2001. It has been determined that the Department lacked the authority to unilaterally amend the BCTA plan after it had been approved by the Department on July 11th, 2001." (Exhibit 5).

9. On February 4th, 2002, Westside filed a petition for Formal Administrative Hearing ("Petition") with the Department alleging that the Department's January 15th, 2002 letter was a "defacto amendment to rule 64E-2.022(3) to provide need for 3 rather than 4 trauma centers." See Petition, Paragraph 11.

10. Florida Statute Section 120.569(1), a provision of Florida's Administrative Procedure Act, provides that a party whose "substantial interests" are determined in an agency proceeding is entitled to have disputed issues of material fact resolved in a formal evidentiary hearing. To qualify as having a substantial interest, one must show that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a hearing and that this injury is of the type or nature which a section 120.569(1) hearing is designed to protect. Royal Palm Square Ass'n v. Sevco Land Corp., 623 So. 2d 533 (Fla. 2d DCA 1993); Agrico Chem. Co. v. Dep't of Envtl. Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

11. Westside has not directed the Department to a case that determines that the January 15th, 2002 letter implicates a substantial interest in this context. Case law makes it clear that a substantial interest is one based on a legal entitlement, and not on a mere unilateral expectation. See Fertally v. Miami-Dade Cnty. Coll., 651 So. 2d 1283 (Fla. 3d DCA 1995); Metsch v. Univ. of Fla., 550 So 2d 1149 (Fla. 3d DCA 1989).

12. Westside's unilateral expectation of being designated a trauma center is insufficient to create a substantial interest. See Agrico Chem. Co. v. Dep't of Envtl. Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). In sum, Westside cannot meet either prong of the Agrico test. The import and effect of the

January 15, 2002 letter cannot be determined until an application for a state approved trauma center is actually received. Florida Statute 395.4025(1)(c) provides:

> In order to be considered by the department, applications from those hospitals seeking selection as state-approved trauma centers, including those current verified trauma centers that seek to be state-approved trauma centers, including those current verified trauma centers that seek to be state-approved trauma centers, must be received by the department no later than the close of business on April 1. The department shall conduct a provisional review of each application for the purpose of determining that the hospital's application is complete and that the hospital has the critical elements required for a state-approved trauma center. This critical review will be based on trauma center verification standards and shall include, but not be limited to review of whether the hospital has:
>
> 1. Equipment and physical facilities necessary to provide trauma services.
> 2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.
> 3. An effective quality assurance process.
> 4. Submitted written confirmation by the local or regional trauma agency that the verification of the hospital as a state-approved trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists. This subparagraph applies to any hospital that is not a provisional or verified trauma center on January 1, 1992.

13. In the instant case, Westside is assuming that the import of the January 15, 2002 letter is to deny them the opportunity to be considered by the Department for a trauma center. The January 15, 2002 letter does no such thing.

14. In reality, the effect of Westside's application for a trauma center cannot be determined until sometime after April 1,

2002. Moreover, Florida Statutes 395.4025(2)(d)1 further provides: "[T]he department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in [Florida Statutes 395.4025 (2)(c)]." Thus, the impact of the January 15th letter might not be known until 18 months after April 1, 2002. See, e.g., International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990) (factor that change in playing dates might affect labor dispute, resulting in economic detriment to players, was too remote to establish standing); Florida Soc'y of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) (some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process).

15. Thus, Westside has failed to meet the first prong of the Agrico test. Simply put, at this point in time, Westside cannot be said to have suffered an injury in fact.

WHEREFORE, based on the foregoing, the Department of Health, Bureau of Emergency Medical Services, moves the Department of Health to enter an Order dismissing the Petition

for Formal Administrative Hearing filed by Columbia Hospital Corporation of South Broward, d/b/a Westside Regional Medical Center.

Respectfully submitted this 22 day of February 2002.

William W. Large
General Counsel
Florida Bar No. 0981273
Department of Health
4052 Bald Cypress Way,
Bin A02
Tallahassee, FL 32399-1703
(850) 245-4005, SC 205-4005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion to Dismiss Petition for Formal Administrative Hearing has been furnished as indicated to the following, this 22 day of February 2002:

R. S. Power, Esquire — Hand Delivery
Agency Clerk
Department of Health
2585 Merchant's Row Blvd.
Tallahassee, FL 32399

Stephen A. Ecenia, Esquire — U.S. Mail
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551

Barbara Auger, Esquire — U.S. Mail
The Auger Law Firm
P. O. Box 471
Tallahassee, FL 32302

Michael E. Riley, Esquire — U.S. Mail
Gray, Harris & Robinson, P.A.
301 S. Bronough Street, Ste. 600
P. O. Box 11189
Tallassee, FL 32302-3189

William W. Large

Ajyl6d

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

Robert G. Brooks, M.D.
Secretary

BUREAU OF EMERGENCY MEDICAL SERVICES

May 24, 2001
Certified Mail Number: Z 362 115 555

RECEIVED
01 JUN -4 AM 7:47
MEDICAL EXAMINER & TRAUMA SERVICES

Mr. George Danz, Director
Broward County Trauma Management Agency
5301 Southwest 31st Avenue
Fort Lauderdale, Florida 33312

Dear Mr. Danz:

We have concluded our review for completeness of the Broward County Trauma Agency Plan Update that was received May 2, 2001. The document was found to include a majority of required elements. However, the following six elements were found to be missing or incomplete:

1. Chapter 395.401(1)(c) requires the "trauma agency to conduct an annual performance evaluation and submit the results to the department". In our review of the section of your plan entitled Goals, Objectives, and Implementation Schedule as required by section 64E-2.019(2)(e) FAC, an objective for developing an annual performance evaluation with a date specific for submission of the evaluation to the department could not be identified. Because this evaluation is required by law, and is critically important to identify the success of your trauma system as well as the areas in need of improvement, an objective to complete this evaluation should be included to help assure its delivery to this office.
2. Also in the same section of Goals, Objectives and Implementation Schedule, none of the objectives and tasks had a specific date for completion. Most were identified as "Ongoing" or "As needed". From our review and interpretation of section 64E-2.019(2)(e), FAC at least some of the objectives and task should have a date certain for their completion. Please review this section, and where feasible include dates where the time of completion is known.
3. In our review of the section entitled Agency Organizational Structure, we could not identify the names of the board of directors and each member's affiliation as required in section 64E-2.019(2)(c)(2), FAC. Please provide this information.
4. Section 64E-2.019(2)(h), FAC requires copies or descriptions of inter-hospital transfer agreements. If such agreements exist, please provide copies or descriptions.
5. Pursuant to 64E-2.019(2)(l)(2), FAC the plan includes a copy of your uniform Trauma Transport Protocols for your service area. In our review of the Trauma Transport Protocols, we note that they are not consistent with the most current rule revisions for adult and pediatric trauma triage criteria included in 64E-2.017 and 64E-2.0175. Our records indicate that your Trauma Transport Protocols are due for renewal in July 2001. If the revised uniform Trauma Transport Protocols are available for inclusion with your plan please provide them.

p. 7/6/01

Phone (850) 245-4440 FAX (850) 488-2512

4052 Bald Cypress Way • Bin C18 • Tallahassee, FL 32399-1738
www.doh.state.fl.us/cms/

EXHIBIT
1

6. Section 64E-2.019(2)(i)(3) requires "a copy of any county ordinance governing the transport of trauma patients within the defined geographic area of the proposed trauma agency." This information was not identified in the trauma plan. If such information exists, please provide a copy with your plan.

Your response to the elements listed above must be submitted to this office within 30 days of the receipt of this notice of omissions or incomplete information. At the end of the thirty days, or upon receipt of your response whichever comes first, we will review the plan to determine compliance with Chapters 395 and 401, Florida Statute and Florida Administrative Code R.64E-2.

Please contact me at (850) 245-4440, extension 2727 if you have any questions.

Sincerely,

Fredrick A. Williams
Program Administrator

FLORIDA DEPARTMENT OF HEALTH

Jeb Bush
Governor

Robert G. Brooks, M.D.
Secretary

BUREAU OF EMERGENCY MEDICAL SERVICES

July 11, 2001

Mr. George Danz, Director
Broward County Trauma Management Agency
5301 Southwest 31st Avenue
Fort Lauderdale, Florida 33312

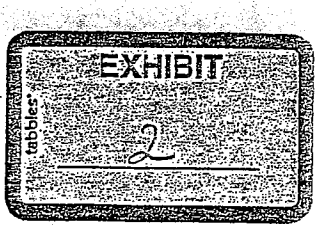
Dear Mr. Danz:

We have completed the review of the Broward County Trauma Agency Plan Update submitted to this office on May 2, 2001 with the changes and additions we had requested in our letter to you May 24, 2001. We are pleased to inform you that your plan update is approved effective as of the date of this letter. Attached is a copy of the approved plan excluding the attachments that were provided with the plan. Should we have cause to discuss your plan in the future, the attached approved plan is the document that will be used.

Please be advised that pursuant to section 395.401(1)(n) Florida Statutes, the trauma agency will be required to submit an updated trauma agency plan five years from the date of this letter. You may however, experience substantial changes in your trauma system prior to the next statutorily required update. With substantial changes you may need to revise your plan and resubmit it to this office for approval. We look forward to working with you in the development of your trauma system. Please feel free to contact Fred Williams in this office at (850) 245-4440, extension 2727 should you have questions or assistance.

Sincerely,

Charles Bement
Bureau Chief



Phone (850) 245-4440

FAX (850) 488-2512

4052 Bald Cypress Way • Bin C18 • Tallahassee, FL 32399-1738
www.doh.state.fl.us/ems/

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

John O. Agwunobi, M.D., M.B.A.
Acting Secretary

Certified Mail # Z 362 115 584
Return Receipt Requested
September 28, 2001

George Danz, Director
Broward County Trauma Agency
5301 Southwest 31st Avenue
Fort Lauderdale, FL 33312

Dear Mr. Danz:

It has recently come to my attention that the trauma services systems plan approved by the Bureau for the Broward County Trauma Agency conflicts with the provisions of *Fla. Admin. Code R. 64E-2.022(3)*. The plan recommends three state approved trauma centers or pediatric trauma referral centers for trauma service area 18 while the Administrative Code Rule provides for four.

The Legislature has assigned responsibility for determining the number of trauma centers allocated to each trauma service area to the Department of Health. *See § 395.402(3)(b), Fla. Stat. (2000)*. The Department has allocated, by rule, four centers for your area therefore, the trauma services systems plan for Broward County Trauma Agency is amended in accordance with the law to provide for four centers.

Sincerely,

Charles Bement
Bureau Chief

4052 Bald Cypress Way, Bin C-18 • Tallahassee, FL 32399-1738

TOTAL P.03

EXHIBIT 3

000058

FLORIDA DEPARTMENT OF HEALTH

Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Secretary

November 5, 2001
VIA CERTIFIED MAIL
#7000 0600 0027 1553 7720

Tamara M. Scrudders, Esquire
Office of the County Attorney
Broward County
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, FL 33301

RE: Your correspondence of October 15, 2001

Dear Ms. Scrudders:

In response to the above-referenced correspondence from you on behalf of the Broward County Trauma Agency (BCTA), this will confirm Mr. Charles Bement's September 28, 2001, notice to you of the amendment of the BCTA plan as required by *§ 395.401(1)(c), Fla. Stat. (2001)*. The amendment, as you know, provides for a minimum of four (4) trauma centers as outlined in *Fla. Admin. Code R. 64E-2.022(3)*, rather than three (3) as recommended in the BCTA plan.

Further, this letter is notice that Mr. Bement's determination is final agency action for purposes of *§ 120.569, Fla. Stat. (2000)*; and, if the BCTA believes its substantial interests have been determined by this action, it has twenty-one (21) days from the date of your receipt of this letter to petition for an administrative hearing by sending it to the Agency Clerk at 4052 Bald Cypress Way, BIN #A02, Tallahassee, FL 32399-1703. Failure to file a petition within 21 days shall constitute a wavier of BCTA's right to a hearing on this agency action. Should the BCTA choose to waive its right to this proceeding, the amendment of the BCTA plan shall become a final order appealable within 30 days as provided in *§ 120.68, Fla. Stat. (2001)*.

Your letter mentioned BCTA possibly petitioning for a variance or waiver of the rule at issue under *§ 120.542, Fla. Stat. (2001)*. Such petitions are governed by *Florida Administrative Code Chapter 28-104*. The Bureau of Emergency Medical Services staff will consider the petition and written evidence and make a decision to grant or deny the petition and submit a final order to the Secretary of the Department of Health for signature. As you know, the Department can grant a variance or waiver of this rule only upon a showing that it violates principles of fairness or creates a substantial hardship. Among the factors considered would be the application of the rule to BCTA and how it differs from like situated entities.

In the alternative, BCTA might explore the exception provision outlined in *§ 395. 401(1)(e), Fla. Stat. (2001)*. That provision states, "The Department may grant an exception to a portion of the rules adopted pursuant to this section or § 395.4015 if the local or regional trauma agency proves that, as defined in the rules, compliance with that requirement would not be in the best interest of the persons served within the affected local or regional trauma area." This "best interest" standard might be more appropriate to meet the needs of your client and the citizens of Broward County as opposed to the standards established in *§120.542, Fla. Stat. (2001)*. The Department has not, in recent memory, conducted such a proceeding but has received and adopted the recommendations of the General Counsel's office for such a proceeding.

EXHIBIT 4

000059

If BCTA seeks the *§ 395.401(1)(e), Fla. Stat. (2001),* exception to the minimum number of four (4) trauma centers for trauma service area 18, the Department will conduct a non-adversarial public hearing for receipt of evidence in Broward County. The presiding officer shall be a Department employee, assisted by staff and counsel. Ideally, the hearing will draw participants from BCTA and other persons and entities. The Department would conduct this hearing as soon as feasible to obtain maximum participation. The Department is very interested in considering the input of medical experts and documentation of statistical analyses to make an informed and effective decision.

In addition, the General Counsel's office has recommended the Bureau initiate rulemaking to amend *Fla. Admin. Code R. 64E-2.022*, which appears appropriate to address issues indicated from comprehensive input from interested groups throughout the state. I anticipate the Bureau will pursue this recommendation sometime in the spring of 2002.

If you wish to discuss these options in further detail, please contact the Bureau's attorney, Janine B. Myrick. The BCTA and Bureau of Emergency Medical Services have long enjoyed a collaborative and cooperative relationship. On behalf of the Department of Health, please be assured that the Bureau remains committed to working in partnership with local communities to deliver the highest quality emergency medical care to Florida's citizens and visitors.

Sincerely,

Art Clawson
Division Director
Emergency Medical Services
and Community Health Resources

AC/mak
cc: Charles Bement, Bureau Chief, Bureau of Emergency Medical Services
William Large, General Counsel, Department of Health
Janine B. Myrick, Esquire, Attorney for the Division
Theodore Henderson, Esquire, Agency Clerk

TWK

FLORIDA DEPARTMENT OF HEALTH

Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Acting Secretary

January 15, 2002

CERTIFIED MAIL

George Danz, Director
Broward County Trauma Agency
5301 Southwest 31st Avenue
Fort Lauderdale, FL 33312

Re: Final Agency Action Notice dated November 5, 2001

Dear Mr. Danz:

Be advised that this correspondence is the official withdrawal by the Department of Health of its amendment of the Broward County Trauma Agency (BCTA) plan. More specifically, the Department withdraws its letter of September 28th 2001 to the BCTA. Likewise, the Department withdraws its Notice of final agency action of November 5th, 2001. It has been determined that the Department lacked the authority to unilaterally amend the BCTA plan after it had been approved by the Department on July 11th, 2001.

This withdrawal of the letters of September 28th and November 5th, 2001 is final agency action for purposes of § 120.569, Fla. Stat. (2001); and, if the BCTA believes its substantial interests have been determined by this action, it has twenty-one (21) days from the date of your receipt of this letter to petition for an administrative hearing, by sending it to the Agency Clerk at 4052 Bald Cypress Way, Bin #A02, Tallahassee, FL 32399-1703. Failure to file a petition within 21 days shall constitute a waiver of BCTA's right to a hearing on this agency action. Should the BCTA choose to waive its right to this proceeding, the withdrawal of the amendment of the BCTA plan shall become a final order appealable within 30 days as provided in § 120.68, Fla. Stat. (2001).

Sincerely,

A.P. Clawson, Director
Division of Emergency Medical Services
and Community Health Resources

WWL:ma

cc: Charles Bement, Bureau Chief, Bureau of Emergency Medical Services
William W. Large, General Counsel, Department of Health
Janine B. Myrick, Esquire, Attorney for the Division

EXHIBIT 5 tabbies

000061

Theodore Henderson, Esquire, Agency Clerk, Department of Health
Tamara Scrudders, Esquire, Attorney for Broward County Trauma Agency
George N. Meros, Esquire, Attorney for North Broward Hospital District
Michael Riley, Esquire, Attorney for North Broward Hospital District
William R. Scherer, Esquire, Attorney for North Broward Hospital District
Wendy A. Delvecchio, Attorney for North Broward Hospital District
Gary Barber, Esquire, General Counsel, South Broward Hospital District
Stephen A. Ecenia, Esquire, Attorney for Westside Regional Medical Center
Thomas W. Konrad, Esquire, Attorney for Westside Regional Medical Center
Barbara Auger, Esquire, Attorney for Westside Regional Medical Center

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE

GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

February 25, 2002

By hand delivery

Sharyn L. Smith, Director/Chief Judge
Division of Administrative Hearings
The Desoto Buildiing
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Re: Columbia Hospital Corporation of South Broward, Petitioner vs. State of Florida, Department of Health, Respondent - Petition for Formal Administrative Hearing

Dear Director Smith:

Our firm represents the Petitioner, Columbia Hospital Corporation of South Broward d/b/a Westside Regional Medical Center, ("Westside") in the above styled proceeding. Petitioner Westside submitted its Petition for Formal Administrative Hearing to the Department of Health on February 4, 2002. The Department thereafter, on the 15th day after receipt of the Petition, referred the Petition to the Division of Administrative Hearings, for the conduct of a formal fact finding hearing. The Division received and dated stamped as filed on February 20, 2002, the Notice transmitting the Petition to the Division.

Apparently after filing of the Notice with the Division, the Department changed its mind concerning the transmittal of the notice and sought and obtained the return of the matter to the Department. As acknowledged by the Department of Health's General Counsel, William Large, the petition was actually filed with DOAH and officially date stamped as follows "02 FEB 20 p.m. 2:13 Division of Administrative Hearings." At some point in time thereafter such date stamp was crossed out and a stamp was entered stating "Not for Administrative Hearings." (A copy of Mr. Large's correspondence concerning this matter and the document reflecting the filing at DOAH is attached.)

We are at a loss to perceive how the Division of Administrative Hearings could return such matter to the Department at its unilateral request once the matter had been referred to and filed with DOAH. It was noted in Nicholitz v. Board of Opticianry, 609 So.2d 92 (Fla. 1st DCA 1992):

> "Once a referral to DOAH is made, however, 'the referring agency shall take no action with respect to the formal proceeding except as a party litigant.'"

This finding was reiterated in the recent decision of Ryan v. Florida Department of Business and Professional Regulation, 798 So.2d 36, 38 (Fla. 4th DCA 2001).

It is our belief that someone in the clerk's office acted contrary to the requirements of law in returning this matter to the Department of Health. We would appreciate your immediate review of this matter and determination that DOAH continues to retain jurisdiction of matter, since no proper or appropriate motion was filed by anyone acting in the capacity of a party litigant, seeking to return the matter to the Department of Health.

Thanking you for your immediate attention to this matter, I remain

Sincerely,

Stephen A. Ecenia

Attachment

cc: Barbara Auger (by facsimile)
William Large (by facsimile)
Michael E. Riley and Chanta G. Combs (by facsimile)
William R. Scherer and Wendy A. Delvecchio (by facsimile)
Gary Barber (by facsimile)

Jeb Bush
Governor

FLORIDA DEPARTMENT OF HEALTH

John O. Agwunobi, M.D., M.B.A.
Secretary

February 21, 2002

VIA FACSIMILE (850) 681-6515

Steven A Ecenia
RUTLEDGE ECENIA PURNELL
& HOFFMAN, P.A.
215 South Monroe Street, Suite 420
Tallahassee, Florida 32301

Dear Mr. Ecenia:

I am in receipt of a carbon copy of your letter to my agency clerk, R. S. Power. Please be advised that Westside's Petition for Formal Administrative Hearing was inadvertently sent to the Division of Administration Hearing (DOAH) yesterday. In sum, the petition was not sent to DOAH with the authority of the Department. As such, the petition will not be resent to DOAH until my agency clerk has an opportunity to rule on all pending motions.

As you will further recall, just prior to yesterday's hearing, I indicated to you that the Petition had not been date-stamped in by DOAH. As an officer of the Court, I need to make you aware that after reviewing the documents sent to DOAH, it appears that DOAH date-stamped the petition as follows: "02 FEB 20 PM 2:13 DIVISION OF ADMINISTRATIVE HEARINGS" In addition, it appears as if someone at DOAH crossed out the date stamp and used a subsequent stamp to indicate the following: "NOT FOR ADMINISTRATIVE HEARINGS." (See attached). Please be advised that these facts do not change the Department's position that the Petition for Formal Administrative Hearing was inadvertently sent to DOAH and that DOAH does not have jurisdiction over this proceeding.

As you are aware, F.S. 120.569(2)(a) provides in part:

> On the request of any agency, the division shall assign an administrative law judge [(ALJ)] with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1).

In sum, F.S. 120.569(2)(a) contemplates that an ALJ will be assigned prior to DOAH having jurisdiction over a particular matter. In the instant case, an ALJ was NOT assigned; therefore jurisdiction was not conferred upon DOAH. Florida Statutes 120.57(1)(a), in turn, provides in part: "Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by the division shall conduct all hearings under this subsection . . .". As with F.S. 120.569(2)(a), this section also contemplates that an ALJ must be assigned prior to conferring jurisdiction upon DOAH.

I look forward to seeing you at tomorrow's depositions. Of course, should you have any questions or comments please do not hesitate to contact me.

With best regards, I remain

Cordially yours,

William W. Large
General Counsel

WWL:ma

Attachment

cc: Sharyn L. Smith, Director/Chief Judge DOAH
Barbara Auger, Esquire, Attorney for Westside Regional Medical Center
Michael E. Riley, Esquire, Attorney for North Broward Hospital District
R. S. Power, Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD, d/b/a WESTSIDE REGIONAL MEDICAL CENTER,

Petitioner,

vs. Case No.:

DEPARTMENT OF HEALTH,

Respondent.
_____/

NOTICE

TO: Sharyn L. Smith, Director/Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Please be advised that the Department of Health has received a request for an administrative hearing from the above-designated Petitioner. The Department requests the Division of Administrative Hearings (DOAH) to assign this matter to an Administrative Law Judge to conduct a fact-finding hearing pursuant to Sec. 120.57(1), Florida Statutes, and to submit a Recommended Order to this Agency. Two copies of papers and/or pleadings heretofore filed in this cause are attached to this Notice.

APPEARANCES

FOR AGENCY

William W. Large, General Counsel
Department of Health
Office of the General Counsel
4052 Bald Cypress, BIN A02
Tallahassee, FL 32399-1703

FOR PARTY REQUESTING HEARING

Stephen A. Ecenia, Esquire
Harold F. X. Purnell, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302-0551

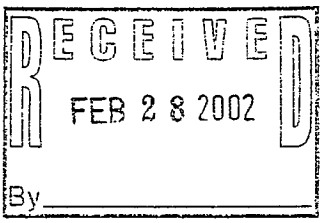
and

Barbara Auger, Esquire
The Auguer Law Firm
Post Office Box 471
Tallahassee, FL 32302

State of Florida
Division of Administrative Hearings

Sharyn L. Smith
Director and Chief Judge
Ann Cole
Clerk of the Division

The DeSoto Building
1230 Aplalachee Parkway
Tallahassee, Florida
32399-3060



February 27, 2002

Stephen A. Ecenia, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Re: Columbia Hospital Corporation of South Broward, d/b/a Westside Regional Medical Center vs. Department of Health

Dear Mr. Ecenia:

This letter is intended to follow up on our telephone conference of February 26, 2002.

At this juncture, since the Division of Administrative Hearings clerk's office has apparently returned the referral in question to the Department of Health, the Division of Administrative Hearings is not prepared to take any further action in this matter at this time.

Sincerely,

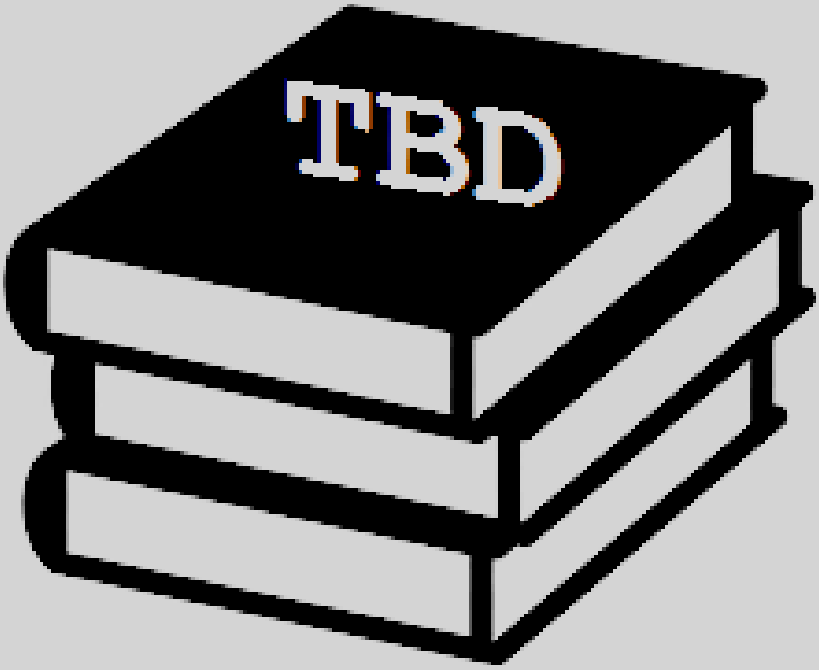
JAMES W. YORK
Deputy Chief Judge

JWY/cdl

cc: William W. Large, General Counsel

(850) 488-9675 • SUNCOM 278-9675 • Fax Filing (850) 921-6847 • Fax SUNCOM 291-6847
www.doah.state.fl.us • E-mail Ann_Cole@doah.state.fl.us

BUY™	SELL™	SHOP™



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)

BUY™	SELL™	SHOP™