MAR 27 2006

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

LAWNWOOD MEDICAL CENTER, INC.
d/b/a LAWNWOOD REGIONAL MEDICAL
CENTER AND HEART INSTITUTE,
a Florida corporation,

Plaintiff,

CASE NO.: 2003 CA 2865

v.

RANDALL SEEGER, M.D., as President of the
Medical Staff of Lawnwood Regional
Medical Center, Inc. d/b/a Lawnwood
Regional Medical Center and Heart
Institute and Member of the Medical
Executive Committee of Lawnwood Regional
Medical Center, Inc. d/b/a Lawnwood
Regional Medical Center and Heart
Institute,

Defendants.
_______________________________________/

SUMMARY FINAL JUDGMENT

This cause came before the Court to be heard on Plaintiff LAWNWOOD MEDICAL CENTER, INC.'s Motion for Summary Judgment and Defendant RANDALL SEEGER'S Motion for Summary Judgment. After reviewing the pleadings, record evidence, memoranda of law, and having heard argument of counsel,

the Court finds that:

This case involves a challenge to the constitutionality of the St. Lucie County Hospital Governance Law, which became effective July 16, 2003. The St. Lucie County Hospital Governance Law, HB 1447, was a 2003 special act of the Florida Legislature, and is cited as Chapter 2003-372, Laws of Florida (hereinafter referred to as "*Hospital Governance Law*"). The issue of the constitutionality of the special act is a pure question of law and is appropriate for summary disposition. *Department of Insurance v. Keys Title & Abstract Co.*, 741 So.2d 599, 601 (Fla. 1st DCA 1999). At the hearing on the motions for summary judgment, the Court expressed concern regarding the propriety of ruling on Plaintiff's request for declaratory relief *affirming* the constitutionality of the law. Because the Defendant's counterclaim attacks the constitutionality of the special law, and based on the parties' stipulation at the hearing, the Court has concluded that there is a justiciable controversy that can be resolved by declaratory judgment.

Lawnwood Medical Center, Incorporated, is a Florida for-profit corporation that owns and operates Lawnwood Regional Medical Center and Heart Institute (hereinafter referred to as the "Hospital") in St. Lucie County, Florida. The Corporation operates the Hospital through its Board of Directors, and through its delegation of certain duties to the Corporation's officers and Board of Trustees

(hereinafter "Board"). Randall Seeger, M.D., is the Medical Staff's President, and it is his duty under the Medical Staff Bylaws to act on behalf of the Medical Staff as the chief medical officer, to monitor the self-governance of the Hospital's Medical Staff, and to seek implementation of principles embodied in the Bylaws. Because Dr. Seeger raises the constitutional challenge on behalf of the Medical Staff, the Court will refer to Dr. Seeger's position as the "Medical Staff" in this Order.

On September 10, 2003, acting pursuant to the *Hospital Governance Law,* Thomas Pentz, the Secretary of the Hospital's Board, presented the Medical Staff with proposed changes to the Medical Staff Bylaws. Approximately one month later, the Medical Staff rejected the Board's proposed amendments to the Medical Staff Bylaws, and stated that it challenged the *Hospital Governance Law's* constitutionality. On December 10, 2003, the Corporation filed its Petition for Declaratory Judgment, seeking a declaration that:

a. The *Hospital Governance Law* is constitutional;

b. The Hospital's Trustees have the power and/or right to propose valid amendments to the Medical Staff Bylaws pursuant to the *Hospital Governance Law,* as contained in the [Board of Trustees'] resolution; and

c. The Hospital's Trustees have the power and/or right to adopt the proposed amendments to the Medical Staff Bylaws as contained in the [Board of Trustees'] resolution.

The Petition initially joined the Medical Staff and the Florida Attorney General as parties. The Florida Attorney General declined to defend the statute's constitutionality, and this Court dismissed him as a party. The Medical Staff filed an Answer and Affirmative Defenses specifically challenging the statute's constitutionality. The parties filed cross-motions for summary judgment addressing whether or not the *Hospital Governance Law* is constitutional.

In addressing the constitutionality of the Hospital Governance Law, "[t]he political motivations of the legislature, if any, in enacting...[legislation] are not a proper matter of inquiry for...[the]Court." *School Board of Escambia County v. State*, 353 So.2d 834, 839 (Fla 1977). The Court is also mindful that statutes come before our courts "clothed with a presumption of constitutionality," *City of Miami v. McGrath*, 824 So.2d143, 146 (Fla. 2002), and that courts must give a statute a constitutional construction where such a construction is reasonably possible. See *Tyne v. Time Warner Entertainment Co.*, 901 So.2d 802, 810 (Fla 2005).

The pivotal issue here is whether the Legislature may enact a special law that essentially applies only to a single private entity, a corporation, in a single county.[1]

[1] There are two hospitals in St. Lucie County, and they are both "corporately owned for-profit hospitals." *Plaintiff's Memorandum in Support of its Motion for Summary Judgment*, at p.4. The other hospital, St. Lucie Medical Center, has not participated in this litigation, and neither party has argued the effect of the Law on St. Lucie. As is more fully set forth below, it is clear that the intent of the Legislature was to address difficulties between the Lawnwood Trustees and the Lawnwood Medical Staff, rather than to comprehensively address issues that might be unique to St. Lucie County's hospitals.

There is no dispute regarding whether the *Hospital Governance Law* meets the procedural requirements of a special law; it was properly noticed as a special law, and enacted as one. Although our courts frequently hear claims regarding the constitutionality of general laws that in reality apply to only one county or entity, this case does not fall into that category of constitutional challenge. The instant case therefore represents a more unusual type of constitutional challenge: one involving a properly-enacted special law. There are few appellate decisions dealing with such claims, and the Court has been unable to find relevant case law addressing the question of whether special acts that apply only to the operations of one corporation, such as the *Hospital Governance Law,* are permissible under the Florida Constitution or are *per se* unconstitutional.

Throughout the litigation of this case, both parties appear to have assumed that by following the procedural requirements related to special acts, the Legislature is permitted to enact laws that apply only to one entity. Indeed, the Florida Constitution does not define "special laws," saying only that "[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected." *Article III, Section 10, Florida Constitution.*

Section 11 of Article III proceeds to define "prohibited special laws," listing twenty-one subject areas where special laws are proscribed; a footnote to Section 11 also lists ten additional "prohibited subject matters" enacted under Section 11(a)(21) of Article III.

Nothing in either Section 10 or Section 11 of Article III provides guidance as to the proper, or constitutionally proper, purpose of a special law. Florida's appellate courts have, however, attempted to define special laws in numerous cases. In *State ex rel. Cray v. Stoutamire*, 179 So. 730 (Fla. 1938), the Florida Supreme Court said the following:

> There is no definition of general or local or special bills or laws in the Constitution; but it has been stated that 'a statute relating to *** subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a 'general law': while a statute relating to particular subdivisions or portions of the state, or to particular places of classified localities, is a 'local law'; and a statute relating to particular persons or things or other particular subjects of a class, is a 'special law.' State ex rel. v. Daniel, 99 So. 804, 809 (Fla. 1924)

In *Pinellas County v. Laumer*, 94 So.2ds 837 (Fla. 1957), the Supreme Court dealt with an attack on the constitutionality of a special act that rezoned rural land in Pinellas County, Florida, subject to a referendum. The trial court had concluded that the statute was unconstitutional, apparently on the ground that the rezoning was a "fundamental

right" that could not be regulated through special or local act. The Supreme Court disagreed, finding that rezoning was not one of the enumerated prohibitions for special acts in Article III. The Court did so, however, after noting that "[t]he vast majority of the legislation of this State on the subject of county and municipal zoning has been by special or local law...We hold that the power to zone at the county and municipal level may properly be granted by the Legislature to local authorities by local or special act." Although rezonings are not customarily initiated by special or local law today, the case is instructive as an example of the kinds of subjects usually addressed by special or local law: an exercise of governmental or police power within a particular county. In *Pinellas County v. Laumer*, then, the special act was directed to a rezoning, which is an obviously governmental function, within a particular county.

The majority of cases dealing with the distinctions between special laws and general laws involve general laws that should have been passed as special acts. See, e.g., *Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Gulfstream Park Racing Association*, 912 So.2d 616 (Fla. 1st DCA 2005); *Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21 (Fla. 1st DCA 1999); *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989). In many such cases, the appellate court has found the law to be a special act enacted as a general law, and therefore unconstitutional. If the statutes in question

had been enacted as general law, the Legislature's broad discretion to establish statutory classification schemes would determine whether the classification was permissible. Generally, if a classification bears a "...reasonable relationship to the purpose of the statute and is 'based upon proper distinctions and differences that inhere in or are peculiar or appropriate to a class,' the statute is a valid general law." *Ocala Breeders*, at 25. As might be expected, a statute that employs an arbitrary classification scheme is not valid as a general law. *Ocala Breeders*, citing *Classic Mile* at 1157.

The case law scrutinizing general laws to determine whether they are, in fact, special laws subject to Article III, Section 10's procedural provisions does not apply here. However, there are no cases suggesting that even a properly-enacted special law can affect only the affairs of a private corporation found within a particular county. To the contrary, the cases the Court has reviewed deal with governmental functions or regulated entities found within certain territorial areas. Nothing in the case law therefore specifically supports the proposition that a special act is a constitutionally permissible method for affecting the internal business affairs of a private corporation. Although the Court would be inclined to end the inquiry there, finding that the *Hospital Governance Law* is an unconstitutional special act because its sole purpose is to affect the internal affairs of a private corporation, there are other grounds that also

support that conclusion. Those arguments have been thoroughly briefed and advanced in the motions and memoranda submitted by the parties, and they will be addressed below.

A. Whether the *Hospital Governance Law* impairs an existing contract between two private entities in violation of Article I, section 10, Florida Constitution.

Article I, section 10, Florida Constitution provides that "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." The Florida Supreme Court has stated that the right to contract is one of the most sacrosanct rights guaranteed by fundamental law. See *Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993). The beginning point in this analysis, then, is whether there is a contract between the Medical Staff and the Hospital. If a contract exists, then the Court must determine whether the *Hospital Governance Law* impairs the contract. Florida courts have defined "impairment of contract" as meaning

> to make worse; to diminish in quantity, value, excellency or strength; to lessen in power; to weaken. Whatever legislation lessens the efficacy of the means of enforcement of the obligation is an impairment. Also if it tends to *Postpone* or *Retard* the enforcement of the contract, it is an impairment.

State ex rel. Women's Benefit Ass'n v. Port of Palm Beach Dist., 164 So. 851, 856 (1935).

See also *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 781 n.41 (Fla., 1979); and *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984). The severity of the impairment increases the level of scrutiny to which the legislation will be subjected, but total destruction of contractual expectations is not necessary for a finding of substantial impairment. *Pomponio*, 378 So.2d at 779 citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, at 244, 98 S. Ct. 2716 (1978), at 2722, 57 L. Ed. 2d 727. See also *United States Trust Co.*, 431 U.S. 1, at 17, 97 S. Ct. 1505 at 1515, 52 L. Ed. 2d 92.

If the Court determines that the statute does impair a contract, then the test is:

> To determine how much impairment is tolerable, we must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.

Pomponio, at 780.

The Court finds that Florida has adopted the majority view that hospital bylaws become a binding and enforceable contract between a hospital and its

medical staff when adopted by a hospital's governing board. *Lawler v. Eugene Wuesthoff Mem'l Hosp. Ass'n*, 497 So. 2d 1261, 1264 (Fla 5th DCA 1986); *see also Hosp. Corp. of Lake Worth v. Romaguera*, 511 So. 2d 559, 560 (Fla 4th DCA 1986) (rejecting a hospital's argument that a bylaws amendment was not binding for lack of mutuality, stating that the hospital "did not execute the by-laws amendment out of gratuitous compassion for its contract physicians. On the contrary, the highly self-serving purpose, and therefore consideration, was to facilitate retention of the benefits bestowed upon it by the Joint Commission on Accreditation of Hospitals."). *See also Naples Community. Hospital, Inc. v. Hussey*, 918 So.2d 323 (Fla. 2nd DCA. 2005). The record here shows that the Medical Staff and the Corporation adopted the Medical Staff Bylaws on January 11, 1993. Consequently, the Medical Staff Bylaws form a valid contract between the Medical Staff and the Hospital's Board of Trustees.

In determining that the Medical Staff Bylaws are a contract, those bylaws must be read in the appropriate context. It is important, then, to understand the interactions between Chapter 395, Florida Statutes; the requirements of the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO"); the entire Medical Staff Bylaws; and the Corporation's Board of Trustees Bylaws that were in effect at the time that the Corporation adopted the Medical Staff Bylaws.

Considering these sources together, the Court finds that there is an on-going, working relationship between a medical staff and a hospital's governing board.

For example, section 395.0191, Florida Statutes (2005), which sets out Florida's law regarding the appointment and credentialing of medical staff, gives the governing board the authority to set the criteria for reviewing candidates. The medical staff makes recommendations to the governing board about the individual candidate's fitness. Similarly, section 395.0193, Florida Statutes (2005), which describes peer review and the disciplinary power of a hospital, recognizes a balance between a hospital's governing board and its medical staff. Under section 395.0193, a peer review panel conducts an investigation, and makes a recommendation to the hospital's governing board. The governing board then considers the recommendation and acts pursuant to section 395.0193(3)(a)-(g). The statutory scheme acknowledges and supports coordination between the medical staff and a hospital's governing board.

This coordination between a medical staff and the hospital's governing board is also a requirement of the Joint Commission for the Accreditation of Healthcare Organizations ("JCAHO"). JCAHO is an independent not-for-profit organization that evaluates the quality and safety of care for more than 15,000 health care organizations. To maintain and earn accreditation, organizations must have an

extensive on-site review by a team of Joint Commission health care professionals, at least once every three years. In fact, the Medical Staff Bylaws in this case specifically state that:

> To ensure quality health care, it is the intent of all parties to these Bylaws to taken into consideration, as appropriate, the Accreditation Manual for Hospitals of the Joint Commission on Accreditation of Hospitals.

The importance of complying and keeping JCAHO accreditation is also reflected in the affidavit of Thomas Pentz, the Corporation's Chief Executive Officer, submitted by Defendant in support of his motion for summary judgment. Pentz stated that in 1992, the Hospital faced the risk of losing accreditation because of its "lack of sufficient JCAHO compliant Medical Staff Bylaws." Apparently in response to the threat of losing its accreditation, the Corporation adopted the Medical Staff Bylaws in January 1993. *Id. at para. 23.*

The Court finds that the *Hospital Governance Law* impairs the contract between the Hospital and the Medical Staff because it impermissibly interferes with the parties' bargained-for relationship. Before passage of the *Hospital Governance Law*, the Medical Staff Bylaws prohibited the Corporation from unreasonably withholding ratification of a medical staff decision or other medical staff matters, or from taking an independent action against the medical staff's recommendation without "good cause."

See Art. XI, §3, Medical Staff Bylaws, and Article VII, section 7, Bd. of Trustees 1988 Bylaws (stating that "the Board of Trustees may, for good cause shown, taken any action with regard to the medical staff, including but not limited to, 1) appointments, (2) granting of clinical privileges, (3) disciplinary actions, (4) all matters relating to professional competency and the smooth operation of the Hospital"). The requirement that the Corporation act "reasonably" and with "good cause" provides a standard upon which the parties' compliance with the "contract" can be measured.

In contrast to the Bylaws' requirement that the Corporation's actions be subject to a reasonableness and good cause standard, the *Hospital Governance Law* gives the Corporation plenary power over the medical staff and the Hospital. The statute only requires that the Corporation "carefully consider" the medical staff's recommendations. *Hospital Governance Law,* § 5. The *Hospital Governance Law* therefore substantially alters the standards described in the Medical Staff Bylaws, and gives the Corporation powers to unilaterally amend the Medical Staff Bylaws that it did not have. Consequently, the Court finds that the statute is an impairment of the Medical Staff's contract with the Corporation.

Next, the Court must balance the Legislature's attempt to remedy an identifiable "evil" or to serve a legitimate government interest, against the intrusion of the statute into the private parties' contract. If the law creates a substantial

impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. *United States Trust Co.*, 431 U.S., at 22, 97 S. Ct., at 1517; *Allied Structural Steel Co.,* 438 U.S., at 247, 249, 98 S. Ct. at 2723-2725. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

In identifying the "evil" to be remedied or the legitimate public purpose to be served, the *Hospital Governance Law's* stated intent is to "clarify" that in the event of a conflict between bylaws of a hospital corporation's board of directors and hospital's medical staff bylaws, "...the hospital board's bylaws shall prevail with respect to medical staff privileges, quality assurance, peer review, and contracts for hospital-based services." § 1, *Hospital Governance Law.* The Court finds that as applied to the Medical Staff Bylaws, the *Hospital Governance Law* does not serve a legitimate public interest, but rather provides a benefit to a special interest.

It must be noted that the Medical Staff Bylaws here expressly recognize the Board's final authority over the Hospital. For example, the Medical Staff Bylaws recognize that the Board makes the final decision based on the Medical Staff's recommendation for the following:

> 1) Granting initial appointment to the Medical Staff, and advancement on the different levels of the Medical Staff from

the rank of Provisional Staff, to Associate, and to Active, and determination of Courtesy and Consulting Staff; *Art. II, Categories of Medical Staff, Part C, §2d; Part D- Courtesy and Consulting Staff, §1(3) Medical Staff Bylaws; Art. VI, Part D- Procedure for Initial Appointment, §§5, and 7;*

2) Creating additional medical departments and subsequent specialties and subspecialties within a department; *Art. IV, Part A – Clinical Departments §1, Medical Staff Bylaws.*

3) Formulating utilization plans, such as evaluation of appropriateness of hospital admissions, lengths of stay, discharge, use of medical services, and data collection, approved by Medical Executive Committee and the Board of Trustees, *Art. V, Part F: Utilization Review Commission, §2(a)(2), Medical Staff Bylaws;*

4) Granting of clinical privileges to Medical Staff; *Art. VI, Part C: Description of Initial Clinical Privileges, §1, Medical Staff Bylaws;*

5) Considering the Medical Staff Recommendation to the Board of Trustees regarding exclusive arrangements for physician and/or professional services, prior to any decision being made, in the following situations:

a. The decision to execute an exclusive contract in a new department or service;

b. The decision to renew or modify an exclusive contract in a particular department or service;

c. The decision to terminate an exclusive contract in a particular department or service. *Art. VI, Part C: Description of Initial Clinical Privileges, §4 Physicians Under Contract with Hospital, Medical Staff Bylaws.*

6) Granting a physician a temporary privilege, Locum

Tenens; *Art. VI, Part D- Procedure for Initial Appointment, §8 Locum Tenens;*

7) Deciding to deny staff membership for a particular clinical privilege; *Art. VI, Part F – Denial Due to Moratorium;*

8) Determining not to continue a medical staff person's privileges; *Art. VII, Actions Affecting Medical Staff Members, Part A- Procedure for Continued Appointment, §§4(b), 6;*

9) Disciplining medical staff for actions involving clinical competence, patient care, treatments, case management, professional ethics, and infraction of the Medical Staff Bylaws, Rules or Regulations, and disruptive behavior. *Art. VII, Part C, §3(b), (c).*

10) Deciding whether or not to allow a medical staff member a leave of absence; *Art. VII, Part F;*

11) Reviewing appeals of disciplinary hearings against the medical staff, and making the final disciplinary action *Art. VIII, Part A – Initiation of Hearing, §9; Art. VIII, Part D- Appeal, §§ 3, 4.*

The Corporation has the final decision-making power in the areas of staff membership and promotion, credentialing, leaves of absence, the contractual opening and closing of hospital departments, peer review, and discipline. The Corporation's decision-making power, however, is not absolute because it is subject to the requirement that its power be exercised reasonably and with good cause.

It would therefore appear that the objective of the *Hospital Governance Law* was not reconciliation of specific conflicts between the Medical Staff Bylaws and

the Corporation's 1988 Bylaws, if such an objective was legally appropriate, but was instead a means to bypass previous court interpretations of the Medical Staff Bylaws, and to somehow address the Corporation's concerns about liability. This conclusion is supported by the Corporation's argument in its motion for summary judgment that the "Medical Staff Bylaws must never become a weapon to interfere with the Trustees' ability to fulfill their duty or mission[,]" and by the history of the past litigation between the Corporation and Medical Staff. See, for example, *Walker v. Lawnwood Medical Center, Inc.,* Case No. 99-159 CA03 (Fla. 19th Jud. Cir. Ct. Feb. 15, 1999), *per curiam affirmed,* Case No. 99-885 (Fla. 4th DCA 1999),*and Lloyd et al. v. Lawnwood Medical Center, Inc., 2000 WL 309305 (Fla. 19th Jud. Cir. Ct.), affirmed,* 773 So.2d 114 (Fla. 4th DCA 2000). The Plaintiff is insistent that the Court cannot second-guess the Legislature's rationale for the law, or substitute its judgment for that of the Legislature. Although that is true, the Legislature cannot simply say that it had a "legitimate governmental purpose to protect the health and welfare of the public" in enacting the *Hospital Governance Law,* when it did not enact the Law's far-reaching changes to the Hospital's governance in any other county in Florida. See *Plaintiff's Memorandum in Support of its Motion for Summary Judgment*, at p. 6. If the substantive provisions of the law protect citizens in St. Lucie County, they should be enacted to protect citizens

throughout the State. The fact that the Law applies only to the Hospital and its internal affairs leads inexorably to the conclusion that its alleged purpose of protecting citizen health and welfare is nothing more than a pretext. Further, the Plaintiff's motion devotes at least three pages to a dissertation of the corporate negligence doctrine, and concludes that dissertation with the statement that "[b]ecause the hospital is ultimately responsible for ensuring the initial and ongoing competence of all physicians at the facility, the Trustees must have the power to fulfill that duty to patients." *Id.,* at p. 11. That is a compelling and logical statement, but it cannot support the constitutionality of a law that rewrites the Medical Staff Bylaws for the sole purpose of taking away powers that the Medical Staff currently possesses.

The *Walker* and *Lloyd* cases show that the courts have previously interpreted the terms of the Medical Staff Bylaws and required both parties to abide by those terms. For example, in *Walker,* the circuit court granted two pathologists a temporary injunction reinstating their medical staff and clinical privileges where the facts showed that the Corporation summarily suspended the two pathologists from the medical staff without complying with the process set out in the Medical Staff Bylaws. The *Walker* court specifically rejected the Corporation's argument that it could circumvent the peer review process, and act summarily under chapter 395

because of a "dangerous situation." The alleged "dangerous situation" was the Medical Executive Committee's failure to conduct an adequate peer review of the two pathologists. As Judge Schack's order states,

> To the extent that LRMC felt that the [Medical Executive Committee] was not discharging its responsibilities appropriately and was creating a dangerous situation, the hospital had several options:
>
> a) The hospital could have asked the Florida Department of Professional Regulation to obtain an emergency suspension of the [two pathologists] license to practice medicine pursuant to Florida Statute section 120.60;
> b) The hospital could have filed an action against the [Medical Executive Committee] seeking an injunction to compel the MEC to take action against the [two pathologists];
>
> c) The hospital could have sought to remove those members of the MEC they felt were failing "to comply with the policies, procedures, or directives of the risk management program or any quality assurance committees of the hospital. Section 395.0193(3)(g), Fla. Stat. (1998)

Walker, Case No. 99-159 CA03 (Fla. 19th Jud. Cir. Ct. Feb. 15, 1999) *page 7-8.* The subsequent case history shows that the Board appealed the circuit court's granting of the temporary injunction, and that the appellate court affirmed the circuit court's granting of the temporary injunction.

The *Walker* and *Lloyd* cases also demonstrate that there is no legitimate public need for the Legislature to delineate the powers of the Hospital's Board and its Medical Staff. The cases show that the Corporation has refused to use procedures that it adopted *with* the Medical Staff, and failed to use the courts in settling its disputes. Furthermore, the lack of subsequent case history from the *Walker* and *Lloyd* cases shows that the Corporation never sought a final judicial interpretation that it was acting reasonably in rejecting the Medical Staff's actions. Consequently, the Court finds that the *Hospital Governance Law* does not serve a legitimate public purpose, but rather gives the Corporation a private benefit to change the terms of its agreement with the Medical Staff.

Finally, the Court finds that the *Hospital Governance Law* is not narrowly tailored. The *Hospital Governance Law* gives the Corporation plenary power over the Medical Staff, and the unilateral ability to amend the Medical Staff Bylaws. A narrowly tailored remedy would recognize that the Corporation has final authority, and create a standard on which the parties could seek review. Moreover, the special law's grant of absolute power is contrary to the statutory scheme set out in Chapter 395 and the JCAHO standards that recognize mutual responsibilities for the medical staff and the hospital's governing body.

Based on the foregoing, the Court holds that the *Hospital Governance Law*

violates article I, section 10, Florida Constitution as an impairment of an existing contract.

B. Whether the *Hospital Governance Law* violates the prohibition against enacting a special law that provides a privilege to a private corporation, article III, section 11(a)(12), Florida Constitution.

Article III, section 11(a)(12), provides that "[t]here shall be no special law or general law of local application pertaining to: private incorporation or grant of privilege to a private corporation." Based upon the analysis that is more fully set forth above, the Court finds that the *Hospital Governance Law* is a special law that impermissibly grants a privilege to a private corporation. The *Hospital Governance Law* gives the Corporation here the specific power and privilege of unilaterally rewriting and amending the existing Medical Staff Bylaws contract, and sets out a separate peer review and appeal process. This is a privilege that, by operation of the Law, is not granted to any other hospital in the State of Florida. No hospitals outside of St. Lucie County can unilaterally ignore their established contracts that control peer review, credentialing, or whether or not a hospital department or service is an "open or closed shop," nor can they ignore the dictates of Chapter 395, Florida Statutes, and the JCAHO standards. The *Hospital Governance Law* does, however, provide the Corporation with that extraordinary power.

Based on the foregoing, the Court holds that the *Hospital Governance Law* violates Article III, section 11(a)(12) because it provides a special privilege to a single, private corporation.

C. Whether the *Hospital Governance Law* violates Article III, section 6, Florida Constitution, because the *Law's* title does not reference that the special law amends section 395.0193, Florida Statutes, by creating a special exemption for the Respondent concerning the required peer

review process.

Article III, section 6, of the Florida Constitution provides, in pertinent part, that "[l]aws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection." Section 395.0193 addresses a hospital's power to conduct peer review and discipline medical staff. Section 395.0193 provides that each licensed facility shall develop written, binding procedures for conducting peer review. Further, section 395.0193(3) provides that if there is a reasonable belief that a physician's conduct constitutes grounds for discipline that "a peer review panel shall investigate and determine whether grounds for discipline exist with respect to such staff member or physician." The statute then provides that the "governing board of any licensed facility, after considering the recommendations of its peer review panel, shall suspend, deny, revoke, or curtail the privileges, or reprimand, counsel, or require education, of any such staff member or physician after a final determination . . . .".

The Court finds that the *Hospital Governance Law's* title does not indicate that it is amending section 395.0193 as it applies to the Hospital here. The special act defines a separate process whereby the Hospital's governing board can take independent action regarding a physician's medical staff membership, clinical privileges, peer review, or quality assurance, as well as the mechanics of conducting peer review, and disciplinary appeals for this Hospital. Therefore, this Court holds that the *Hospital Governance Law* violates Article III, section 6, Florida Constitution because it improperly amends section 395.0193 without reference to the statute in the *Law's* title.

D. Whether the *Hospital Governance Law violates* the equal protection clause of the Florida and federal constitutions by creating two classes of hospitals.

The state and federal law is clear that all persons are equal before the law. Art. I, s. 2, Fla. Const., and U.S. Const. amend. XIV, 1. In considering whether a statute violates equal protection, the issue is not whether the statute distinguishes between one class of persons or property from another, but whether that distinction is proper, given the purposes of the statute.[2] An equal protection challenge to a statute that does not involve a fundamental right or suspect classification is evaluated by the rational relationship test.[3] Under the rational relationship test, a court must determine: 1) whether the challenged statute serves a legitimate governmental purpose; and 2) whether it was reasonable for the legislature to believe that the challenged classification would promote that purpose. *Id.*

Turning to the instant case, the Court finds that the *Hospital Governance Law* creates two classes of hospitals: first, all hospitals statewide that are governed by section 395.0193 in regard to peer review; and second, the two St. Lucie County hospitals that are given additional powers to reject the peer review process findings and a physician's appeal rights. Because this classification does not involve a fundamental right or suspect classification, the Court is required to apply the rational relationship, or rational basis, test.

As discussed earlier, the *Hospital Governance Law* does not serve a legitimate government purpose. The creation of two classes of hospitals here does not rationally serve a legitimate government purpose to delineate the authority between a hospital's governing body and its Medical Staff. If that was a legitimate purpose, and the Court cannot agree that it is, the law would have to apply statewide to effectuate that purpose. Here, rather than delineating the authority

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[2] *Zapo v. Gilreath*, 779 So.2d 651 (Fla. 5th DCA 2001), rev. den. 796 So.2d 539; *Todd v. State*, 643 So.2d 625 (Fla. 1st DCA 1994) (equal protection does not deny state's power to treat different classes of persons in different ways, so long as classifications are reasonably related to legitimate state interest).
[3] *Zapo*, 779 So.2d at 651.

between the governing board and the Medical Staff, the *Hospital Governance Law* gives the Corporation in this case the complete power to dictate the terms of its Medical Staff's conduct. The Law therefore conflicts with Section 395.0193 and with the JACHO standards on peer review; both envision a medical staff and a hospital's governing board developing a peer review and discipline mechanism together.

Finally, the Court finds that the *Hospital Governance Law* creates two classes of hospitals: one class that follows existing state law, and the other class, St. Lucie County hospitals, that does not. The Law gives special privileges to the Corporation that owns the Hospitals in St. Lucie County, and these special privileges are not reasonably related to establishing proper authority over the hospitals, furthering peer review, or patient health, safety, or welfare. Therefore, the Court holds that the *Hospital Governance Law* violates the equal protection clauses of both the Florida and federal constitutions.

IV. CONCLUSION

Based on the foregoing analysis, the Court holds that the *Hospital Governance Law* is unconstitutional in the following respects:

1. The Law impairs the obligation of an existing contract between two private parties;[4]

2. The Law improperly creates a privilege for a private corporation;[5]

3. The Law amends section 395.0193, Florida Statutes, by creating a special exemption for Lawnwood Medical Center, Inc. in regard to the peer review process, without referencing the amendment in the law's title;[6] and

[4] Art. I, section 10, Fla. Const. and Art. I, s. 10 of the U.S. Const.
[5] Art. III, section 11(a)(12), Fla. Const.
[6] Art. III, section 6, Fla. Const.

4. The Law violates equal protection by creating two classes of hospitals: those that follow section 395.0193, Florida Statutes, and Lawnwood Medical Center, Inc., which has its peer review process controlled by the *Hospital Governance Law.* This classification was made without any legitimate government purpose, and without a reasonable expectation that the classification would serve a governmental purpose.[7]

Accordingly, **IT IS ORDERED AND ADJUDGED** that:

Plaintiff's motion for summary judgment is DENIED. Defendant's motion for summary judgment is GRANTED. Summary final judgment is hereby entered for the Defendant, consistent with the declaratory relief set forth above.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 24 day of March, 2006.

JANET E. FERRIS
Circuit Judge

Copies furnished to:

William A. Kebler, Esq.
Thomas Porter Crapps, Esq.
Richard Levenstein, Esq.

[7] Art. I, section 2, Fla. Const., and U.S. Const. 14th Amend.