UNIFIED MEDICAL STAFF COMMITTEE
MEDICAL STAFFS OF BROWARD HEALTH

January 19, 2018

Beverly Capasso, CEO

Commissioner Rocky Rodriguez
Commissioner Christopher Ure
Commissioner Andrew Klein
Commissioner Steven Wellins
Commissioner Nancy Gregoire

Broward Health
1800 NW 49th Street
Fort Lauderdale, FL 33309

Re: Letter of Concerns on behalf of the Unified Medical Staff Committee of the Medical Staffs of Broward Health

Ms. Capasso and Commissioners:

The purpose of this letter is to share with each of the concern of the Medical Staff leadership that its purpose and function as an organized medical staff is being compromised to the detriment of Broward Health as a viable health care system. As introduction we point out that the stated mission of Broward Health is; "To provide quality health care to the people we serve and support the needs of all physicians and employees". We believe the reference in the mission statement to supporting the needs of the physician is not self-serving rhetoric but, rather, a fundamental recognition that meeting the needs of the physicians is essential to Broward Health's ability to deliver quality care to our patients.

For many months the Medical Staff leadership has endeavored to address these concerns in a collaborative manner. Those efforts have largely been met by a lack of urgency to find practical, timely solutions to patient centered issues and shoulder shrugging reference to "corporate" decision-making while Broward Health roils from one crisis and controversy to another. While we remain constant in our commitment to the hospitals where we practice, to other members of the care team and particularly to our patients, we watch as Broward Health takes actions and implement policies in violation of the Medical Staff Bylaws, The Joint Conference ("TJC") standards, and seemingly Broward Health's own corporate compliance program.

The concerns addressed herein are not raised lightly. The Medical Staff leadership is charged with oversight of the quality of care, treatment and services delivered by its physician members and other practitioners credentialed through the mandated medical staff processes.[1] We believe it is our obligation to bring these issues to light and do everything in our power to insure a robust, sustaining and compliant health care system.

The primary concerns addressed below include unilateral adoption of an ED call coverage policy that strips the Medical Staff from meaningful participation in the process; unilateral elimination of the Chief of Staff reports from the standing agenda for Board of Commissioner meetings; continued crisis in the contracting process for renewing routine primary care and specialist coverage as well as contracting for non-clinical duties; and the announced defunding of Medical Staff selected legal counsel based on "industry standards" .

The Medical Staff Bylaws

It is the Medical Staff's position that its Bylaws are equally binding on the Board as governing body and the Medical Staff. The Bylaws expressly confirm this in Art. XIII, titled Certification of Adoption and Approval, which provides that upon adoption by affirmative vote of the Medical Staffs and approval by the Board, the Bylaws shall be "equally binding" on the Board and the Medical Staff. The Bylaws adopted and approved in 2011 contain this express confirmation as do the restated (and current as amended) Bylaws adopted and approved in 2013. The Bylaws further provide they may not be unilaterally amended by either the Board or the Medical Staff. Art. XII, Section 12.1.

The obligation of the Board to uphold the Medical Staff Bylaws and prohibition against unilateral amendment were not included for arbitrary or capricious purpose. The Bylaws were drafted in compliance with TJC standards as well as applicable HCQIO and Conditions of Participation governing Medical Staffs. TJC standards governing the Medical Staffs direct the governing body to uphold medical staff bylaws that have been approved by it. TJC standards also direct that the Medical Staff bylaws, rules and regulations not be unilaterally amended. *See,* MS.01.01.01, PE 7 and MS.01.01.03, PE 1.

These cited TJC standards insure the independence and self-governing functions of the Medical Staff in carrying out its *obligations of oversight* in the delivery of the quality of care, treatment and services of the physician members of the Medical Staff and other practitioners credentialed per medical staff mandated processes. These standards and legal requirements *require* the organized medical staff of a TJC accredited facility be organized as a self-governing entity and be accountable to the Governing Body in accordance with the Bylaws.

[1] See, TJC standards effective Jan. 1, 2016, Chapter Overview; "The self-governing organized medical staff provides oversight of the quality of care, treatment, and services delivered by practitioners who are credentialed and privileged through the medical staff process. The organized medical staff is also responsible for the ongoing evaluation of the competency of practitioners who are privileged, delineating the scope of privileges that will be granted to practitioners, and providing leadership in performance improvement activities within the organization.

Year in and year out TJC surveyors and survey consultants hired by Broward Health look to these same standards in evaluating the structure, function and performance of the Medical Staff in carrying out its duties. Physician leadership and hospital administrators can attest that TJC surveyors ask "Is the Medical Staff independent?", "Do your Bylaws provide for self-governance?"

Establishment of Call

The Bylaws provide that the establishment of departmental on-call schedules is overseen by the Department Chair in consultation with the Chief of Staff. Sec. 7.6.1.6. and 8.6.6.2. In carrying out departmental functions, the Chair is accountable to the Medical Executive Committee, who in turn, is accountable to the Board. This process has been in place and when respected limits the ability of any one individual or group, Physician or Administrator, to use call as inducement for referrals or to reward call to a particular physician or practice in a self-serving manner. It is not a process that is "non-compliant" with the CIA and claims made to the contrary have now been walked back by the COO, after months of using compliance as an excuse to unilaterally remove the Medical Staff from the process of establishment and oversight of call schedules.

The history of BH's implementation of Policy GA-004-500 On-Call Coverage Arrangements is critical to understanding the Medical Staff's frustration and alarm. Since June of 2017 BHN Administration advised they were under Corporate directive for "compliance" reasons to take control of establishing on-call coverage to eliminate "two call" panels for Attendings (Internal Medicine and Family Practice) and close specialist call to employed physicians if available (currently cardiology at BHN).[2] The Medical Staff is well aware of its duty to insure its Bylaws are compliant with applicable laws and regulations and Medical Staff legal counsel repeatedly asked for documentation or guidance on this "compliance" requirement. After several requests, General Counsel's office advised that employed physicians were being compensated to take call per FMV analysis and authorizing community (non employed) physicians would, in effect, constitute an unauthorized or non-compliant payment and/or improper inducement to those community based specialists. No opinion or third party authority or guidance was provided to support this explanation. While there is business logic to the explanation that Broward Health does not want to pay its employed physicians to take call for the entire service and pay community physicians to perform some of the same services, that proposition *assumes* that the FMV analysis actually included the value of performing ALL specialist call [3]. Equally critical, this position could only logically apply to unassigned (PPUC) call as there is no payment whatsoever from Broward Health for "private" specialist call coverage services rendered to non-assigned (private insured) patients.

[2] At BHMC, the then current interim CEO (before he was summarily departed) openly advised the MEC that he believed the proposed call policy must be collaboratively developed with the Medical Staff and its then present "draft" form violated the Bylaws.

[3] This assumption is belied by Broward Health's recent admission that it currently has no means to actually track the encounters of specialist consults which is the reason given for the "Physician Consult Process" to be included in the EMR; to capture such information to determine the economic value of on call specialist consults.

The Medical Staff reached out to other private and public health systems to investigate this "compliance" requirement. It found no support for the "compliance" reason given for unilaterally removing the Medical Staff from the establishment of on-call schedules and policies. Trying to give credence to the "compliance" reasons being advanced, BHN Medical Staff requested that for specialties with robust community physician members, such as cardiology, that a parallel call coverage plan be adopted; utilize employed physicians for unassigned and federally or state funded patients and open call for "private" patients to ensure no circumstance where Broward Health was paying non-employed physicians for "taking" call. This request was completely ignored, and the Medical Staff leadership was told the policy was going forward as written.

There are other reasons for questioning the "compliance" mandate for removing the Medical Staff from establishing and overseeing call schedules. The proposed changes in call were contrary to the statements made by the former CEO and the policy initiatives adopted by the Joint Conference Committee in April of 2015, when Dr. El Sanadi called a Joint Conference Committee meeting to explain why specialty call panels must be opened such that any physician who sought and was qualified to take call could participate. *See* Joint Conference Minutes April 29, 2015. The Medical Staff fully supported and remains supportive of that initiative when it serves patient care. At the Joint Conference Committee held September 22, 2016, the CMO updated the Committee on the open call program and advised it was progressing. Indeed, where it seems to suit Broward Health Corporate, call policies are developed with the input and support of the Medical Staff, as illustrated with the development at BHMC of the multi-department medicine/family call policies. However, the Bylaws and Medical Staffs are ignored by Corporate in other instances of policy making. There is no consistency.

The draft call policy is seriously troubling for another historic reason. The former interim CEO of Broward Health was terminated for alleged AKS violations arising from the grant of trauma call to a surgeon. Independent of the veracity of those allegations, a safeguard against even the appearance of an AKS violation is the establishment and oversight of the call schedules with meaningful oversight and participation by the Medical Staff. Within the accountability structure of the Bylaws there are safeguards against *the quid pro quo* grant of primary or specialist call by insuring that no Administrative team has unilateral control over setting call.

At the October 26, 2017 Joint Conference meeting the newly appointed COO advised the Medical Staff that the new call policy was NOT required by the IRO (sometimes referred to as the Monitor) or otherwise compliance mandated; it was being pursued for business reasons. The new call policy was not adopted at that Joint Conference meeting and the Medical Staff understood that collaborative discussions would continue. Yet, despite this understanding, on November 14, MEC at BHMC was advised the new policy was "live" and in effect at all four hospitals. This letter shall serve as formal notice of the Medical Staff's objection and intention to pursue correction of this violation by all appropriate means.

Chief of Staff Reports to the Board

The Chief of Staff is responsible to represent the Medical Staff to the CEO and Board in matters concerning the Medical Staff; to communicate and represent the concerns, opinions and grievances of the Medical Staff to the CEO and Board and to serve as an ex-officio member of the Board. Art. VII, Sec. 7.6.1. In furtherance of those responsibilities, the Chiefs of Staff have always given the Board a report, which included its recommendations for credentialing. Those reports are typically informational as to the achievements and progress at the respective hospitals. However, they also serve an important communication function to formally address the Board with respect to the concerns, opinions and grievances of the Medical Staff. When the CMO assumed the responsibility of presenting the credentialing report the Chief reports were unilaterally removed from the Agenda. The Medical Staff believes that the Chiefs should be restored to the Agenda. In response to the request for the Chiefs Reports to be reinstated, it has been suggested the Chiefs could request being placed on the Agenda if and only if they submitted their comments to Corporate in advance (and presumably for approval). Such response smacks of censorship and the removal of the Chiefs' Report from the Agenda is contrary to open, transparent communications and the ability of the Chiefs to represent the Medical Staff.

Primary and Specialist Coverage and Delivery of Operational Services affecting Quality of Care

Supporting the needs of physicians and other members of the care team is part of Broward Health's mission and is critical to the delivery of quality health care and patient satisfaction. The Medical Staff is critically concerned that the alienation of the physicians is affecting the delivery of health care. There is a critical shortage of specialty services necessary for adequate patient follow up, as example, plastic surgery and oncology at BHN. In addition, current contracts do not allow physicians to see PPUC patients in their private offices. This leads to inappropriate use of the ED by patients, unnecessary hospital admissions, and, above all, poor patient care. Across the system there is physician attrition as physicians do not feel valued and necessary personnel and other support is delayed or denied, resulting in a continued downward spiral of volume and worsening morale of the non-physician staff as well. There is an institutional wealth of experience, loyalty and talent in the Medical Staff and working collaboratively is in the best interest of Broward Health and its ability to survive and thrive. The Medical Staff is hopeful that the re-building of an executive team will facilitate quality health care and patient, physician and staff satisfaction.

Medical Staff Legal Counsel

In recognition of the role of an organized medical staff and its self-governing function, the Medical Staff Bylaws authorize independent legal counsel to assist the Medical Staff in carrying out its functions. Art. XII, Sec. 12.5.5. Per that same section, the expense of Medical Staff legal counsel is to be borne by Broward Health subject to the reasonableness of fees

charged. The Chiefs have been advised that expense will no longer be borne by Broward Health citing cost cutting and industry standards. The Chiefs were further advised that if the Medical Staff elects to utilize counsel of its choosing, the Medical Staff is responsible for the cost. Medical Staff counsel was formally advised by letter dated December 27, 2017, that effective January 1, 2018, legal services provided would not be paid by Broward Health.

It should be noted that when this provision was retained in the 2010 and 2013 restated Bylaws, then General Counsel questioned this arrangement and sought the opinion of Arent Fox to determine if this retained autonomy was legal. Arent Fox opined that the retained autonomy of independent legal counsel was not typical but not improper or in violation of any governing law or regulatory scheme, and the Board adopted the Bylaws with the provision remaining. Given the alienation and concerns addressed in part in this letter, it is all the more critical that the Medical Staff have the ability to choose its own counsel in performing its duties, just as authorized per the Bylaws. And before "cost cutting" is provided as basis, the costs of other outside counsel and the capacity of the General Counsel without employ of outside counsel must be assessed. As loyal physicians in supporting Broward Health through the turmoil that has accompanied the imposition of the CIA and the very concerns addressed herein, the Medical Staff leadership must ask why legal counsel of its choice is being sidelined, particularly in light of the legal expenses that have been expended by Broward Health for outside counsel over the last few years? Medical Staff believes the Bylaws should be respected and any opportunity to reduce expenses taken with additional information and analysis.

In closing, the Medical Staff leadership is committed to its responsibilities and its integral role in oversight and responsibility for patient care and vigorously intends to uphold those responsibilities consistent with its historic support and commitment to the Broward Health hospitals the Medical Staff serves.

Respectfully,

UNIFIED MEDICAL STAFF COMMITTEE