REQUEST FOR BOARD ACTION

ITEM NO. 14.

DATE OF MEETING: December 6, 2010

REQUESTED BY: Commissioner George Brown

SHORT TITLE: Resolution of Intent Regarding Removal of Board of Health Appointment

BACKGROUND: Dr. Naseem Nasrallah, MD is currently serving as the Medical Director for the Health Department under a service contract, and at the same time serves as a member of the Board of Health in the licensed physician appointment. Officials of the Department of Health and Human Services have expressed concern that serving in these two roles is a conflict of interest under N.C.G.S. 14-234, and have suggested the Board of Health and Board of Commissioners address the issue.

N.C.G.S 130A-35 (g) provides a member of the Board of Health may be removed from office by the county board of commissioners for several reasons, including subsection (2) Violation of a State law governing conflict of interest, and (5) Conduct that tends to bring the office into disrepute. The statute requires the member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond. A copy of the statute is attached.

SPECIFIC ACTION REQUESTED: To consider a resolution of intent to remove Dr. Naseem Nasrallah, MD from the Board of Health pursuant to N.C.G.S. 130A-35 (g)(2) and (5).

COUNTY MANAGER'S RECOMMENDATION

Appointments to and removal from the Board of Health is at the discretion of the Board of Commissioners, pursuant to GS 130A-35.

PB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby confirms an intent to remove Dr. Naseem Nasrallah, MD from appointment to the Pender County Board of Health pursuant to N.C.G.S. 130A-35 (g)(2) and (5). The Chairman/County Manager is instructed to provide a written notice of the basis for the intended removal to Dr. Nasrallah to provide an opportunity for his response on or before January 3, 2011.

AMENDMENTS:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____UNANIMOUS

YEA VOTES: Brown ___ Rivenbark ___ Tate ___Ward ___ Williams ___

_____ _____
Chairman 12-06-10

_____ _____
ATTEST 12-06-10

members of the Commission. (1973, c. 476, s. 127; 1989, c. 727, ss. 175, 178; 1993, c. 513, s. 6.)

§§ 130A-33.1 through 130A-33.29: Reserved for future codification purposes.

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, establish a consolidated human services agency pursuant to G.S. 153A-77, participate in a district health department, or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 13.)

Local Modification to Former § 130-13 and Former Similar Provisions. — Caldwell: 1939, c. 366; Cumberland: 1935, c. 159; 1943, c. 91; Edgecombe: 1969, c. 422; Moore: 1943, c. 326, s. 2; Nash: 1949, c. 6, s. 1.

CASE NOTES

A board of health acts within its rule making powers when it enacts a regulation which (1) is related to the promotion or protection of health, (2) is reasonable in light of the health risk addressed, (3) is not violative of any law or constitutional provision, (4) is not discriminatory, and (5) does not make distinctions based upon policy concerns traditionally reserved for legislative bodies. City of Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996).

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

Stated in Houck & Sons v. Transylvania County, 852 F. Supp. 442 (W.D.N.C. 1993), aff'd, 36 F.3d 1092 (4th Cir. 1994).

§ 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, one professional engineer, and three representatives of the general public. All members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for:

(1) Commission of a felony or other crime involving moral turpitude;
(2) Violation of a State law governing conflict of interest;
(3) Violation of a written policy adopted by the county board of commissioners;
(4) Habitual failure to attend meetings;
(5) Conduct that tends to bring the office into disrepute; or
(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners.

Naseem Nasrallah, M.D.
Surgical Medical Clinic
P.O. Box 729
Burgaw, North Carolina 28425

November 29, 2010

VIA HAND DELIVERY

Jimmy Tate, Chairman
Pender County Commissioners
Burgaw, North Carolina

Dear Mr. Tate,

This is to inform you that I will resign my position as a member of the Pender County Board of Health effective December 1, 2010.

Thank you for the opportunity to serve the citizens of Pender County.

Sincerely,

N. Nasrallah

Naseem Nasrallah

Cc: Bobby Watkins, Chairman, Board of Health (via U.S. Mail)