IN THE SUPREME COURT OF FLORIDA

DADE COUNTY, a political subdivision of the State of Florida, and the PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, an agency and instrumentality of Dade County, Florida. Petitioners, vs. AMERICAN HOSPITAL OF MIAMI, INC., a Florida corporation, Respondent.	CASE NO. 66,689 THIRD DISTRICT COURT OF APPEAL CASE NO. 83-1445

BRIEF OF AMICUS CURIAE THE NORTH BROWARD HOSPITAL DISTRICT

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BRIEF OF AMICUS CURIAE
THE NORTH BROWARD HOSPITAL DISTRICT

Pursuant to the Court's Order of June 6, 1985, the North Broward Hospital District respectfully submits this amicus brief to address certain issues in the case and to respond to specific assertions made in the brief of Amici Curiae Federation of American Hospitals, Florida League of Hospitals, Inc. and Forty-Seven Hospitals filed in Support of the Position of Respondent American Hospital of Miami, Inc. ("Amici Brief").

STATEMENT OF INTEREST

The North Broward Hospital District ("Hospital District") is a tax-assisted state subdivision and unit of local government that provides hospital services in northern Broward County. Pursuant to specific statutory authority, 1951 Fla. Laws, Ch. 27438,

Special Acts, the Hospital District currently operates three hospitals in Broward County, with a fourth under construction. The Hospital District provides free care to the vast majority of indigents in its service area who need hospital treatment -- admitting and treating without charge more than 5,000 indigent patients per year in recent years -- but it also depends heavily on paying patients to maintain its viability. Pursuant to the mandate of its Charter, it tries to provide hospital services of the highest quality to all patients, whether indigent, insured or otherwise financially-equipped to pay.

THE REASONS WHY THE HOSPITAL DISTRICT HAS FILED THIS BRIEF

As a matter of fundamental policy, the Hospital District refuses to countenance the purely mercenary transfer of indigent persons from private hospitals into Hospital District facilities. It has thus historically prohibited all medically unnecessary, financially-motivated transfers (as are at issue on this appeal), while allowing transfers of indigents or any other persons if the transfer is justified by medical need and not merely the financial convenience of the transferring institution.

The Hospital District believes that the financially-motivated "dumping" of indigents by private hospitals endangers the lives of patients and represents a morally abhorrent practice. It deserves no governmental encouragement: Dumping is contrary to established ethical principles and is bad public policy; dumping poses health risks to the patients who are its victims, endangering lives and

aggravating the suffering of patients whose treatment is delayed as they are unnecessarily shuttled from one hospital to another.

The dumping of indigents also has fiscal implications for the Hospital District. The unrestricted dumping of indigent patients may impose substantial costs on public hospitals, shifting the cost of charity care that would ordinarily be borne by private hospitals, from the private to the public sector. Those additional costs can undermine a public hospital's ability to use its limited fiscal resources to maintain low-cost facilities, of the highest calibre, for the benefit of the community.

The Hospital District was established to operate hospitals and to provide hospital services. It was not established to administer any "medicaid-type" program under which it would pay other hospitals to treat poor patients. Nor is it equipped to do so. Indeed, it has been the District's understanding that far from being compelled to create such programs, as Amici suggest all "local governments" must do, it has no legal authority under its Charter to establish a general medical welfare program of that type. Any attempt to impose "ultimate financial responsibility" of treating indigents upon it, would radically change the nature of its activities.

In short, whereas the Hospital District has expended in excess of $200 million on uncompensated medical care for indigent persons since 1976 -- has willingly and voluntarily done so -- it rejects on policy and legal grounds Amici's assertions that local governments must either (1) tolerate dumping, or (2) subsidize the

surrounding private hospitals, through cash payments, for their occasional treatment of the poor.

Ordinarily, the Hospital District would have refrained from filing an amicus brief in this case, since this appeal concerns itself with statutes and constitutional provisions that pertain by their terms only to counties, not to hospital districts or any other units of local administration. However, the Hospital District's direct participation on this appeal has been prompted by the brief filed by Amici Curiae Federation of American Hospitals, Florida League of Hospitals, Inc. and Forty-Seven Hospitals.[1/] That brief is plainly intended to coax an obiter dictum from the Court to apply directly to hospital districts and other units of local government, despite the fact that the statutory provisions at issue apply only to county government.

The Amici expressly ask this Court for a ruling designed to overreach the issues actually presented in this case and to impose new legal obligations on all "local government entities." See

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1/ Because of the attempt to overreach the issues actually presented by the appeal, the Hospital District filed an emergency motion to strike that brief as improper as soon as it learned of that brief. On June 6, this Court denied the motion to strike, expressly noting that it was without prejudice to the filing of an amicus brief.

The Hospital District regards the attempt to have the Court reach out in this matter to decide issues not presented to be of special concern since several of the Amici hospitals are currently prosecuting the same issues through a federal court lawsuit against the North Broward Hospital District, Hospital Development and Service Corporation, d/b/a Plantation General Hospital v. North Broward Hospital District and Broward County, United States District Court for the Southern District of Florida, 81-6103-Civ-Atkins.

Amici Brief at 29-30, 33-34, 49. They expressly ask for an advisory ruling that the State's various "local governments" and "hospital districts" have an obligation to permit the unrestricted dumping of indigents and to subsidize the operation of private institutions. Their intention is highlighted in the Conclusion of their brief where they ask for a ruling that would apply, by its express terms, to any "local government . . . created for the purpose of providing hospital services (such as a hospital district)." Amici Brief at 49 (emphasis added). The Hospital District believes that it would be wrong for the Court to reach so far beyond the issues presented in this case.

Moreover, in arguing for the result they seek, Amici do not limit themselves to the statutes at issue in this case.[2/] They primarily rely instead on their own self-interested vision of what

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[2/] Unlike the brief of any of the parties, Amici refer repeatedly to purported policies, practices and laws governing the State's public hospital districts and "local governments" generally. E.g., Amici Brief at 3, 29, 30, 31, 32, 33-34, 48, 49. There are even direct and grossly misleading references specifically to the North Broward Hospital District. Amici Brief at 3.

But no issue concerning the construction of the Charters of these districts, each a special act of the legislature, under which the public hospital districts of the State operate is presented by this case. And, indeed, in making their broad arguments, Amici do not even cite the relevant special acts, which differ so significantly that they cannot responsibly be lumped together. There appear to be at least 20 different local hospital districts and authorities within the State. Each operates under its own distinct enabling legislation, passed and authorized by the state legislature. E.g., Fla. Laws, Ch. 69-1201 (South Lake County Hospital District); Ch. 61-2232 (Highlands County Hospital District); Ch. 67-1724 (Lower Florida Keys Hospital District); Ch. 65-1905 (Marion County Hospital District).

constitutes sound public policy. That view of public policy sharply contradicts the view and historic practice of the Hospital District.

Amici are, of course, 47 private hospitals, primarily hospitals that operate to make profits for investors ("investor-owned" hospitals),[3/] and 2 nationwide trade associations representing such institutions. The "public policy" they espouse, and claim to find in the actions of the legislature, reflects their motives. The logical extension of the health system they envision has two tiers: Public hospitals -- which have historically lead the way in providing the finest equipment and care, at lowest cost, to all segments of the community -- would simply be overwhelmed with the poor and the "unprofitable," and relegated to the lower tier. The upper tier would be dominated by private hospitals that shunt unprofitable patients to the public hospitals in order to guarantee continued high profits for themselves.

At any level, as a matter of patient care or social or medical policy, the result that Amici improperly ask this Court to legislate, is bad policy. Because the North Broward Hospital District could be directly and grievously affected by the dictum that Amici hope to elicit from the Court, and because the issues raised involve significant public policy questions in which the

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[3/] Many Amici are subsidiaries of the Hospital Corporation of America, the single largest proprietary chain in the world and one of the most profitable corporations in the country. Some are subsidiaries of the second largest chain of proprietary hospitals, the well-known Humana Corporation.

Hospital District has a substantial interest, the North Broward Hospital District has been forced to file this brief as amicus curiae.

SUMMARY OF ARGUMENT

The Hospital District will confine its argument to three points:

1. The mercenary transfer of indigent patients from private hospitals to public hospitals is wrong from an ethical, medical, and public policy perspective.

2. The legislature of the State of Florida has not endorsed a system in which private hospitals are relieved of all obligations to the poor, or in which local governments are under an obligation to finance charity care provided by private hospitals. On the contrary, the legislature of the State of Florida contemplates a system in which private hospitals continue their historic role of providing services to the poor as an ordinary consequence of being in the hospital business. Under the State's vision of appropriate public policy, financial assistance for treating the poor will come through a specific state-administered fund, and not from local governments.

3. Amici have misstated the role of hospital districts generally, and the North Broward Hospital District in particular.

I. THIS COURT SHOULD NOT PLACE THE STATE OF FLORIDA'S IMPRIMATUR ON THE PRACTICE OF DUMPING INDIGENT PATIENTS

In approaching the technical legal issues in this case, it is easy to lose sight of the fact that this is a medical case and that the lives and health of real persons are at stake. This case arose because American Hospital of Miami insists upon transferring indigent patients to Jackson Memorial Hospital for no other reason than because those patients are indigent. The practice is known as "dumping," and apparently Jackson Memorial has offered some resistance to American Hospital's insistence upon engaging in that practice.

Under the common law of this State, a hospital is generally free to turn away an elective patient who cannot pay for treatment. Many (though perhaps not all) investor-owned hospitals simply turn away all potential indigent or uninsured patients at the door. Those private hospitals thereby guard themselves against the uninsured poor, and most of the cost of treating the poor, simply by refusing admission to patients that have not demonstrated an ability to pay.

There is, however, an explicit statutory limitation on that common law prerogative. No hospital that has an emergency room is allowed to turn away a patient in need of emergency care. See Fla. Stat. §§ 401.45, 395.0143. On the contrary, the law mandates that no hospital may "deny any person treatment for any emergency medical condition which will deteriorate from failure to provide such treatment."

Yet a pernicious practice has arisen under which the spirit and the purpose of § 401.45 and § 395.0143 are circumvented: Some private hospitals have developed the practice of treating the emergency patient, as required by § 401.45 and § 395.0143, but only just enough to render that patient "stabilized for transport" in the opinion of one of the hospital's doctors. As soon as the patient is stable for transport, the private hospital will try to ship that patient out to a public hospital. The practice is morally and medically suspect.

The transfer of patients in need of continuing care for purely financial reasons is widely regarded as unethical. Financially-motivated transfers violate, for example, the precepts of the American College of Emergency Physicians, which provide that

> Transfer of a patient from one facility and/or physician to another facility and/or physician should be only on the basis of medical necessity . . . and should disregard socio-economic considerations.

See Exhibit A (emphasis added). Medical need should establish the criteria for a transfer; "socio-economic" factors should not. The medically unnecessary transfer of patients in need of care also violates the guidelines of the Joint Committee on Accreditation of Hospitals ("JCAH"), which provides that

> Unless extenuating circumstances are documented in the patient's record, no patient shall be arbitrarily transferred to another hospital if the hospital where he is initially seen has the means for providing adequate care.

See Exhibit B (emphasis added). Following these same humanitarian instincts, courts have held that economic considerations alone are not a reasonable justification for transferring a patient once treatment is begun, if the patient in fact requires continued medical care and the transferring facility has the means to provide it. E.g., Thompson v. Sun City Community Hospital, Inc., 141 Ariz. 597, 688 P.2d 605 (1984); Le Jeune Road Hospital v. Watson, 171 So.2d 202 (Fla.3d DCA 1965).

These ethical principles reflect sound medical practice. Amici intimate that the only persons that they would transfer are persons "who can be safely" transferred. Amici Brief at 3, n.1. But there is, and can be, no assurance of absolute safety in transfers that are, by definition, medically unnecessary.

Once treatment is begun, it is medically prudent to continue it in the same institution. This brief is not the occasion to present expert medical testimony on the problems inherent in making difficult judgments of "stability for transport." Nor is there need to do anything more than note the possibility of special difficulties in making medical judgments of that type where there is financial pressure being exerted to transfer the patient out of the hospital. But at a minimum, the Court may take judicial notice of instances in which persons who were judged to be in a stable medical condition nonetheless suffered permanent disability as a result of a purportedly "safe" transfer. E.g., Thompson v. Sun City, supra. Moreover, apart from the risk of permanent injury, patients who are transferred will continue to suffer pain, mental distress, and concern in the course of their

unnecessary transportation from one hospital to another. E.g., Le Jeune Road Hospital v. Watson, supra. It is appropriate for a governmental institution to try to protect patients, even indigent patients, from these risks and these harms; it is not appropriate for the State of Florida to tacitly endorse these practices as Amici and Respondent ask the Court to do.

Amici's statement that "for many years the North Broward Hospital District has enforced a policy of refusing to provide care to indigent residents who have first been seen at a private hospital," Amici Brief at 3, n.1, is misleading. As noted above, the Hospital District only refuses to accept patients "that have first been seen at a private hospital" when those indigent patients are being transferred to suit the financial convenience of the transferring hospital. In accordance with the ethical precepts identified above, the Hospital District will accept the transfer of indigent patients whenever there is a medical reason for the transfer -- such as the availability of services or equipment at the public hospital that are not available at the transferring hospital.[4/] This policy reflects a sound and humane

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[4/] The formal statement of policy is as follows:

> 1) An elective, non-emergent patient who seeks admission at a non-district hospital and does not meet its admitting requirements and is refused, may choose to seek admission at the nearest district hospital. Our district physicians and hospital personnel will determine if treatment and/or admission are required and provide whatever may be necessary.

(Footnote continued)

exercise of the discretion vested in the Hospital District by law.[5/]

II. THE POLICY OF THE STATE OF FLORIDA FULLY RECOGNIZES THAT PRIVATE HOSPITALS WILL AND SHOULD TREAT INDIGENT PATIENTS

At one point in their brief, Amici acknowledge that "the State itself, the private hospitals doing business in the State, and Florida's counties all have a significant role to play" in providing care to the poor. Amici Brief at 7. To be sure, the counties, other public hospitals, and the State, all have taken an

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[4/] (continued)

> 2) A patient in a non-district hospital who requires services that are not available in that facility may be considered for transfer to a district hospital having the required services. The physician at the non-district facility must call the appropriate physician of the district hospital so that the medical aspects may be confirmed. Also, the approval of administration at the district hospital involved must be obtained prior to the transfer. Examples would be a patient requiring an artificial kidney or radiation therapy.
>
> 3) A patient who is treated and/or admitted at a non-district facility will not be accepted as a transfer to our district hospitals before or during the hospital stay unless he meets the criteria listed above in paragraph 2.

[5/] Yet this policy has not satisfied the private hospitals in the area, many of whom have banded together to bring a federal court lawsuit to compel the Hospital District to accept transfers made entirely for financial reasons. See fn. 1, supra.

active role in providing care to the poor.[6/] The State, the counties, and other public hospitals undertake these things because they are willing, voluntarily, to act in the public interest. They do not, however, embark upon these undertakings lightly or without limitation.

But while State and local governments actively do their part, and whereas most private hospitals have historically regarded charity care as an ordinary cost of being in the hospital business, it is the essence of Amici's position that unless private hospitals are actually paid by counties for treating indigents, they have an absolute right to relieve themselves of unwanted indigents by the simple expedient of shipping them off to public hospitals. In short, they claim that private hospitals have no role to play in caring for the poor. That is not the policy of the State of Florida, and the best indication that it is not the policy of this State may be found in the Public Medical Assistance Act of 1984.

The Public Medical Assistance Act of 1984, 1984 Fla. Laws, ch. 84-35 ("PMAA"), is the State's most recent attempt to deal with the problem of indigent care. It requires all hospitals to share the burden of indigent care and to contribute to a fund for

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[6/] Government medical programs are many and varied. The State, of course, has medicaid and other programs. County programs vary from county to county. For example, Broward County provides no hospital care funds for the poor, but that does not mean that it ignores the poor; it does appropriate money for valuable out-patient, preventative medicine projects.

such care, potentially to be redistributed to all hospitals on the basis of the amount of indigent care they provide. See Fla. Stat. § 395.101. Obviously there would be no urgent need to establish such a state fund, financed by private hospitals, if hospital districts, counties, and "local governments," already had a legal obligation to pay for indigent care, as Respondents and Amici assume.

The PMAA resulted from recommendations submitted to the Legislature by the Florida Task Force on Competition and Consumer Choices in Health Care. Created by the Legislature in 1982, the Task Force was directed to consider (1) how to control escalating health care costs in the context of a competitive health care system, and (2) how to provide needed services for indigents who were perceived as being neglected in a competitive system.

The Task Force issued its report in March 1984, decrying the trend toward commercialization, the decline of private charity in the health care industry, and the tendency toward a divided two-tier system of medical care. Report and Recommendations of the Florida Task Force on Competition and Consumer Choices in Health Care, ch. 4 (March 1984) (Exhibit C). It urged a system in which private hospitals continue to assume a share of the indigent burden, and insisted that the appropriate balance between public and private resources should be determined by the government, not private marketplace forces. Id. at 133-34. The Task Force was particularly critical of the proprietary ("investor-owned") hospitals, stating that they typically

> do as little teaching as possible, limit their patient mix to as few Medicaids and unsponsored cases as possible, avoid offering services that are regular losers, and ship as many as possible high intensity, high risk patients to referral centers.

Id. at 135, quoting D. Kinzer, Care of the Poor Revisited (1983) (unpublished paper).

Speaking to the subject of indigent care, the Task Force noted that against the background of an industry that traditionally has recognized that it has an obligation to serve the community, there has been a "dramatic downward trend" in the level of indigent care provided by proprietary hospitals. Id. The Task Force also observed that hospitals which do recognize their obligations to the community often cannot compete with the typical proprietary hospital that skims affluent paying patients while providing little or no public service in the form of indigent care, education or research.

In response to these conditions, the Task Force recommended that the Legislature adopt a comprehensive program for meeting unserved health care needs of the poor and requiring all hospitals, as well as the State and the counties, to share the cost of such service. Specifically, the Task Force proposed:

> a. The establishment of a "Medical Indigency Pool" to which all hospitals, counties and the State would contribute annually. Hospitals, including proprietary, voluntary, and public, would pay approximately 3 percent of their net operating revenues (to be adjusted upward or downward according to the needs of the pool). Counties would pay $4.00 per resident, and the State would pay $20 million. New federal matching funds would also be utilized in the pool.

b. The pool would be used primarily to (i) fund an expanded Medicaid program (extending Medicaid benefits principally to the children of intact families), (ii) provide payments to hospitals for the care of patients that qualify as medically indigent but are not covered by Medicaid, and (iii) create a "medically needy" program designed to cover some of the medical costs of poor people who do not quality as medically indigent.

The Medical Indigency Pool, in short, was conceived by the Task Force as a means of equitably financing indigent hospitalization costs, by spreading the financial burden to all hospitals, as well as to counties and to the State.

Despite intense lobbying by private, for-profit hospitals and their trade association, the Florida League of Hospitals, the Legislature adopted the substance of the Medical Indigency Pool proposal, as well as other key Task Force recommendations. As enacted, § 5 of the PMAA states that the "intent of the Legislature to provide a mechanism for the funding of health care services to indigent persons, the cost of which shall be borne by the State and by hospitals which are granted the privilege of operating in the State." See Fla. Stat. § 154.33. Under § 7, each licensed hospital in the State of Florida must pay an assessment of 1 percent of its annual net operating revenues in the first year and 1.5 percent in subsequent fiscal years to help finance indigent care throughout the State. See Fla. Stat. § 154.35.

In sum, if the new Act stands for anything, it is that the legislature does not intend the entire burden of indigent care to be borne by the State, the counties, or the public hospital

districts, as Amici allege. The legislature has consciously crafted a program to deal with a difficult social problem. It has done so, not by relieving private hospitals of the cost of providing indigent care, but by equitably spreading among them the cost and responsibility of providing such care. Under the Act, the burden of indigent care is to be shared by all hospitals, which are in turn expected to provide such care. The cost of providing such care is to be partially paid by all hospitals that enjoy the privilege of operating in Florida, as well as public bodies, through a state fund. Amici is trying to elicit a ruling in this case that will undo what the legislature has purposefully done.

Amici state that the issue on this appeal is "whether the burden of indigent health care should fall exclusively upon the private hospitals of the State or whether those burdens should be equitably shared." Amici Brief at 3. Amici raise the spectre that unless this Court subscribes to the notion that public hospitals must treat all indigents under all circumstances, "the doors may be thrown open in some counties to a wholesale renunciation of responsibility for the health care needs of the impoverished, to their ultimate misfortune and to the possible financial ruin of many of Florida's private hospitals." Id. at 4.

This is nonsense. The public hospitals of the State already carry almost all of the weighty burden of providing hospital care to indigent patients. They do so voluntarily. The North Broward Hospital District, for example, spent close to 35 million

dollars[7] on indigent care, treating more than 5,000 indigent patients[8] in 1983 alone. By contrast, Plantation General Hospital, a private hospital in the North Broward area, and one of the Amici in this case, admitted a total of 38 indigent patients during approximately the same period.[9] Despite this kind of embarrassing performance, Plantation General Hospital has sued the Hospital District in federal court,[10] insisting that it should not have been forced to treat, and is entitled to be paid in cash for treating, even this small handful of charity patients.

Thus, the unfortunate fact of the matter is that many private hospitals see this suit as a means by which they can rid themselves of even the very small number of charity patients that they now accept. The issue is not whether, as propounded by Amici, private hospitals should bear all of the indigent care load, but whether they should bear any of that load. The real question is whether a private hospital will now be granted a constitutional or statutory right to unburden itself of even the 20 or 30 charity patients it admits a year as an ordinary cost of being in the

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[7] See North Broward Hospital District audited financial statement for fiscal year 1984.

[8] See June 30, 1984 patient charge-off report of the North Broward Hospital District.

[9] See Plantation response to damages interrogatory #1 in Docket No. 81-6103-CIV-ATKINS (S.D. Fla.) (Jan. 4, 1985).

[10] See fn. 1, supra. Support for all the above specific factual statements may be found in the record of those proceedings, of which this Court may take notice. For present purposes, the specifics are less important than the nature of the situation they exemplify.

hospital business, and whether the State of Florida through this Court should endorse the two-tier healthcare system -- one for the rich and one for the poor -- that the legislature has tried so hard to avoid.

III. AMICI PRESENT A VERY MISLEADING PICTURE OF THE FUNCTION OF HOSPITAL DISTRICTS IN GENERAL, AND THE NORTH BROWARD HOSPITAL DISTRICT IN PARTICULAR

In trying to advance their argument, Amici make several misstatements about hospital districts in general, and the North Broward Hospital District in particular. The character of their misstatements reveals much about the underlying weaknesses in their public policy argument.

1. Amici say that the North Broward Hospital District "realized a net surplus of revenue over expenses . . . of more than $17 million," Amici Brief at 3, n.1, and imply that this is money that should be given to private hospitals or used to pay for the treatment of unprofitable patients that those private hospitals would transfer away.

Any person with accounting experience understands that what Amici refer to as a "net surplus of revenue over expenses" is the money that the Hospital District will use for capital projects -- to build new public hospitals, improve and expand existing ones, and finance major equipment purchases. Unlike "investor-owned" hospitals, public hospitals do not distribute their "net surplus" to shareholders; they can only use it for the benefit of the public.

Improvement and modernization are essential to the provision of high quality medical services. Amici's failure to recognize this fact reveals a fundamental truth about the issue presented in this case: Every additional dollar that public hospitals are compelled to spend treating indigents, who would otherwise be treated in private hospitals, is one less dollar that the public hospitals will have left to modernize and maintain their facilities.[11/]

2. Amici say that the "District's Board of Commissioners is not elected by the people of the District and is thus accountable to no one for its actions." Amici Brief at 4 n.1.

Contrary to that assertion, the members of the Board of Commissioners of the North Broward Hospital District are directly accountable to the State of Florida and to the taxpaying public; each of its members has been appointed by the Governor of the State, and serve for a fixed term. Chapter 27438, Fla. Laws, as amended, § 3. Moreover, all budgets of the Hospital District are formulated on the basis of public hearings, and all changes to the Hospital District's Charter must be expressly approved by an affirmative act of the state legislature.

The point is important. At issue in this case is the discretion of local government officials who are answerable to their

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[11/] To the extent that public hospitals cannot afford to modernize their facilities, the private hospitals gain but the public loses. When a public hospital provides high quality services in modern facilities that puts great competitive pressure on the private hospitals also to maintain the high quality of their institutions. That, of course, costs money.

constituencies through the political process. It is reasonable to believe that they will try to make the difficult decisions involved in setting limits on charity treatment on the basis of their disinterested judgment as to sound public policy, and the best interests of patients and constituents. On the other side are private hospitals, many of which are investor-owned and, therefore, focused on maximizing profits. There is no assurance whatsoever that these private institutions, if given the absolute discretion over indigent care that they demand, will exercise that discretion in a manner consistent with the public policy of the State or the best interests of patients.

3. Amici say that the South Broward Hospital District "accepts referrals of indigent patients." Amici Brief at 4 n.1.

If this really were the proper case to compare the discretionary policies of different local government units not before this Court, the Hospital District would point out that in most circumstances the South Broward Hospital District also prohibits the "post-emergency" transfer of indigent persons who have been admitted to a private hospital. And, of course, the North Broward Hospital District also accepts "referrals of indigent patients," but only if the referral is made for a medical reason. The transfers that the Hospital District limits are transfers that are made merely to suit the economic convenience of the transferring hospital, not the medical needs of the patient.

But again, there is an important point to be made. There is nothing wrong with the fact that in addressing these issues different hospital districts arrive at a different balance reflecting

their own unique circumstances. Each local government board must concern itself with competing needs and budgetary restraints. The judgment and discretion is properly given to the officials charged by law with administering those funds and operating those public hospitals. The decision how to allocate local funds for medical care should be made by the officials to whom the Legislature specifically assigned those difficult discretionary judgments; it should not be made on a uniform, statewide basis by the courts.

4. Amici seem to suggest that the state legislature created hospital districts merely as a place to remit indigents. Amici Brief at 29-30. That is what Amici would like, but it is not the truth. The Legislature created special districts to build and operate hospitals for the general benefit of their communities, not as indigent dumping grounds.

In regard to Amici's assertion that hospital districts have an absolute duty to absorb the cost of treating indigents (even to the extent of facilitating the "dumping" of the poor), the Hospital District would point out that its own Charter, passed by special act of the Legislature, expressly states that the Hospital District "may," not that it must, "treat without charge indigent residents." 1951 Fla. Laws, Ch. 27438, as amended, § 30; see Moore v. North Broward Hospital District, No. 78-19189 (17th Judicial Circuit, December 11, 1978). Indeed, the Hospital District's Charter plainly grants the Board of Commissioners the "exclusive authority" to determine the "terms, conditions and consideration" for the use of its facilities. 1951 Fla. Laws, Ch.

27438, as amended, § 6. The Legislature recognized that admissions decisions are local matters and has therefore properly granted the governing board the power to exercise its judgment to limit access to district facilities. But even if the grant of such discretion over admissions had not been explicit, a court should be loathe to believe that any hospital or government body lacks the power to resist the pernicious practice of "dumping."

CONCLUSION

Amici argue for what they claim is a narrow ruling from this Court. But the dicta they seek is intended to reach far beyond this case and impose duties on local government bodies not remotely before the Court. Those duties are incompatible with the best interests of patients and prevailing ethical standards. Amici expressly ask this Court to "rule that a unit of local government has a legal and financial duty to provide post-emergency medical care to indigent residents when it has used public funds to create and operate a medical facility or when such a unit of local government was itself created for the purpose of providing hospital services (such as a hospital district)." Amici Brief at 49 (emphasis added).

The requested ruling is an attempt to reach beyond the facts of this case to reach issues not presented by this case. This case, at most, has to do with counties and the special responsibilities of county governments, and not with municipalities, townships, hospital districts, or any other unit of local government. But even more fundamentally, the ruling Amici and Respondents seek

reflects bad policy, bad medical practice, and is incompatible with the expressed will of the legislature. It is thus unjustifiable and wrong.

Respectfully submitted,

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Dated: June , 1985

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief Of Amicus Curiae The North Broward Hospital District was mailed, first-class postage prepaid, this 21 day of June 1985, to:

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