

Voices for Quality Care

Post Office Box 2251, Leonardtown, Maryland 20650

<http://voicesforqualitycare.org>

(888)600-2375

February 12, 2011

Office of Governor Rick Scott
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: Unlawful Removal of Brian Lee, Florida State Long-Term Care Ombudsman

Dear Governor Scott:

The Board of Directors of Voices for Quality of Care (LTC), Inc., (Voices) has directed me to send you this letter in order to inform you of our intentions regarding the actions taken against the Florida State Ombudsman. Voices serves adults with disabilities who need long-term care services. Many of them are elderly and most of them are frail. They reside in nursing homes, assisted living, and adult residential facilities and are in need of advocates to preserve their federal and state rights. Because of our mission to serve elder and disabled adults, we are writing to you to voice our concerns regarding the clear interference that you, and your office, imposed on Mr. Brian Lee, State Long-Term Care Ombudsman, and on the Florida Long-Term Care Ombudsman Program that is Florida's elder advocacy program.

As we are sure you are aware, all State Long-Term Care Ombudsmen are federally mandated through the Older Americans Act, Title VII, (42 U.S.C. 3058g), representing the needs of long-term care residents¹ before governmental agencies and the general public, seeking administrative and legal remedies to protect the health, safety, welfare (including public benefit welfare programs) and rights of residents.² In so conducting his/her federally mandated duties as a State Long-Term Care Ombudsman, an Ombudsman must collect data in order to ensure residents' needs, quality improvements, or legal policies adversely affecting long-term care residents are properly analyzed. It is not uncommon for any State Long-Term Care Ombudsman to request information pertaining to government programs, private and public long-term care facilities ownership(s), protocols, operational procedures, and the like. The Older American Act gives a State Long-Term Care Ombudsman such authority under 42 U.S.C 3056g (b) (C) and (D).

As a point of reference, it is within the Ombudsman Program's legal right to request such information through the Patient Protection and Affordability Care Act (PPACA; P.L. 111-148). As we are sure you know, as a health care professional and now Governor of Florida, PPACA's overall intention was to expand nursing home transparency, enforcement, and staff training provisions under federal quality and accountability requirements for both Medicaid and Medicare eligible nursing homes. These provisions instruct skilled nursing facilities (SNFs) and non-skilled nursing facilities (NFs) to disclose ownership and organizational relationships, implement ethics and compliance programs, and instruct SNFs to report direct care staff

¹ Long-term care residents is defined as: any person residing in a nursing home, assisted living, or adult community residential facility.

² Reference: Older Americans Act, Sec. 712 (a)(3), (42 U.S.C. §3058g)

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expenditures.³ Again, it is the job the Ombudsman to analyze, format positive quality care solutions to issues, report ethical and legal violations, and disseminate non-confidential information to all interested parties to ensure residents' concerns are voiced and acted upon without interference.

Because policy makers who monitor the Long-Term Care Ombudsman Programs have foreseen the possible conflicts that may arise when advocating on the behalf of elder Americans, Congress included a non-interference section to eliminate reprisal against the Ombudsman, or the Ombudsman Program's staff.⁴

Through Voices' own independent analysis of Mr. Brian Lee's actions of the past several weeks leading to the events of his removal from office for requesting nursing home ownership information, we believe that you, the Governor of Florida, have violated several federal laws and have interfered with the State Long-Term Care Ombudsman and Floridian Long-Term Care Ombudsman Program.

As Voices is not an enforcement agency but an independent advocacy organization, we are lodging this official complaint against the Governor's Office and you as Governor with the federal government enforcement agencies and requesting a formal investigation be conducted and full penalties of the law be enforced.

This is not a action we take lightly or without considerable deliberation. However, it is absolutely essential to the well-being of residents of all nursing homes and assisted living facilities across the country that the Offices of the State Ombudsmen and the Long-Term Care Ombudsman Programs operate as designed by law and in an independent manner in accordance with that law.

Sincerely,

Kate Ricks, Chair
Voices for Quality Care (LTC), Inc.,

Cc: Kathline Sebelius, Secretary, Department of Health and Human Services
Daniel R. Levinson, Inspector General, Department of Health and Human Services
Joe Rodrigues, President, National Association of State Long-Term Care Ombudsman Programs

³ Congress Research Service, Public Health, Workforce, Quality and Related Provision in PPACA: Summary and Timeline; written and published by: Stephen Redhead and Erin D. Williams. September 2, 2010.

⁴ 42 USC 3058g, (j): Noninterference. The State shall--

(1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;

(2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.