

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020782

1. REQUESTED MOTION:

ACTION REQUESTED: Consider contract adjustments for medical mal practice and workers compensation for Shady Rest Care Pavilion, Inc.

WHY ACTION IS NECESSARY: To adjust current required liability insurance.

WHAT ACTION ACCOMPLISHES: Amends Operations and Lease Agreement with Shady Rest Care Pavilion, Inc.

2. DEPARTMENTAL CATEGORY: 05
COMMISSION DISTRICT: CW

C5A

3. MEETING DATE:

08-27-2002

4. AGENDA:

- CONSENT ADMINISTRATIVE APPEALS
- PUBLIC WALK ON TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Human Services
- C. DIVISION

BY: Karen Hawes

*Ann M. Hall for KBH
6/26/02*

7. BACKGROUND:

Consider contract adjustments to amend the current Lease and Operations agreement for the Shady Rest Care Pavilion, Inc. The facility is required to provide \$1,000,000/\$3,000,000 effective July 1, 2002. Staff is currently reviewing information and scheduling this item at this time so that the facility remains in compliance with their agreements.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Ann M. Hall KBH</i>	NA	NA		<i>Aranea Hawes</i>	OA <i>RK 6/26</i>	OM <i>6/26/02</i>	Risk <i>6/27</i>	GC <i>6/27/02</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED TO 08-09-02
 OTHER 8/6/02

Rec. by CoAtty
 Date: 6/26/02
 Time: 11:00 AM
 Forwarded to:
 Budget
6/26/02 2:55 PM

08-06-02 -
DEFERRED TO
08-13-02
08-13-02 -
DEFERRED TO
08-27-02

REC. CO. 6/26/02
4:00 pm
6/27/02
1pm
 BL

**BOARD OF COUNTY COMMISSIONERS
CARRYOVER AGENDA ITEMS
MEETING DATE: August 13, 2002**

<u>CO #</u>	<u>DATE & TIME DISTRIBUTED</u>	<u>DESCRIPTION</u>
CO #1	08-12-02 2:00 PM	ACTION REQUESTED: Consider contract adjustments for medical malpractice and workers compensation for Shady Rest Care Pavilion, Inc. WHY ACTION IS NECESSARY: To adjust current required liability insurance. WHAT ACTION ACCOMPLISHES: Amends Operations and Lease Agreement with Shady Rest Care Pavilion, Inc. (#20020782-Human Services) <hr/> REASON FOR CARRYOVER: Directed at the August 6, 2002 BOCC meeting.

**BOARD: ALBION COY JUDAH JANES ST. CERNY
DONALD STILWELL, COUNTY MANAGER
BILL HAMMOND, DEPUTY COUNTY MANAGER
BRUCE LOUCKS, ASSISTANT COUNTY MANAGER
ANTONIO MAJUL, BUDGET SERVICES
JIM YAEGER, COUNTY ATTORNEY
JIM LAVENDER, PUBLIC WORKS**

**PUBLIC RESOURCES OFFICE
LISA PIERCE, MINUTES DEPT
COMMISSION RECEPTION DESK
BETTY SPENCER, FINANCE**

Distributed by: Kathy Geren
Division of Public Resources
Phone: 335-2215



**MEMORANDUM FROM
THE DEPARTMENT OF
HUMAN SERVICES
ADMINISTRATION**

Date: June 26, 2002

To: All Concerned Departments

From: Ann Arnall 
Deputy Director

Re: Walk-on Blue Sheets (Numbers 20020782 and 20020783)

The attached blue sheet numbers 20020782 and 20020783 need to be walked on for the July 9, 2002 Board of County Commissioners meeting.

Blue Sheet Number 20020782 is to consider contract adjustments for medical malpractice and workers compensation for Shady Rest Care Pavilion, Inc. effective July 1, 2002.

Blue Sheet Number 20020783 is to execute a contract between Lee County Board of County Commissioners and The Health Planning Council of SWFL, Inc. for the Housing Opportunities for Persons with AIDS Program (HOPWA) effective July 1, 2002. Approve a Budget Resolution to the General Fund in the amount of \$70,338.00.

Thank you.

MEMORANDUM
FROM
OFFICE OF THE COUNTY MANAGER
RISK MANAGEMENT

Date: July 8, 2002

To: Board of County Commissioners

From: Lori Parker Parsons *LP*
Risk Program Manager

RE: CONSENT ITEM #5 (B) – SHADY REST CARE PAVILION, IN.C

Pursuant to the attached memorandums from Karen Hawes and Anne Dalton regarding Shady Rest's request to reduce the medical professional liability insurance requirements in the Operation and Lease Agreement, please be advised that the Risk Management Office is not in a position to recommend Board approval of this request.

Based upon the limited information that has been presented, I cannot recommend the Board consider the coverage limits requested by Shady Rest. For your reference, attached please find a copy of a June 17, 2002 memo that I sent to Karen Hawes, which clearly outlines my position regarding the insurance issues.

Further, while I clearly recognize that market conditions and the high cost of this coverage make it necessary to explore other options, I don't necessarily agree that lowering the limits of coverage to the bare minimum is appropriate nor would it provide adequate coverage to the Board of County Commissioners for the inherent liability we have as the owners of the facility.

Without guidelines which establish industry standards for nursing home coverage, it is reasonable to require Shady Rest (just like any other contracted service provider) to carry limits of coverage which show financial responsibility and provides adequate/cost effective coverage.

If at such time Shady Rest provides additional, more detailed information regarding the coverage they have obtained, I would be happy to review and provide the Board with my opinion. In addition, I would also be happy to have the County's insurance broker (Arthur J. Gallagher & Co.) seek additional coverage options for Shady Rest, if the Board authorizes me to do so.

I hope this information has been helpful. Should you have any questions, please do not hesitate contact me.

Cc: Donald Stilwell, County Manager
Bruce Loucks, Assistant County Manager
David Owen, Assistant County Attorney
Andrea Fraser, Assistant County Attorney
Karen Hawes, Director, Human Services
Anne Dalton, Shady Rest Care Pavilion, Inc.

MEMORANDUM
FROM
OFFICE OF THE COUNTY MANAGER
RISK MANAGEMENT

Date: June 17, 2002

To: Karen Hawes, Director
Human Services

From: Lori Parker Parsons
Risk Program Manager

RE: SHADY REST CARE PAVILION

Per your request, I have reviewed Shady Rest's proposal dated March 28, 2002. More specifically, the sections pertaining to medical professional liability and workers' compensation.

Currently, Shady Rest is contractually required to carry minimum limits of \$1M per occurrence and \$3M per aggregate of medical professional liability insurance. In September 2001, the BoCC approved this reduced limit from its previous limit of \$5M.

I believe that the limits of insurance required by the BoCC afford Shady Rest reasonable coverage against losses. However, the nursing home liability insurance market in this state is at the crisis level causing many nursing homes (long terms care facilities) to completely drop their professional liability coverage or purchase it with very low limits.

Thus, the legislature has once again reviewed the crisis that the nursing homes in the state of Florida are faced with. As such, it will become a requirement for all nursing homes to carry professional liability insurance effective July 1, 2002. While the legislature has mandated that nursing homes must now carry professional liability insurance, they have not set any specific limits they must carry. To further help improve the availability of medical professional liability insurance for nursing homes, the legislature also approved a \$6M loan to cover the capitalization expenses of a new Risk Retention Group, thus making a move within the industry that will likely provide insurers with an opportunity to develop new programs (i.e., increasing the availability of this type of insurance).

Be that as it may, Shady Rest will likely still be faced with affordability of coverage and have asked the BoCC to consider reducing the limits of medical professional liability insurance they are required to carry from \$1M/\$3M to \$250K/\$500K. While this limit of insurance is the minimum that is available, I do not believe that it is "industry standard" nor do I believe that it would afford Shady Rest reasonable protection against losses.

I would recommend that the BoCC consider reducing the medical professional liability limits to \$500K per occurrence and \$1M per aggregate. I have been assured that there is market availability for this coverage and more specifically, these limits.

As far as Shady Rest's request to have the option to self-insure their workers' compensation coverage, I don't necessarily have a problem with this as long as we can add language giving us the opportunity to review and approve the financial stability of such a program. I would recommend that the following language be added to what has been proposed:

"SRCP may comply with the above requirements through the purchase of no deductible commercial insurance or the use of a combination of self-insured retentions (SIR) and commercial insurance commonly known as a self-funded program. Approval by the BoCC of such a program will be based upon the Lee County Risk Management Office review and acceptance of information relating to the financial stability and solvency of such a program".

I hope this information has been helpful. Should you have any questions or require my assistance further, please do not hesitate to contact me.

Cc: Bruce Loucks, Assistant County Manager
Tony Majul, Budget Director
David Owen, Assistant County Attorney
Andrea Fraser, Assistant County Attorney

ACORD CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)
07/08/02

PRODUCER
BROWN & BROWN INC
220 SOUTH RIDGEWOOD AVENUE
P O BOX 2411
DAYTONA BEACH, FL 32114

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

AMERICAN FIDELITY AND SURETY COMPANY

INSURED
SHADY REST CARE FACILITY INC
2310 N. AIRPORT ROAD
FT MYERS, FL 33904

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW ARE IN FULL FORCE AND EFFECT FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY FEELINGS OR OPINIONS OF THE PRODUCER OR THE INSURED WITH RESPECT TO WHETHER THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN TO SUCH POLICIES. THIS CERTIFICATE IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NO.	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
A	GENERAL LIABILITY	IRA			BODILY INJURY AND PROPERTY DAMAGE \$250,000 PERSONAL AND ADVERTISING INJURY \$250,000 PRODUCTS AND COMPLETED OPERATIONS \$250,000 MEDICAL EXPENSE \$250,000 FUTURE CARE (Any one day) \$50,000 MEDICAL EXPENSE (Any one day) EXCLUDED
X	COMMERCIAL GENERAL LIABILITY				
	<input checked="" type="checkbox"/> CLAIMS MADE				
	<input type="checkbox"/> OWNERS & CONTRACTORS PROFT				
X	PROFESSIONAL				
	AUTOMOBILE LIABILITY				
	ANY AUTO				
	ALL OWNED AUTOS				
	SCHEDULED AUTOS				
	HIRED AUTOS				
	NON-OWNED AUTO				
	WAREHOUSE LIABILITY				
	ANY AUTO				
	EXCESS LIABILITY				
	UMBRELLA FORM				
	OTHER THAN UMBRELLA FORM				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
	THE PROPRIETOR, PARTNER, OR OFFICER AND OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL PERFORMANCES

CERTIFICATE HOLDER

PROOF OF INSURANCE

CANCELLATION

IF THE POLICY IS CANCELLED, THE POLICY WILL BE CANCELLED BEFORE THE CANCELLATION DATE. THEREFORE, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL A WRITTEN NOTICE TO THE POLICY HOLDER NAMED TO THE LEFT. THE POLICY IS NOT MAINTAINED UNDER NO OBLIGATION OR LIABILITY TO THE COMPANY OR ITS AGENTS OR REPRESENTATIVES.

Brown & Brown
BROWN & BROWN CORPORATION 1993

Memo: From the Department of Human Services

To: Donald Stilwell
From: Karen B. Hawes
Date: 7/8/2002
Re: Agenda Item 5(b) Shady Rest Care Pavilion – Insurance

Currently, in accordance with their agreement Shady Rest Care Pavilion, Inc. (SRCP, Inc) is required to carry minimum limits of \$1M per occurrence and \$3M per aggregate of medical professional liability insurance.

On July 5, 2002 staff was notified that the facility secured \$250,000/\$250,000 for professional liability. The premium cost for this coverage was \$309,706. The facility received three quotes which are detailed in the July 5, 2002 letter from Ms. Anne Dalton, Chair of the Shady Rest Care Pavilion, Inc. Based on this information staff is recommending that the secured limits for professional liability be accepted and the Operation and Lease Agreement be amended accordingly.

Additionally, SRCP, Inc. requested that the Operations and Lease Agreement be modified so that if they have the ability in the future to self insure they can proceed. Staff recommends that if the facility proceeds with self insurance that the Risk Management office review and recommend acceptance at that time to the Board of County Commissioners.

Attached is correspondence received from Ms. Anne Dalton, Chair of the Shady Rest Care Pavilion, Inc. Board of Directors, dated July 5, 2002 and Mr. Bob Beiseigel, President, dated July 2, 2002.

If you have any questions regarding this please contact me.

CC: BOCC 1, 2, 3, 4, 5

Bruce Loucks, Assistant County Manager

David Owen, Assistant County Attorney

Andrea Fraser, Assistant County Attorney

Lori Parsons, Risk Manager

JUL 05 02 12:26p

DALTON/BAYSIDE

941-337-7642

p.2



SHADY REST CARE PAVILION, INC.
Not-for-Profit Nursing & Rehab Services

A Tradition in Caring since 1958

Board of Directors Karen Hawes, Director, Department of Human Services
Sent via Facsimile only: 239-652-7960

Anne Dalton, Esquire
Chair & President July 5, 2002

Joseph E. Barbee
Vice Chair RE: Medical Malpractice Insurance/July 1, 2002 through July 1, 2003

Thomas J. Dalton
Treasurer Dear Karen:

Robert L. Murray
Secretary
AIG has issued SRCP, Inc. a policy for the above insurance, with \$250,000/\$250,000 coverage. The premium costs \$309,706. The Board and staff had conducted an exhaustive search for insurance with other limits, and were only able to obtain three other quotes:

Donald P. Amenta, Esquire

Larry Hart

Reina Schlager

Donlee Heilmann, DRPH

James O. Halbrook

Henry Ogwedgbe, Ph.D.

Dee Mason

(A) Lloyds (CRC): \$500,000/\$1 million; \$250,000 deductible plus mandatory \$250,000 letter of credit securing the deductible, at a premium cost of \$450,000. We cannot obtain such a letter of credit, since SRCP holds title to no assets per the Agreements with Lee County.

(B) Lloyds (CRC): \$1 million/\$1 million; \$250,000 deductible plus mandatory \$250,000 letter of credit securing the deductible, at a premium cost of \$626,000. This premium cost is completely unreasonable.

(C) Essex: professional liability \$50,000/\$50,000 and higher limits on general liability; \$5,000 deductible; \$108,322 premium cost. Since the premium is over double the aggregate coverage, this shows the desperation in this insurance market and is probably a response to the new law requiring all nursing homes to carry "liability insurance".

No professional liability coverage was available at limits of \$250,000/\$500,000 or \$1million/\$3 million.

We are requesting the County Commission to reduce the medical malpractice liability insurance requirement to \$250,000/\$250,000. We are a 100% volunteer board, made up of Lee County community members, and are trying to balance our obligations to the County with our fiduciary obligations to the impoverished elderly who reside at Shady Rest. Thank you for your consideration.

Sincerely,

Anne Dalton, Esquire

MAD/os

Shady Rest Care Pavilion, Inc.
2310 North Airport Road, Fort Myers, FL 33907
Telephone: 239/277-5000 Fax: 239/277-5003

Jul 03 02 01:34p

DALTON/BAYSIDE

941-337-7642

p.2

Business Decisions

850-422-1739

07/06/02 09:55A P.002



July 2, 2002

Ms. Anne Dalton, Board Chairman &
Mr. Wes Edwards, Administrator
Shady Rest Care Pavilion, Inc.
2310 N. Airport Road
Ft. Myers, FL 33907

RE: Opinion Letter

Dear Anne and Wes:

At your request, I am writing to provide a brief summary of how nursing homes in Florida are currently handling their liability insurance coverages. As you know, I have been a financial consultant to the nursing home industry for the past eighteen years. I have served Shady Rest Nursing Pavilion in the same capacity since 1990. As a routine part of my job, I stay abreast of various industry trends that affect the long-term financial viability and performance of Florida's nursing homes.

I recently had occasion to canvas various nursing home industry representatives (owner/operators, professional association executives, accountants, etc.) regarding the nursing home liability insurance coverages presently in force. Based upon my informal survey, it appears that approximately 35% of Florida nursing homes are either: (1) obtaining the minimum coverage that insurers will write (i.e. \$25,000 aggregate annual loss); or (2) going "bare" until their license comes up for renewal (and they are then forced to obtain some minimal coverage). The remaining 65% of the nursing homes, are obtaining "real" coverage (i.e. no meaningful exclusions) at the minimum loss limits (\$250,000 per occurrence, \$500,000 aggregate loss). I am not aware of any other nursing homes in Florida, besides Shady Rest, that have coverage loss limits in excess of those above, either because the premiums are too high or the insurance is just not obtainable.

Please let me know if I can provide any additional information on this issue.

Best personal regards,

A handwritten signature in black ink, appearing to read "Bob", written over a white background.

Robert A. Beiseigel
President

2805 Walter Scott Road
Tallahassee, FL 32312-3051
850-385-5573
FAX 850-422-1739
email: beiseigel.bob@worldnet.att.net

From: Karen Hawes
To: Carney, Shirley
Date: 7/26/02 1:41PM
Subject: Re: Agenda for BoCC Regular Meeting of 8/6/02

Consent
Item 5(a) will be deferred until 8/13/02. We are waiting for information from insurance agency.

Karen B. Hawes
Director, Department of Human Services
haweskb@leegov.com
Phone: 239-652-7930
FAX: 239-652-7960

>>> Shirley Carney 07/26/02 10:22AM >>>

Attached is the agenda for the 8/6/02 regular Board meeting.

CC: Fraser, Andrea; Loucks, Bruce; Owen, David; Parsons, Lori; Schwartz, Holly

*on recap
07-31-02*

From: Ann Arnall
To: Geren, Patricia; Schwartz, Holly
Date: 8/12/02 4:46PM
Subject: Carry Over #1 August 13, 2002 BOCC meeting

Per Karen Hawes, this item should have been deferred until August 27, 2002.

She is unable to attend the Board meeting tomorrow. The information needed to make a decision has not been received yet.

THanks

Ann M. Arnall
Deputy Director

Department of Human Services
arnallam@leegov.com
Phone: 239-652-7920
Fax: 239-652-7960

Human Services Directory Online:
<http://www.lee-county.com/humanservices/directory/default.asp>

CC: Hawes, Karen; Owen, David

From: Patricia Geren
To: Hawes, Karen
Date: 8/12/02 2:02PM
Subject: Re: Shady Rest insurance issue

Will this be deferred at tomorrow's BOCC meeting?

>>> Karen Hawes 08/06/02 12:50PM >>>

I will request at the staff meeting tomorrow that this item be deferred until 8/27 meeting. It does not appear that we will have any decisions until then.

Karen B. Hawes
Director, Department of Human Services
haweskb@leegov.com
Phone: 239-652-7930
FAX: 239-652-7960

>>> Georgi Jackson 08/06/02 12:12PM >>>

I spoke to Arthur J. Gallagher today regarding the status of their search for appropriate insurance for Shady Rest. They advised me that they have received both the application and the loss runs from Shady Rest and that they are in the process of sending this information out to various carriers.

Susan will advise of any new information she receives ASAP, as she knows the item has been deferred until the 08/13/02 Board meeting. I will pass that information along as I receive it.

From: Karen Hawes
To: Geren, Patricia; Jackson, Georgi
Date: 8/6/02 12:51PM
Subject: Re: Shady Rest insurance issue

I will request at the staff meeting tomorrow that this item be deferred until 8/27 meeting. It does not appear that we will have any decisions until then.

Karen B. Hawes
Director, Department of Human Services
haweskb@leegov.com
Phone: 239-652-7930
FAX: 239-652-7960

>>> Georgi Jackson 08/06/02 12:12PM >>>

I spoke to Arthur J. Gallagher today regarding the status of their search for appropriate insurance for Shady Rest. They advised me that they have received both the application and the loss runs from Shady Rest and that they are in the process of sending this information out to various carriers.

Susan will advise of any new information she receives ASAP, as she knows the item has been deferred until the 08/13/02 Board meeting. I will pass that information along as I receive it.

CC: annedalton@att.net; Gilpin, Sue; Loucks, Bruce; Owen, David; Schwartz, Holly;
Wesedwardssrcp@aol.com