

# MEMORANDUM

Agenda Item No. 11(A)(27)

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**TO:** Honorable Commissioner Rebeca Sosa  
and Members, Board of County Commissioners

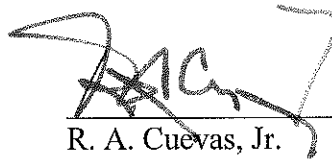
**DATE:** January 23, 2013

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution authorizing legal  
action against the State of Florida  
Department of Health, Kendall  
Regional Medical Center and/or  
other relevant parties to defend  
or preserve the Public Health  
Trust's interests with respect to  
the provision of trauma services  
in the trust's service area

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



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R. A. Cuevas, Jr.  
County Attorney

RAC/cp



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** January 23, 2013

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(27)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(27)  
1-23-13

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING LEGAL ACTION AGAINST  
THE STATE OF FLORIDA DEPARTMENT OF HEALTH,  
KENDALL REGIONAL MEDICAL CENTER AND/OR OTHER  
RELEVANT PARTIES TO DEFEND OR PRESERVE THE  
PUBLIC HEALTH TRUST'S INTERESTS WITH RESPECT TO  
THE PROVISION OF TRAUMA SERVICES IN THE TRUST'S  
SERVICE AREA

**WHEREAS**, the Public Health Trust ("Trust") is an agency and instrumentality of Miami-Dade County that operates Jackson Health System, including Jackson Memorial Hospital, Jackson South Community Hospital ("JSCH"), Jackson North Medical Center ("JNMC") and multiple other County designated facilities providing health care services to all segments of the Miami-Dade County community; and

**WHEREAS**, the Trust also operates the Ryder Trauma Center at Jackson Memorial Hospital ("Ryder"), which provides Level I Trauma Center Pediatric services and Adult Critical Care services, and has developed great expertise in the provision of trauma care services as well as international recognition for its breadth and depth of trauma service provision; and

**WHEREAS**, Ryder is centrally located in Miami-Dade County and, for the past 20 years, it has a proven track record of being able to accommodate and treat patients who are brought in from each end of the County, as well as patients from Broward and Monroe and other counties, without diverting patients; and

**WHEREAS**, supporting the extensive trauma service program at Ryder has required a significant investment of resources, financial and otherwise, by the Trust and Miami-Dade County; and

**WHEREAS**, other local area health systems have at times expressed interest in establishing trauma centers in Miami-Dade County and the State of Florida Department of Health (“Department”), in November 2011, issued provisional license status to Kendall Regional Medical Center and three other hospitals in Florida, in reliance upon Rule 64J-2.010, Florida Administrative Code, allowing those hospitals to operate Level 2 trauma programs; and

**WHEREAS**, the Trust, finding that establishment of additional trauma centers at private hospitals in Miami-Dade County may lead to duplication of trauma services while eroding the resources that currently centralize support at Ryder through the Trust, in October 2011, filed a letter of intent to apply for trauma center status at JNMC and JSCH in order to address said competitive and other service related concerns; and

**WHEREAS**, on March 6, 2012, this Board adopted Resolution No. R-248-12, authorizing the Trust to take all actions necessary to establish trauma care programs at JNMC and/or JSCH, as determined by the Trust to be in the best interest of the Trust and the communities it serves, including, but not limited to, all actions necessary for filing of the application for service approval with the Department, which applications the Trust subsequently filed; and

**WHEREAS**, the recent actions by the Department disadvantage JNMC, JSCH and the Trust by selectively processing provisional license applications for Kendall Regional Medical Center and others pursuant to the now judicially invalidated Rule 64J-2.010, but denying application processing for JNMC and JSCH; and

**WHEREAS**, appealing such Departmental action, and taking other legal action, may preserve the Trust’s rights to operate a sustainable, thriving trauma program at Ryder and to expand its trauma services to JNMC and JSCH, as approved by this Board; and

**WHEREAS**, in December 2012, as stated in the resolution attached hereto, the Financial Recovery Board (1) granted the Trust President and CEO, and/or his designees, authority to review potential legal action, in concert with subject matter experts and legal counsel, to determine the best course of action to protect and promote the Trust's interests with respect to trauma services and then act upon a determined course, and (2) recommended that the Board of County Commissioners approve the same; and

**WHEREAS**, the Trust seeks Commission authorization allowing the Trust to determine appropriate legal action, if any, against the State of Florida Department of Health, Kendall Regional Medical Center, and/or other relevant parties in order to defend or preserve the Public Health Trust's interests with respect to the provision of trauma services in the Trust's service area and to then act thereon; and

**WHEREAS**, the Commission desires to accomplish the purposes outlined in this Resolution as further described in the memorandum attached hereto and made a part hereof, and finds that the actions described herein are in the best interests of the Trust and the communities it serves,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby authorizes Public Health Trust of Miami-Dade County, to determine appropriate legal action, if any, against the State of Florida Department of Health, Kendall Regional Medical Center, and/or other relevant parties to defend or preserve the Public Health Trust's interests with respect to the provision of trauma services in the Trust's service area and to then act thereon.

The Prime Sponsor of the foregoing resolution is Commissioner Jose "Pepe" Diaz.

It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion

was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote

was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 23<sup>rd</sup> day of January, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Valda Clark Christian  
Eugene Shy, Jr.



**Date:** January 11, 2013

**To:** Honorable Rebeca A. Sosa, Chairwoman  
and Members, Board of County Commissioners

**From:** Marcos Jose Lapciuc, Chairman  
Public Health Trust, Financial Recovery Board

**Subject:** Trauma Service Litigation

A handwritten signature in dark ink, appearing to read "Marcos J. Lapciuc".

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Recommendation

On December 19, 2012, the Financial Recovery Board of the Public Health Trust passed and adopted Resolution No. PHT 12/12 - 111, which granted the President and CEO, and/or his designees, authority to review, with subject matter experts and legal counsel, and pursue potential legal action against the Department of Health, Kendall Regional Medical Center, and/or other parties to defend or preserve the Public Health Trust's interests with respect to the provision of trauma services in the Trust's service area. Said resolution further recommended that the Board of County Commissioners grant the Trust the same authority. A copy of Resolution No. PHT 12/12 - 111 is attached hereto and made a part hereof.

Background

The Ryder Trauma Center at Jackson Memorial Hospital ("Ryder") is the only Level I Trauma Center for Pediatric and Adult Critical Care services in Miami-Dade County. It is a stand-alone building complete with a trauma resuscitation unit, a 25-bed trauma intensive care unit, the University of Miami/Jackson Memorial Burn Center, 135 patient beds, a specialized Rehabilitation unit, a designated pediatric unit, 6 operating rooms and a trauma medical-surgical unit.

Ryder is centrally located in Miami-Dade County and, for the past 20 years, it has a proven track record of being able to accommodate and treat patients who are brought in from each end of the County, as well as patients from Broward and Monroe Counties, without diverting patients. The health care team at Ryder has saved thousands of lives while providing unparalleled care that has generated national recognition. Supporting Ryder has required a significant investment of resources, financial and otherwise, by the Public Health Trust ("Trust") and Miami-Dade County. However, in recent times other local area health systems have expressed interest in establishing trauma centers in Miami-Dade County.

Beginning in 2010, Hospital Corporation of America ("HCA") began to request Level 2 trauma status at various hospital locations around Florida, including Kendall Regional Medical Center in Miami-Dade County, Florida. In October 2011, additional HCA hospitals began the application process to operate a trauma center, including Mercy Hospital in Miami-Dade County, Florida. The Trust has found that establishment of additional trauma centers in Miami-Dade County may lead to duplication of trauma services while eroding the resources that currently centralize support at Ryder through the Trust.

Further, as the Trust earlier advised the Commission, the Trust believes that a private trauma network could suffocate Ryder as private hospitals are more likely to be located near funded patients. (Paramedics must transport trauma patients to the nearest trauma center.) As Ryder's cost structure is fixed, expenses would not necessarily decrease with lower patient volumes. Based on trauma alert patient volume statistics for the last six months ending March 2012, the Trust has found that Ryder's market share in Miami-Dade County experienced an erosion of Ryder's historical volume. Decreased volume and funding, coupled with increased competition for limited trauma resource, could negatively impact Ryder's recruitment and retention efforts.



Ryder could lose qualified staff, grants and research projects. The expansion of trauma services to private hospitals within the Trust service area could be catastrophic to the sustainable operation of Ryder and the provision of trauma service across our community as a whole.

In October 2011, in order to address competitive concerns and other service related concerns raised by the expansion of trauma center providers in the Trust service area, the Trust filed a letter of intent to apply for trauma center status at Jackson North Medical Center ("JNMC") and Jackson South Community Hospital ("JSCH"). The Trust believes these new centers could help preserve a large portion of the Trust trauma market share. On March 6, 2012, this Board adopted Resolution No. R-248-12, authorizing the Trust to take all actions necessary to establish trauma care programs as JNM and/or JSCH, as determined by the Trust to be in the best interest of the Trust and the communities it serves, including, but not limited to, all actions necessary for filing of the application for service approval with the Department of Health.

In November 2011, the State of Florida Department of Health ("Department") issued provisional license status to Kendall Regional Medical Center and three other hospitals in Florida. Subsequently, hospitals in the Tampa Bay area and Jacksonville area have filed legal actions opposing the application of Rule 64J-2.010, Florida Administrative Code, to estimate the need for new trauma programs in Florida and support the granting of provisional license status to the indicated hospitals. The Trust did not take similar action. On September 23, 2011, an Administrative Law Judge of the Florida Division of Administrative Hearings, entered a Final Order finding Rule 64J-2.010 governing trauma program need invalid. On November 30, 2012, the First District Court of Appeals for the State of Florida upheld the State of Florida's Division of Administrative Hearings' earlier finding that Rule 64J-2.010 governing trauma program need is invalid.

This Rule invalidation has led to the Department's commencement of rulemaking proceedings. However, the Department has not taken action to revoke or suspend the provisional licenses issued pursuant to the invalidated need rule, Rule 64J-2.010. Instead, in December 2012, the Department issued a new provisional license to Ocala Regional Medical Center allowing it to operate a trauma program. Despite its inaction on the recently issued provisional licenses and new issuance of a provisional license, the Department recently issued Notices of Agency Action to the Trust whereby it advised JNMC and JSCH that the Department will not approve JNMC's or JSCH's application to operate trauma centers until rulemaking for Rule 64J-2.010 is complete.

These Departmental actions disadvantage JNMC, JSCH and the Trust by selectively processing provisional license applications for Ocala Regional Medical Center, Kendall Regional Medical Center and others pursuant to invalidated Rule 64J-2.010, but denying application processing for JNMC and JSCH. The Department arbitrarily allows competitor trauma programs to proceed pursuant to an invalidated rule while wasting the investments the Trust has made in JNMC's and JSCH's trauma center applications. As earlier noted, expanding trauma care services to JNMC and JSCH is a viable option to preserve the Trust's provision of trauma services and combat starvation of Ryder.

The Trust has appealed the notices of agency action recently received concerning the JNMC and JSCH applications to provide trauma services. However, the Trust recognizes that taking other legal action, may preserve the Trust's rights to operate a sustainable, thriving trauma program at Ryder and to expand its trauma services to JNMC and JSCH. As such legal action could involve formal actions against the Department of Health, HCA, Kendall Regional Medical Center, and others, with implications for countywide trauma service provision, the Trust seeks the Commission review and approval.

Thank you for your consideration.

c: *Robert Cuevas, County Attorney*  
*Alina T. Hudak, Deputy Mayor/County Manager*  
*Eugene Love, Agenda Coordinator*