

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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September 1, 2010

Stephen Kay, Chair
Beth Israel Deaconess Medical Center
330 Brookline Avenue
Boston, MA 02215

Dear Chairman Kay:

By letter dated May 13, 2010, the Board of Directors (the "Board") of Beth Israel Deaconess Medical Center ("BIDMC" or the "Medical Center") requested that the Office of the Attorney General (the "Office") conduct a review of the "appropriateness of the Board's governance process and conclusions" in connection with the Board's investigation and disposition of an anonymous complaint (the "Complaint") made against Paul Levy, the Chief Executive Officer ("CEO") of BIDMC with respect to his personal relationship with an employee (the "Employee")¹. In response, the Office, through its Non-Profit Organizations/Public Charities Division (the "Division"), initiated a review (the "Review") under its authority to "*enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof.*" See M.G.L. c. 12, s. 8. BIDMC is a public charity and subject to the jurisdiction of the Division. This letter sets forth the results of the Review.

This Review does not constitute a *de novo* investigation of the Complaint or the personal relationship between Paul Levy and the Employee. The primary responsibility for providing oversight of the Commonwealth's more than 22,000 registered and operating public charities lies squarely with their respective governing bodies, which have the greatest familiarity with institutional operations, personnel and challenges. The Division generally does not substitute its judgments for these boards and will intervene in these situations only when a board has a fiduciary duty to act and fails to. As a result, while by necessity the Division evaluated and took into account underlying facts pertinent to the Complaint, the Review was primarily directed at the Board's actions with respect to the Complaint and whether those actions were consistent with its fiduciary obligations to BIDMC and the public BIDMC serves.

Executive Summary

On the basis of the Review and for the reasons set forth in the body of this letter, the Division has made the following primary findings.

¹ The Office has concluded that the identity of the Employee is not relevant to the Review.



(1) The Division found no basis to conclude that the Employee was not qualified for the positions she held at the Medical Center or its affiliate, Beth Israel Deaconess Medical Center Needham (“BI-Needham”). Her personnel record and the Division’s interviews reflect that she received satisfactory performance reviews, was compensated in amounts within the range set for her job grade, and upon termination received a severance payment consistent with Medical Center severance policies. The Division therefore found no evidence of misuse or abuse of charitable funds.

Nevertheless, the predictable and unfortunate result of combining personal and professional relationships within a workplace environment means decisions made regarding the Employee’s hiring, transfer, pay, bonuses, and performance reviews will always be subject to the perception they may have been influenced as much by the personal relationship with Levy as by her own professional performance.

(2) The outstanding reputation of an organization and its CEO are valuable assets of any charitable organization. The personal relationship between the CEO and the Employee, which continued throughout her tenure despite repeated expressions of concern by senior staff and certain Board members, clearly damaged his reputation and, of greater concern, endangered the reputation of the institution and its management. As such his continued, repeated and acknowledged failure to appreciate and address the situation merited, if not compelled, disciplinary action by the Board.

(3) Once the Complaint was received, the full Board acted in a manner consistent with its fiduciary obligations. While reasonable people, including some Board members, may and did differ on whether the Board action was too harsh or not harsh enough, the action was the result of an investigation done in the framework of an organized and thoughtful process, included a vigorous exchange of differing opinions and views, and left open the possibility of further action if merited.

Notwithstanding the foregoing conclusion, had the entire Board been informed and taken definitive action when concerns regarding the relationship were first expressed to Levy, much, if not all, of the damage would have been averted. The Board members who communicated their concerns to the CEO or management, but then failed to convey them to the full Board, may well have felt such direct communications were sufficient. Others may have heard rumors, but failed to follow-up. With the acknowledged aid of hindsight, it is now clear the entire Board should have been informed and taken action years before the lodging of the Complaint. Accordingly, the Division cannot conclude that neither the Board nor senior management of the Medical Center is without some level of responsibility for these events. Had Levy been called on his failure to act, or had his failure to act been reported to the entire Board, this acknowledged “lapse of judgment” might never have occurred. For senior managers who reported to Levy, demanding a response was likely difficult. For Board members, it was their job. Respect for Mr. Levy and his accomplishments may have created among some Board members a level of deference to management that was, and is, inconsistent with the level of vigorous and fully independent Board oversight that would have compelled definitive action far earlier. Oversight of management is a primary duty and responsibility of a governing body and this unfortunate and preventable situation should serve as a stark reminder to all our boards of the importance of diligent and independent management oversight.

Scope of Inquiry; Review Process

The Review focused primarily on two areas of inquiry.

- Did any aspect of hiring, transfer, promotion, or severance decisions regarding the Employee, or other benefits provided to the Employee during her tenure, constitute a breach of trust in the administration of charitable funds?
- Did the Board exercise “due care” in its investigation and disposition of the allegations regarding the CEO?

The Division reviewed numerous records provided by BIDMC including records and information relating to the Board’s investigation of the allegation(s), employment records pertaining to the Employee, and relevant Medical Center employee policies and procedures. In addition, Division staff conducted lengthy and detailed interviews with eleven individuals including BIDMC counsel, current and former Board members, members of senior management and the CEO.

Factual Findings

Based upon the documentation received and the interviews conducted, the Division considers the following factual findings to be relevant to its evaluation.

Employment and Compensation History

Paul Levy was hired as the CEO in January 2002 after serving as a dean of the Harvard Medical School.² Upon assuming the position, he hired several individuals, including the Employee, to help assess and make recommendations regarding the Medical Center’s operations and finances. Each of these individuals was known to him through previous personal or professional relationships. The Employee was hired as a full-time employee while the others were retained on a contract basis. In the case of the Employee, Levy had served as her advisor at the Massachusetts Institute of Technology. The Employee left full-time employment at an educational consulting firm when she joined the Medical Center.

Retained as a “Strategic Planning Analyst,” a position that was created for the Employee within the BIDMC Office of the President (Levy), the Employee’s starting salary was approximately \$52,000.³ From 2002 to approximately April of 2004, she was assigned to Levy’s office and worked on various projects throughout the Medical Center, conducting assessments and evaluations of various departments, systems and operations, as well as assisting in the development of the BIDMC strategic plan. While she worked with many managers in various departments, the Employee would also report her findings back to Levy who considered her a valuable source of information on the inner workings of the Medical Center. Some managers, however, expressed concern regarding the Employee’s direct access to the BIDMC President.

² Mr. Levy’s contract was renewed in 2005 for a term through 2010 and extended in 2008 for an additional two years through 2012.

³ Compensation for BIDMC employees is determined through a Compensation Department within BIDMC Human Resources. According to the BIDMC Vice President for Human Resources, the Employee’s salary was determined by the Compensation Unit during her tenure with the Medical Center. Levy stated that he never made any decision or recommendation regarding her compensation.

As early as 2003/2004, the existence of a personal relationship between the Employee and Levy became known within the Medical Center. During that time, the Board chair and BIDMC senior staff raised concerns with Levy, particularly in the context of her direct reporting relationship to him. At this point, at least one other Board member was aware of the relationship.

In April 2004, the Employee was offered a job by the BI-Needham CEO, Jeff Liebman, as a Healthcare Strategic Planner.⁴ She accepted the offer and was not replaced at BIDMC. Her new salary at BI-Needham was \$75,000 and the position, which was newly created, was among those eligible for performance bonuses. According to Mr. Liebman, the Employee was hired to oversee the development of BI-Needham's strategic plan, a task similar to that with which she was involved at BIDMC, as well as governance issues, and research and data analysis. The Employee eventually took on other functions related to the planning and expansion of the emergency facilities at BI-Needham. In 2007, she was promoted to the position of Chief of Staff at BI-Needham with an annual base salary of approximately \$82,000. In 2006, 2007, 2008 and 2009, she received a performance bonus of approximately, \$14,000, \$16,000, \$17,000 and \$21,000 respectively. Her annual salary, including bonus, in 2009 was approximately \$104,000.⁵

During her employment at BIDMC and BI-Needham, the Employee's personnel records evidence positive performance reviews that also included recommended areas of improvement. These reviews were conducted by various individuals within BIDMC including Levy and the CEO of BI-Needham. Levy reviewed the Employee in 2002 and 2003 when she worked in the Office of the President. Throughout her career at BIDMC and BI-Needham, her salary falls within the range of employees in a similar grade. During her employment at BI-Needham, other non-physician directors were eligible for and paid performance based bonuses that ranged from \$1,500 to approximately \$38,000 annually. The Employee was the only non-physician, director level employee, out of a total of five such employees, to receive a performance bonus for all four years (2005-2008).

Subsequent to the Employee taking the position at BI-Needham, a second Board chair and members of BIDMC's senior management team voiced concerns to Levy about the Employee's relationship with him. Moreover, many of the senior managers were advised by subordinates that the relationship was generating rumors throughout the Medical Center. In February of 2009, Levy convened a small group of senior BIDMC managers to advise him about rumors regarding his relationship with the Employee and her ongoing employment at BI-Needham. This group recommended that the Employee should seek employment opportunities outside of the Beth Israel Deaconess system. In August of 2009, a member of senior management again raised concerns regarding growing rumors about the relationship. In response, Levy contacted Liebman to inform him that it was time for the Employee to leave, and was informed by Liebman that, due to budget issues, her position was already slated for elimination. On November 6, 2009, the Employee was laid off from BI-Needham.

⁴ While working at BI-Needham she remained on the payroll of BIDMC with her salary "charged back" to BI-Needham. This is not an unusual arrangement.

⁵ During the approximately eight year period she was employed at BIDMC and BI-Needham, the Employee was reimbursed for work related travel on five occasions and reimbursed for other related work expenses, including supplies, catering and parking, in the aggregate amount of approximately \$18,500.

Consistent with existing severance policies⁶, she was provided with approximately \$29,000 in severance payments through May of 2010.

The Complaint

In late March and early April 2010, several Board members received, or otherwise became aware of, the Complaint.⁷ Dated March 15, 2010, the two page letter accused the CEO of (1) hiring a relative as the Chief Operating Officer of the Medical Center and (2) having sexual relationships with two hospital employees, neither of whom were named but are described by the author with sexist and racist terminology. The letter was not signed but stated: "sent by concerned employees of BIDMC," with a return address of the Office of the President /BIDMC.

Board Response/Investigation of Complaint

On or about April 22, 2010, Board Chair Stephen Kay, with assistance from BIDMC Vice President and General Counsel Patricia McGovern, began a formal inquiry into the Complaint and engaged outside counsel, Robert Sherman, to investigate the allegations on behalf of the Board. Mr. Sherman is a member of the law firm of Greenberg Traurig, LLP. Mr. Sherman also serves as a member of the BIDMC Board of Trustees, a non-fiduciary advisory board to the Medical Center and Board of Directors. Prior to engaging Sherman, Kay and McGovern discussed the pros and cons of retaining someone who might be perceived as an "insider" to BIDMC and determined that the advantages of hiring someone whose background and knowledge would enable him to rapidly and effectively respond outweighed any perceptual disadvantages. Chairman Kay also appointed himself and Board members Patrick Ryan, Edward Ladd, Carol Anderson, and Helen Chin Schlichte to an ad-hoc committee of the Board to assist the Board in its review of the matter. Mr. Sherman was tasked with investigating the Complaint and reporting to the ad-hoc committee and Board on April 26, 2010. No limitations were placed on Mr. Sherman's investigation and he was given access to all personnel and other records related to his inquiry. From April 23 through April

⁶BIDMC has specific severance policies for executives, managers and non-managers. Director level positions such as the Employee's have no written policy. According to the BIDMC Vice President for Human Resources, it has been the Medical Center's practice since 2000 to offer director level employees a six month salary continuation as well as health benefits subject to off-set if the former employee obtains a new job. At least two other director level employees were given similar severance packages in late 2008 and early 2009. All such employees, including the Employee, executed a general release of claims consistent with Medical Center policy regarding the payment of severance.

⁷Sometime after the Board commenced its review of the Complaint, it received a second anonymous complaint against the CEO. The letter, dated April 30, 2010, alleged that a "number of women" have complained to the letter's author of "unwanted touching by Paul" as well as the lack of a "system that supports them at BID." The letter goes on to express gratitude for Mr. Levy's "leadership in turning around a sinking hospital" but expressed disappointment in his personal behavior. The letter was unsigned and has a return address of "BIDMC Nursing, 333 Brookline Avenue, Boston, MA 02115." In response to the second letter, Mr. Sherman was tasked by the Board to include the allegations in his review. Two additional letters were also sent to the Board during the course of the Board's investigation into the Complaint. These two letters, both anonymous, were more generally critical of Levy and his job performance and urged action by the Board. In connection with the April 30, 2010 letter, Mr. Sherman, with the assistance of Medical Center staff, subsequently searched for any complaints against Levy for inappropriate touching and interviewed current and former nursing supervisors at BIDMC. No complaints were located and no one interviewed reported complaints from anyone on the nursing staff.

26, 2010, Mr. Sherman conducted multiple interviews with BIDMC and BI-Needham personnel and reviewed personnel and payroll information pertaining to the Employee as well as relevant employee policies. According to Mr. Sherman, the scope of his review was based on several factors including (1) the anonymous nature of the Complaint, (2) the lack of conflicting information collected during the course of initial witness interviews and document reviews, (3) the relative costs of a broader scope against its anticipated value, and (4) the Board's desire to complete its investigation quickly.

The Board first addressed the issue at a meeting held on April 21, subsequent to which Mr. Sherman was retained, and at meetings held on April 26 (which included both an ad-hoc committee meeting and a full Board meeting), April 28, and May 3, 2010. Over the course of these meetings, Mr. Sherman briefed the Board on its fiduciary duties and provided factual information regarding his investigation including details of interviews of BIDMC staff and reviews of records and policies related to the Employee's employment and compensation history. Mr. Sherman informed the Board that the charge of nepotism in the hiring of the BIDMC COO, as well as the allegation regarding a second relationship contained in the Complaint, were false. During this 12 day period, the findings were updated as new information became available including the results of Mr. Sherman's investigation. The Board was advised by Mr. Sherman that the CEO's actions had not violated any law or any BIDMC policy⁸ but that the Board had full discretion to respond to the Complaint in whatever manner it deemed appropriate.

During this period, the Board, through the ad-hoc committee, interviewed Paul Levy and former Board chair Lois Silverman. Levy outlined his reasons for hiring the Employee as well as the general nature of his personal relationship, including travel and other outside of work activities. Levy declined to answer certain questions about the nature of the relationship and acknowledged that this left others, including Board members, to draw their own conclusions. He informed the ad-hoc committee that he had no part in any compensation decisions pertaining to the Employee and was not involved in determining her severance. He further confirmed that members of his management team and two former Board chairs had, over time, questioned him about his relationship with the Employee and that he had done nothing in response to these inquiries. Levy admitted to "a major lapse in judgment" and apologized to the Board.

Deliberations by the ad-hoc committee and the full Board included, but were not limited to: (1) the nature and length of the relationship between Levy and the Employee, (2) the fact that the relationship remained ongoing despite her departure from the Medical Center, (3) conclusions the Board could draw based upon Mr. Levy's answers to their questions regarding the nature of the relationship, (4) her job performance, (5) the lack of evidence of any misuse or abuse of funds, (6) the lack of prior incidents or patterned behavior, (7) the CEO's job performance, acceptance of responsibility and expression of regret, (8) the impact on donors and the Medical Center including its ability to recruit and retain top physicians and management, (9) the amount of the Employee's severance, (10) the lack of an anti-fraternization policy at the Medical Center, (11) whether the incident constituted a violation of law or hospital policy, (12) the standards by which boards should hold their CEOs accountable, and (13) various potential remedies including termination, sanction, monitoring and no action. The Board also discussed the negative press BIDMC received as a result of this matter as well as a potential press leak on the Board.

⁸ These policies include the Medical Center's nepotism policy, its sexual harassment policy and its code of conduct.

Throughout the Board's deliberations, there were differing opinions regarding an appropriate response to the Complaint. Some members questioned whether the Board should investigate an anonymous, sexist and racist complaint concerning a former employee; others felt it warranted a full review. Support was expressed for Levy based on his past performance as well as his ability to lead BIDMC during a potentially difficult time for the healthcare sector. There were expression of both disbelief and significant disappointment that he had put the Medical Center in this situation. The directors discussed whether Levy was the best person to continue to manage the Medical Center in light of their findings. There was also concern about the full Board's lack of knowledge given that past Board chairs and BIDMC senior management had known of the relationship for years. One Board member indicated that Levy had lost the moral authority to lead the hospital and stated his intent to resign if Levy was retained.⁹ Another Board member threatened to resign if Levy was terminated.

After interviewing Levy and reviewing the available facts, the ad-hoc committee unanimously recommended that the Board retain Levy as CEO, express public disappointment in his conduct, and take such further action as it deemed warranted including a financial sanction. The full Board accepted this recommendation and unanimously voted to support Levy's current leadership of BIDMC but express its disappointment in his conduct. The Board subsequently discussed other remedies including sanctions, reductions in future bonuses and future monitoring or oversight. Ultimately, the Board decided to impose a \$50,000 financial sanction on the CEO and to consider Mr. Levy's conduct and its impact on the Medical Center in future incentive compensation determinations. The financial sanction was recommended by Chairman Kay and was meant to be punitive rather than representative of any financial malfeasance. The Board also stated that the matter remained open and that it would continue to monitor the situation to assure that the CEO's ability to effectively lead the Medical Center had not been materially impaired.

Subsequent to the May 3, 2010 meeting, Chairman Kay concluded that an independent review of the Board's actions might better provide assurance to the public that the Board had carried out its responsibilities. On May 13, 2010, he convened a meeting of the Board in which his request to ask the Office to review the Board's actions was approved.

Discussion

Use of Charitable Funds

Payment of excessive amounts for work performed, or payment for work not performed, constitutes a breach of trust in the administration of charitable funds. On that basis, both the BIDMC Board and the Division reviewed the employment and compensation history of the Employee to determine whether there were any irregularities in the manner or amount of her compensation, including the terms of her severance.

During the course of the Board's investigation and the Review, no information has been presented that Levy was directly involved in any compensation decisions

⁹ During his interview with the Division, this Board member indicated that his decision to resign was based on his personal belief that Levy was no longer capable of leading the hospital on a going forward basis and not a reaction to any inadequacies in the Board's investigation, process or deliberations.

pertaining to the Employee, although he did participate in her evaluation when she was working in the Office of the President. As previously noted, the Division was advised that compensation levels for employees are determined through a Compensation Unit and not by hospital executives, and that such a process was followed with respect to the Employee's compensation.

The Review found that during her time at BIDMC and BI-Needham, the Employee's salary was within the range of her job grade. For example, for her highest salary year, 2009 (annual salary of \$104,000), a grade 10 employee could earn a minimum of \$63,960, a maximum of \$122,720 with the median being \$93,340. From 2002 through 2009, her salary, while subject to annual increases and performance bonuses, was within established ranges for each of those years. Similarly, her severance of approximately \$29,000 was consistent with Medical Center policy and represents six month's salary, offset by salary earned in her new job that commenced in February of 2010.

Two aspects of her compensation and employment history do merit discussion. First, while her overall salary was within the range of her job grade, she was the only non-physician director who received a bonus in all four of the years reviewed. Second, both positions that the Employee held at BIDMC and BI-Needham were newly created and not maintained after she left. In the context of the widely known personal relationship between the CEO and the Employee, each is inevitably subject to the perception that it was influenced by the personal relationship. Nevertheless, the record before the Division evidences excellent academic credentials, a good work history, positive performance reviews, and total compensation within the ranges for her job grade including bonuses approved by BI-Needham CEO Jeff Liebman. Based on evidence available to it, the Division has no basis to conclude that charitable funds were misused through excessive compensation or payment for work not performed.

The CEO's Actions

Emphasizing again that the Review was not a *de novo* investigation of the Complaint, certain conclusions can be clearly drawn regarding the CEO's conduct which are relevant to our review of the Board's actions.

Neither the record nor Mr. Levy dispute that he (i) failed to separate a professional and personal relationship with an employee of the Medical Center and BI-Needham that spanned many years and was known throughout these institutions; (ii) was alerted on numerous occasions by staff and Board chairs that he needed to take action to end either the personal relationship or the employment relationship; and (iii) failed to heed those warnings.

While the Division cannot measure the impact of these failures, the public attention, exposure and criticism which inevitably took place most certainly had a negative impact on the institution. Internally such actions may also have negative repercussions. Lines of authority and responsibility can become blurred. Decisions may become suspect and subject to differing interpretations. Considered against the power of the CEO, which most certainly reached beyond the President's Office to the rest of the Medical Center and to BI-Needham, no decision regarding the Employee was immune from his influence. The existence of a personal relationship between a CEO and a

subordinate inevitably causes other employees, including managers, to factor that relationship into their decision making regarding the subordinate. No explicit direction from the CEO is required. Perhaps more troublesome, attitudes, real or perceived, may be fostered within the workforce that personal relationships trump professional qualifications. The Employee may well have succeeded entirely on her own professional qualifications and performance, however her relationship with Levy will always foster doubts in the minds of some.

The Board Investigation

In Massachusetts, corporate fiduciaries of charitable organizations must act prudently, in good faith and exercise reasonable judgment.¹⁰ Faced with an anonymous, racist and sexist complaint concerning a former employee that, without corroboration, would have likely been disregarded, the Board addressed the Complaint seriously and moved swiftly. Chairman Kay established a process for review and action, retained the services of outside counsel Robert Sherman, and established a diverse ad-hoc committee to take primary responsibility for fact finding, including interviewing Mr. Levy and making preliminary recommendations to the Board. The Board's review of this matter spanned approximately two weeks and involved three specially scheduled meetings that were attended in person or over the phone by a majority of the Board members able to participate. BIDMC management fully cooperated with the Board's investigation.

The Board's deliberations were wide ranging and were geared to determining what was in the best long-term interest of the Medical Center. There were a wide range of opinions on whether to review the Complaint and ultimately how to address it. The Board was not constrained and was specifically advised it had the authority to consider options ranging from disregarding the Complaint to terminating the CEO. It carefully considered the facts that were available to it and engaged in back and forth discussion as to what those facts were, what weight they should be given and how they should be applied to a decision. The process was inclusive and Chairman Kay made every attempt to ensure minority opinions were heard. The Division considers differing views and vigorous debate as a clear sign of a healthy board that takes its responsibilities seriously. Similarly, the Division views the resignation of a Board member, not as a failure, but as another indication of diverse opinions that were debated and discussed but ultimately could not be reconciled to everyone's satisfaction. The resigning Board member played a valuable role throughout this process.

Two aspects of the Board's review merit discussion: (1) the scope of the review, and (2) the existing relationship between Robert Sherman and the Medical Center. As to the scope of the review, any investigation, including this one conducted by the Board, must ultimately determine how extensive the scope should be. That determination is shaped by the nature of the issue, the need for speed, the results of initial interviews and document reviews, and the cost of any additional inquiry against its likely return. In this case, the Board applied that criteria and determined that it had sufficient information to appropriately respond. The Division has no basis to conclude a greater scope was called for. Moreover, if additional information arises that is relevant to the Board's oversight of management, it is clearly obligated to consider that information and, if merited, act on it.

¹⁰ See generally, *Boston Children's Heart Foundation v. Nadal-Ginard*, 73 F.3d 429,433-34 (1st cir. 1996); *Murphy v. Hanlon*, 322 Mass. 683, 686 (1948); *Spiegel v. Beacon Participations, Inc.*, 297 Mass. 398, 411 (1937); *Sagalyn v. Meekins, Packard & Wheat, Inc.*, 290 Mass. 434, 438 (1935).

The hiring of Attorney Robert Sherman, a non-fiduciary trustee of BIDMC, to lead the investigation was recognized as a potential conflict of interest by Chairman Kay. As we have repeatedly stated, conflicts of interest are not per se illegal or inappropriate, but do require disclosure and findings that the arrangement is in the best interests of the organization. This issue was considered by Chairman Kay and BIDMC counsel. Ultimately, they decided that Mr. Sherman's familiarity with BIDMC would allow him to move much more quickly than other outside investigators who were less familiar with BIDMC. Because this issue was disclosed and considered, the Division has no basis to conclude that the retention of Mr. Sherman to undertake the investigation was inappropriate.

Disciplining its CEO is a difficult action for a Board. While Board members, BIDMC staff and employees, and members of the public may all have differing views about the adequacy or propriety of the sanctions imposed, the Division has no basis to second guess this action or its scope.

Board Independence

The Division, however, cannot conclude that neither the Board nor senior management of the Medical Center is without some level of responsibility for these events. Clearly members of senior management, two former Board chairs and at least one non-officer Board member were aware of the relationship and had directly and indirectly alerted Mr. Levy to the problems it was creating. Had he been called on his failure to act, or had his failure to act been reported to the entire Board, this acknowledged "lapse of judgment" might never have occurred. For senior managers who reported to Levy, demanding a response was likely difficult. For Board members, it was their job.

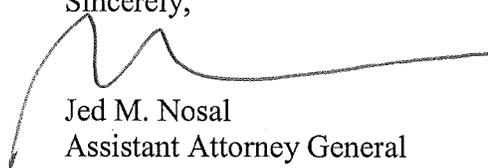
We state this with a level of conviction clearly aided by hindsight and with the knowledge that some past and current Board members are still unconvinced that the investigation should have taken place or, having taken place, that sanctions were warranted. Nevertheless, we believe that at some level deference to a successful CEO, widely perceived as having rescued the Medical Center, may have impaired Board independence. As the charitable sector strives to improve and enhance effective governance, this unfortunate outcome serves as a stark and compelling reminder to all our charitable boards of the critical importance of board independence in all aspects of management oversight.

On a going forward basis, we note that the Board recently added provisions to the BIDMC human resources policies requiring disclosure of certain personal relationships within the workplace, commonly referred to as "anti-fraternization policies." Additionally, the Board Chair has emphasized that the Board will continue to monitor and review the impact of this situation on BIDMC and the CEO's ability to lead. We expect that the Board will keep the Division informed of any significant developments in this area. The Division believes both actions are entirely appropriate and consistent with the Board's obligations.

In closing, the Division notes that the need for Board independence of management, whether it relate to conflicts of interest, executive compensation, dual office holding or diligent management oversight, remains a high priority for the Division's oversight activities of all public charities.

Thank you for your attention and cooperation throughout the Review.

Sincerely,

A handwritten signature in black ink, appearing to read "Jed M. Nosal". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Jed M. Nosal
Assistant Attorney General
Chief, Business and Labor Bureau