

Sunshine and Public Records, rural health network

Number: INFORMAL

Date: January 30, 2003

Subject:

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Mr. Charles N. Ellis
Administrator, Jackson Hospital
Post Office Box 1608
Marianna, Florida 32447

Dear Mr. Ellis:

You have asked for direction from this office regarding the applicability of the Government-in-the-Sunshine Law and the Public Records Law to the board of directors of a rural health network. You are the Chairman of the Board of Directors of the Panhandle Area Health Network.

Rural health networks were recognized by the Legislature as a means to increase access to health care in rural areas,[1] to insure efficient and effective delivery of health care services in rural areas,[2] and to guarantee the availability of a continuum of quality health care services in rural communities.[3] In addition, section 381.0406, Florida Statutes, provides that a goal of the networks shall be to increase "the utilization of statutory rural hospitals for appropriate health care services whenever feasible, which shall help to ensure their survival and thereby support the economy and protect the health and safety of rural residents." [4] Ultimately, rural health networks are to "ensure that quality health care is available and efficiently delivered to all persons in rural areas." [5]

A "[r]ural health network" is defined as "a nonprofit legal entity, consisting of rural and urban health care providers and others, that is organized to plan and deliver health care services on a cooperative basis in a rural area, except for some secondary and tertiary care services." [6] Pursuant to section 381.0406(17), Florida Statutes, the Agency for Health Care Administration, in consultation with the State Health Office, shall establish rules for the creation and certification of the networks.

Networks are incorporated [7] and are governed by a board of directors with membership from local government, health care providers, businesses, consumers, and others. [8] The primary responsibility of a network board of directors appears to be administrative in that the board is responsible for determining the content of health care provider agreements that link network members. [9]

Government-in-the Sunshine Law

The Government-in-the-Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political

subdivision[.] "[10] The statute thus applies to public collegial bodies within this state, at the local level as well as the state level.[11] It is applicable to both elected and appointed boards or commissions.[12] In addition, boards or commissions which have been created by another public agency are subject to the provisions of section 286.011, Florida Statutes.[13]

Florida courts have stated that it was the Legislature's intent to extend application of the Sunshine Law so as to bind "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control." [14] Based on the specific terms of the statute and the "dominion and control" test approved by the courts, this office has determined that a number of regional entities fall within the scope of the Sunshine Law.[15]

As an entity created by administrative rules of a public agency and empowered through the statutes, a rural health network appears to be a board or commission to which the Sunshine Law is applicable. Thus, meetings of the Board of Directors of the Panhandle Area Health Network, should be held in accordance with the requirements of section 286.011, Florida Statutes.

Public Records Law

Pursuant to section 119.011(1), Florida Statutes, "public records" are defined to include:

"[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.[16] All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.[17]

An "agency" within the scope of the Public Records Law, is:

"[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." [18]

Article I, section 24, Florida Constitution, establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law pursuant to Article I, section 24, Florida Constitution, or specifically made confidential by the Constitution. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution.

As an entity created "pursuant to law", a rural health network would appear to be an "agency"

within the scope of the Public Records Law and records made or received by the network and its board of directors are "public records" subject to the requirements of Chapter 119, Florida Statutes.

Finally, as Chairman of the Board of Directors of the Panhandle Area Health Network, you may wish to consult the Government-in-the-Sunshine Manual for day-to-day questions relating to the requirements of these two laws. This compilation of citations to the statutes, case law, and Attorney General Opinions interpreting the Sunshine and Public Records Laws will provide you with a valuable resource. I am enclosing a copy of the order form for this publication for your convenience.

I trust these informal, advisory comments will assist you in resolving questions about the records and meetings of the Board of Directors of the Panhandle Area Health Network.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosure: Sunshine Manual Order Form

[1] See s. 381.0406(1)(a), Fla. Stat. (1993).

[2] See s. 381.0406(1)(b), Fla. Stat. (1993).

[3] See s. 381.0406(1)(c), Fla. Stat. (1993).

[4] See s. 381.0406(1)(e), Fla. Stat. (1993).

[5] See s. 381.0406(1)(f), Fla. Stat. (1993).

[6] Section 381.0406(2)(c), Fla. Stat. (1993).

[7] See s. 381.0406(11)(a), Fla. Stat. (1993).

[8] Section 381.0406(11)(b), Fla. Stat. (1993).

[9] Section 381.0406(11)(c), Fla. Stat. (1993).

[10] Section 286.011(1), Fla. Stat. (1993).

[11] *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

[12] See Op. Att'y Gen. Fla. 71-191 (1971).

[13] *Cf. Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979), in which the court determined that a city manager was an "agency" for purposes of the Sunshine Law and that when he utilized an advisory group to assist him in screening applications and making recommendations for the position of chief of police, he created a "board" to which the Sunshine Law was applicable.

[14] *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

[15] See, e.g., Ops. Att'y Gen. Fla. 82-66 (1982) (regional service facility board); 76-193 (1976) (Central Florida Commission on the Status of Women); 74-364 (1974) (regional planning council).

[16] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[17] *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

[18] Section 119.011(2), Fla. Stat. (1993).