

PINELLAS COUNTY LICENSE BOARD FOR CHILDREN'S CENTERS
AND FAMILY DAY CARE HOMES

Minutes for the Emergency Board Meeting for
October 23, 2008

APPROVED CORRECTED MINUTES

The Emergency Board Meeting of the Pinellas County License Board for Children's Centers and Family Day Care Homes was scheduled for Thursday, October 23, 2008, at 11351 Ulmerton Road, Largo, Room 418D, to begin at 8:15 a.m. A public notice of the meeting was posted in the Health Department at Center Bay, and requested to be posted in the Juvenile Welfare Board and Coordinated Child Care buildings. In addition, an email posting was sent to the provider associations and posted on the Child Care Licensing website. The meeting will be ratified at the next regular Board meeting of November 5, 2008.

Board Members Present: Lourdes Benedict, Chairman; Barbra Mastrotta; Elise Minkoff, Donna Rippley

Board Members Absent: Donna Huard, Commissioner Seel, Judi Vitucci

Ex Officio Member Absent: Charles Minor

Advisory Members Present: None

Advisory Members Absent: Heidi Buck, Sharon Carder, Sharon Carie, Terri Hajian, Ann Hofmeister, Anne Sullivan

County Attorneys Present: Christy Pemberton, and Dennis Long (arrived at approximately 8:30 a.m.)

Staff Members Present: Carla Doenges, Executive Director
Frank Nagatani, Attorney for Department of Health
Stephanie Judd, Financial Administrator for PC Health Department
John Geisler, Community Environmental Health Program Manager
Gayle Guidash, Director of Environmental Health and Preparedness
Dana Stajkowski, Recording Secretary

Others present: Katie Cole of Johnson, Pope, Bokor, Ruppel & Burns LLP
Rod Cyr, JWB Contract Manager

Call to order: The meeting was called to order at 8:15 a.m.

Chairman Benedict stated the purpose of the meeting is to review and discuss the Memorandum of Understanding (MOU) and to discuss legal counsel for the Pinellas County License Board.

Memorandum of Understanding:

Attorney Pemberton stated since the MOU was prepared, the Board of County Commissioners (BOCC) in its meeting on Tuesday, October 21, 2008, decided that in light of the County Administrator agreeing, based upon the advise of the BOCC, to give the PCLB money (\$7,500) and the preparation by Dennis Long of the MOU that the BOCC withdrew its consent to provide legal counsel to the PCLB at the end of October 2008.

Attorney Pemberton assured the Board that the County Attorney would aid in the transition and do whatever it takes to make it work. She reported there are two attorneys who are interested in representing the PCLB; one is interested in representing pro bono on November 5.

Dennis Long, Chief Assistant County Attorney for Pinellas County, stated that on October 21, 2008, the BOCC withdrew legal representation of the PCLB based on the Rules of Professional Conduct.

- That the County Attorney's Office proposed funding support from the appropriate accounts relating to conflicts and outside counsel
- That an MOU (copy attached) provides support in the amount of \$7,500 for transition funding for legal counsel
- That the MOU was approved and signed by the Interim County Administrator and becomes effective November 1, 2008
- That the \$7,500 will be paid in the form of a check

Pending Litigation:

Chairman Benedict Stated that she is concerned about pending litigation on two cases.

Attorney Pemberton responded that there is only one outstanding case; that there is not a lot of legal work to be done before resolution of the case; that the defending attorney only recently expressed desire to continue pressing forward with it.

Legal Costs & Transition Funding:

Attorney Pemberton stated that her original estimate for legal assistance was based on a full staff of licensing specialists; that time spent on prosecutions and the amount of prosecutions has dramatically been reduced with the decreased staff; that providers are not being monitored as often; that there has been fewer calls from staff to the attorney for advise.

Ms. Doenges stated that staff has met the requirement for the number of visits.

Replying to a question about cost of pending litigation Attorney Pemberton stated that the second pending case has not been filed; that if it went forward there could be approximately 3 hours of attorney time; that she has no estimate of cost on the one that has gone forward.

Responding to a question from Chairman Benedict of how the \$7,500 was determined, Attorney Long responded that the figure was derived from discussions within the county attorney office; that he took the total amount of estimated time and doubled it; that it is not based on years of time ticket analysis.

Responding to a question from Attorney Nagatani regarding the amount of substantial outstanding fees on the pending case, Attorney Pemberton stated the status has not changed; that her notes from the transfer [of PCLB to the Health Department] specifically mentioned that the Health Department was assuming that responsibility; that Dr. Dharamraj stated the County Attorney's office should not be representing staff.

Ms. Judd responded that it was a misunderstanding, that Dr. Dharamraj did not expect the County Attorney to represent Health Department staff in personnel related matters; but when there is a prosecution, revocation or other legal action against a provider, Health Department staff is in essence hired by the Board contractually to handle the Board's actions against the provider [and would then be represented by the Board's attorney].

Ms. Judd expressed concern about the cost of the pending case(s) and the available transition funding.

Outstanding Legal Fees:

Ms. Doenges stated that she is concerned that the Board is being asked to sign the MOU without time to determine the actual cost of outstanding legal fees on the pending case and without an understanding of the amount of legal time needed.

Attorney Long stated that if attorney's fees were assessed in the pending case that it would not be paid by the County Attorney.

Attorney Long restated that attorney representation is being withdrawn because of their ethical responsibility; that from a cost prospective, there has never been a cost allocation from the county for representing the PCLB.

Assistance for New Attorney:

Attorney Long stated that the County Attorney's office will be available for whatever period of time it takes to sit down with new counsel to be brought up to speed [including pending case(s)] and that there will not be an allocation or charge [from the County Attorney's Office] for that.

Process for Requesting Additional County Funding:

Attorney Long stated that there is a process for requesting funds from the BOCC that the Board can use; that he suggests the Board's legal counsel make the request and not Health Department counsel.

Responding to Chairman Benedict's and Barbra Mastrota's questions, Attorney Long stated:

- That if the Board does not sign the MOU that the money is not off the table but that the transition will still occur.
- That there isn't an articulated procedure for [the PCLB] requesting additional dollars because this is a one of a kind situation. He suggests that:
 - The Board approve or not approve the MOU
 - The PCLB Chairman communicate with the Chairman of the County Commission and ask for time on the agenda to ask for additional funding that would be scheduled under the County Attorney's portion of the agenda.
 - County Attorney Bennett could present the item and the appropriate representative of the PCLB can stand at the podium and present the background and ask for the additional dollars.
 - The County Commission would direct County staff to research the issue.
 - That the County Commission said if later on in the budget year the County Attorney's Office needs to transfer money from reserves to make up for money used for the transfer of the PCLB they would do that.

Attorney Long Recommendation:

That the PCLB will be best served with an attorney who does not have divided loyalty.

Pending Litigation Fees:

Responding to Chairman Benedict's question Attorney Long stated that the County is not responsible for settling a court case.

Attorney Nagatani reported he understood there are fees incurred by opposing counsel that need to be addressed; \$30,000 is the asking price.

Pending Litigation Fees: Attorney Pemberton stated that the case should not be discussed because at some point it will come before the PCLB and that these discussions will probably have to be shared. She stated that in general under the statute if the governmental/state agency (whether or not the statute applies to the PCLB is a question of law) goes after the license of a small business owner to revoke the license and the small business owner is the prevailing party and the court finds that the administrative proceedings against the small business owner was not commenced in good faith - three ifs – does the PCLB qualify under the statute, will the licensee be a prevailing party, will the court find that the proceeding was not initiated in good faith – if all that happens, then the small business owner can apply to the court for reasonable attorney fees not to exceed \$30,000.

She stated this was an issue that began when the PCLB was at JWB; that under statutory provision the fees are assessed against the agency and are not like other fees that are assessed against both the agency and the attorney.

She questioned whether the Health Department would take the assessed fee out of the PCLB budget or out of the Health Department's risk management fund and handle it as a risk management under the Interlocal Agreement.

In answer to a Elise Minkoff's question, Attorney Pemberton stated she could not respond as to why it has taken two years to resolve this case when the PCLB would take final agency action on the case.

Recommendation: In response to Chairman Benedict's request for guidance, Attorney Nagatani agreed with Attorney Long that the Board approve the MOU, that if the Board needs additional funding for legal counsel that they go before the BOCC. He reported that Commissioner Latvala had remarked that if more funding was needed to ask.

Commitment: Attorney Long agreed that the BOCC did leave the door open to make a request for additional dollars. Further, Attorney Long made a commitment that if the PCLB decides to go to the BOCC to ask for more funding that no one in the County Attorney's office will take the position that because the MOU was approved that it precludes the PCLB from asking for more funding.

Dennis Long will send an email to the PCLB and copy the County Attorney stating his commitment above.

Motion: A motion was made by Donna Rippley and seconded by Barbra Mastrota that the Memorandum of Understanding in the amount of \$7,500 be approved. Unanimously approved.

Discussion: Elise Minkoff stated that there isn't anything that precludes the PCLB from requesting additional funding, however she appreciates Attorney Long's offer to put his commitment in writing.

Vote: Unanimously approved.

**Legal Counsel and
Estimate of Atty. fees:**

Rod Cyr, JWB Contract Manager, stated that Gay Lancaster, Executive Director for PCLB, will consider a request from PCLB for attorney representation and support that representation up to \$25,000; and that he would entertain an amendment to add the estimated 70 hours or \$15,750 for legal counsel to the contract.

Responding to Chairman Benedict's question Rod Cyr stated that Gay Lancaster's offer to pay for the PCLB attorney was with the understanding that PCLB choose the JWB attorney, but that he could present the question to Ms. Lancaster; and that the JWB Board wants to do what it can to help.

Ms. Doenges explained to the Board how she estimated the number of hours needed for legal counsel. She also stated that she is looking to reduce meeting time for the Board; that she will look to the Department of Children and Families for explanation of regulations; that staff will be offering provider training to reduce the amount of questions by providers at Board meetings.

Responding to a question from Chairman Benedict Attorney Cole stated that attorney's fees begin according to the agreement between client and attorney.

Attorney Pemberton stated that Charles Harris of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis is interested in representing the PCLB; and that if the PCLB selects the JWB attorney that the \$7,500 could cover the cost of another attorney when there is conflict between PCLB and JWB as there may be at the November 5th Board meeting. In response to questions, Attorney Pemberton responded:

- That Mr. Harris is looking for us to put in a bid for his services but that he would represent us for free on November 5th.
- That professional services do not require going out for a bid.

Attorney Cole reported to Board there would be a potential conflict with respect to the funding of the PCLB. She reported to the Board qualifications of her firm and its lawyers.

Attorney Long stated that the attorneys would need to determine when a conflict exists.

Responding to questions from Lourdes Benedict:

- Ms. Judd reported that it was the understanding of Dr. Dharamraj and herself that the JWB funding would be made available for services other than Johnson, Pope.
- Mr. Cyr reported that when JWB when out for bid on an attorney that [Johnson, Pope] prices were reasonable.

Motion:

A motion was made by Elise Minkoff and seconded by Barbra Mastrota to accept the bid of Johnson, Pope, Bokor, Ruppel & Burns LLP as the attorney for the PCLB.

Accountability:

Ms. Minkoff requested to know who will be accountable for the expenditure of legal fees because she has heard that we have not been able to track passed legal service fees and that the County has been very generous in that support to the PCLB.

Ms. Judd reported that Carla Doenges will be the responsible party.

Vote:

Unanimously approved.

Minutes – October 23, 2008

Motion: A call for a motion to approve a different attorney for November 5 due to a potential conflict was declined; that the attorney just hired will make a determination.

Board Direction: Elise Minkoff requested on the record that Attorney Flynn reach out to Attorney Harris of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis.

Adjournment: A motion was made by Elise Minkoff and seconded by Barbra Mastrota adjourn the meeting at approximately 9:45 a.m. Unanimously approved.

Lourdes Benedict, Chairman

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of this 23rd day of October, 2008 (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida, (“County”) and the Pinellas County License Board for Children’s Centers and Family Day Care Homes, an independent special district with the State of Florida, (“PCLB”).

WITNESSETH:

WHEREAS, pursuant to Chapter 61-2681, Laws of Florida, and Chapter 70-896, Laws of Florida, as amended (the “Act”), the PCLB licenses and regulates children’s centers and family child care homes in Pinellas County to protect and promote the health, safety and mental development for children cared for in these child care facilities (the “Program”); and

WHEREAS, as authorized by the Acts, the Board of County Commissioners previously consented to the Office of the County Attorney providing legal representation to the PCLB in civil matters; and

WHEREAS, the County Attorney has determined that it would not be appropriate or permissible in accordance with the Rules of Professional Conduct to continue to provide legal representation to the PCLB, and the County desires to provide financial assistance to the PCLB to secure legal counsel to aid in the transition to new legal representation, as provided herein.

In consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. The PCLB shall secure legal representation to handle all legal matters, pending or in the future, relating to its Program duties and responsibilities as defined in the Acts and applicable Florida Law, effective November 1, 2008. The manner and scope of legal representation shall be determined by the PCLB in its sole discretion.
2. The County shall pay to the PCLB the sum of \$7,500.00 to be utilized by the PCLB to secure legal representation as provided in Section 1 herein, upon receipt of an invoice from the PCLB in accordance with Section 218.70, et seq., Florida Statutes, the “Florida Local Government Prompt Payment Act.” The County shall have no obligation to contribute any sums in excess of the sum set out herein, and the PCLB shall be responsible for and fund all costs and expenses related to the Program.
3. This MOU shall commence on the Effective Date and shall terminate on June 30, 2009.
4. The County and the PCLB shall be fully responsible for their own acts of negligence and their respective agents’ acts of negligence, when such agents are acting within the scope of their employment; and shall be liable for any damages resulting from said negligence to the extent permitted by section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity or shall be construed as consent by either party to be sued by third parties in any matter arising out of this MOU.

5. The PCLB shall permit examination or audit of all MOU related records and documents during or following the termination of this MOU, and shall maintain such records and documents for at least three (3) years following the termination of this MOU.


6. It is hereby mutually agreed that the PCLB is not acting as an agent or employee of the County.

7. Neither party may subcontract, assign or transfer its rights or obligations under this MOU without prior written consent of all other parties.


8. This MOU constitutes the entire agreement between the parties and may be amended only in writing, signed by all parties to this MOU.

IN WITNESS WHEREOF, the parties hereto, or their lawful representative, have executed this MOU as of the Effective Date.

PINELLAS COUNTY LICENSE BOARD
FOR CHILDREN'S CENTERS AND
FAMILY DAY CARE HOMES

By: 

PINELLAS COUNTY, a political
subdivision of the State of Florida,
by and through the County Administrator

By: 
Fred E. Marquis, Interim County Administrator

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: 
Chief Assistant County Attorney

NO. 08-174

RESOLUTION DESIGNATING HEARING OFFICER

PINELLAS COUNTY LICENSE BOARD FOR
CHILDREN'S CENTERS & FAMILY DAY CARE HOMES

WHEREAS, Chapter 61-2681, as amended by Chapter 70-893 and Chapter 2007-277 Laws of Florida, created the PINELLAS COUNTY LICENSE BOARD FOR CHILDREN'S CENTERS & FAMILY DAY CARE HOMES (License Board) which is the local licensing agency for Pinellas County child care facilities; and

WHEREAS, the License Board conducts proceedings involving the imposition of administrative fines or the denial, suspension or revocation of child care licenses in accordance with the provisions of Chapter 402, Florida Statutes; and

WHEREAS, Florida Statutes, section 402.310(3) requires the County Commission to designate hearing officers for appeals of administrative action taken on behalf of the License Board; and

WHEREAS, the Commission recognizes that the requirement for formal proceedings under Chapter 120, F.S. (Administrative Procedures Act) will call for the use of a Florida State Department of Administration hearing officer in some cases, whereas, in other cases, the utilization of a retired senior judge as the hearing officer would be more practical and more economically feasible; and

WHEREAS, the Commission considers that the Chairman of the License Board would be the most qualified person to make such a decision on a case-by-case basis; and

WHEREAS, the County Attorney no longer prosecutes administrative actions on behalf of the License Board.

IT IS THEREFORE RESOLVED

The Commission hereby designates that either a senior judge available through the Court Administrator’s Office or a hearing officer designated by the Department of Administration may be utilized as Chapter 120 hearing officers for the License Board.

The Chairman of the License Board or his/her designee, shall, under the limitations set forth above, arrange for hearing officers on an as-needed, case-by-case basis.

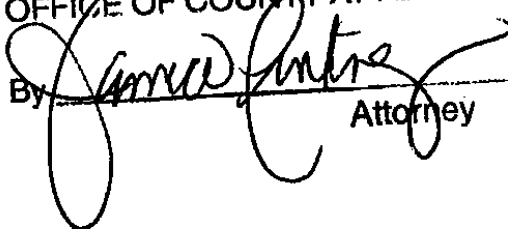
The License Board shall be responsible for compensating senior judges or hearing officers designated by the Department of Administration.

Resolution 92-174 is hereby repealed.

Commissioner Welch offered the foregoing resolution and moved its adoption, which was seconded by Commissioner Latvala, and upon roll call the vote was:

- AYES **Stewart, Seel, Latvala, Welch and Duncan.**
- NAYS **None.**
- ABSENT AND NOT VOTING **Harris and Morrioni.**

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APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY
By  Attorney