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February 25, 2016

## VIA FEDEX

Robert S. Cohen, Director and Chief Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

**Re: Public Record Exemption: South Broward Hospital District d/b/a Memorial  
Hospital West  
DOAH Case Nos. 15-3113MPI & 15-3118MPI (Consolidated)**

Dear Sir:

By letter dated May 28, 2015, the Agency for Health Care Administration requested that the above-referenced matter be sealed. The alleged basis for this request was § 409.913(12), Fla. Stat., which relates only to situations where the investigation of a Medicaid provider contains an allegation of fraud, abuse or neglect, *and*, the information is only exempt from the provisions of Section 119.07(1), Fla. Stat., until (1) the Agency takes final agency action with respect to the provider by requiring repayment of an overpayment or imposes an administrative sanction, (2) the case is referred for criminal prosecution, (3) ten days after the complaint is determined to be without merit, or (4) at all times if the complaint or information is otherwise protected by law. Based upon the above, there was no basis to seal this case, and there is no basis to continue the seal on this matter.

First, there has been no allegation or finding of fraud, abuse or neglect. Even taking the Agency's position at face value, this is merely a situation where the Agency failed to enforce its own rule for many years, and is now retroactively doing so. None of that falls within the ambit of fraud, abuse or neglect. Thus, there was no basis to seal the case. Moreover, the exemption, even if it were deserved, does not apply once the Agency takes final agency action, which, according to the statute, ends when there is repayment of any alleged overpayment or sanctions are imposed. In the instant case, repayment has been made and sanctions have been imposed. Certainly, there has not been and will be no criminal prosecution, and there has not yet been a

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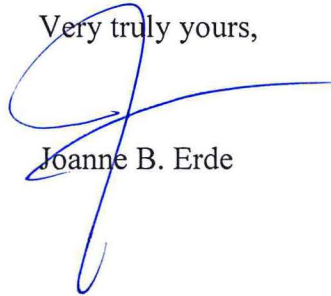
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final resolution of the particular complaint. Lastly, there is no protected information included in the filed documents, and if there were, those documents can easily be kept confidential. Only the exhibits contain any protected information; nothing in the docket does. The sealing of the case prevents others, who have similar matters, from being able to see the status of litigation, particularly any orders entered, and there is no reason for this to be the case. Accordingly, we believe there is no basis to have this case sealed, and we therefore request that it be unsealed.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'Joanne B. Erde', with a long horizontal flourish extending to the right.

Joanne B. Erde

JBE:fs

cc: Joseph M. Goldstein, Esq., Via Email  
Daniel E. Nordby, Esq., Via Email