

MIAMI BEACH

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Jimmy Morales, City Manager
Tel. 305-673-7010, Fax: 305-673-7782

November 2, 2016

Mr. Robert L. Jenkins
President, Florida State Fraternal Order of Police
999 11th Street
Miami Beach, FL 33139

Dear Mr. Jenkins:

This will acknowledge receipt of your email on October 28, 2016. While I appreciate your concern about your members' wellbeing, I respectfully disagree with many of your statements which I consider to be misleading and inaccurate.

First of all, the City has and is continuing to provide healthcare coverage to all first responders and all other employees as well. As you know, we provide subsidized health insurance to all our general employees. Your members have FOP Trust Health coverage which is subsidized by the City from 76%-80% and workers compensation is therefore not the primary payer. We assume that the FOP Trust is providing medical coverage to its members as intended, including those diagnosed with Zika.

Beyond insurance, the City of Miami Beach has provided extensive training on the prevention of contracting the Zika virus to all of our employees and has made insect repellent available to all staff free of charge. Since the U.S. Center for Disease Control has issued specific warnings only with respect to pregnant women, at the beginning of the declaration of the Zika zone we immediately offered to allow pregnant employees that work in the zone the opportunity to take a leave of absence, using their accrued leave, or be assigned to another work location outside the Zika zone, to the extent possible. A couple of employees have availed themselves of this option. We arranged with the Florida Department of Health that any employee who felt that they had contracted Zika could be tested free of charge. We are precluded by HIPPA from discussing the personal health issues of employees, but needless to say, the two officers are not the only employees that have indicated that they contracted Zika. Finally, in the one confirmed case of infection, the City restored the used sick leave to the employee through administrative leave and made the employee whole. All in all, I do not believe there is any jurisdiction in South Florida that is doing more to address the health issues of employees with respect to Zika.

Before addressing the issue of workers compensation, I also need to disagree with your statement that with respect to Zika, the risk of exposure of first responders "is exponential in comparison to the rest of the population". I don't think you really mean that. It is important to note that the persons most impacted are the residents who live here

each and every day. Their risk with respect to Zika is, in fact, exponential in comparison to our entire workforce. That is why we have been working closely with county, state, and federal officials to insure that we are doing everything in our power to protect the health and wellbeing of our residents, employees, businesses and visitors. As part of that, we are applying the law, health benefits and workers compensation rules equally to all 2000+ employees of the City of Miami Beach. When it comes to Zika, there is no preferential treatment to any employee or group.

The real bone of contention here is with respect to workers compensation. Any employee, police officer or otherwise, has a right under state statute to file a claim for workers compensation and the statute sets forth a specific process and clear standards. An employee's claim of Zika would be covered by **Florida Statutes 440.151(1)(a) (a copy attached hereto)** which states in part that the employee must show (*burden of proof is on the Claimant to prove it*) the occupational disease (Zika) was contracted while engaged in employment and he/she must show that the exposure/bite took place while on duty and identify the specific infected mosquito. The employee must also provide medical evidence of injury ("disablement or death"), including providing a written release of medical records. To date, very limited/insufficient medical records have been received by the City's third party administrator for workers compensation for the cases which have been recently denied (in fact, neither officer, to date, has submitted a written release of records, and one officer has not even submitted any test results).

There is no statutory presumption that Zika is related to employment at the City of Miami Beach or that it causes any long term injury beyond the short term symptoms in adults. Again the worker must prove his/her case under the statute "to a reasonable degree of medical certainty, based on objective relevant medical findings." Fla. Stat. {440.09(i). If the legislature sees fit to change the law to include Zika as a presumed "occupational disease" then we will abide by that new law. It is not the role of the City of Miami Beach to unilaterally create any such assumption, particularly since we are neither medical nor scientific experts. Throughout this entire episode with Zika, we have consistently deferred to the CDC and the Department of Health with respect to health and medical issues. Furthermore, as you are well aware, the workers compensation law is the product of the state legislature and is not by law the purview of local government. Even if I was so inclined to consider a presumption for the Zika virus as work related, I cannot rewrite legislation to make Zika a presumption disease.

To reiterate, unlike Heart conditions, there is no presumption that Zika is an occupational disease. Miami Beach is applying the workers compensation law properly, and, based on the existing workers compensation statutes, a denial of both recent known claims is warranted. Claimants have recourse in the state workers compensation administrative proceedings. If the Claimant can produce the proper medical and scientific evidence which is absent at this time, then we will obviously reconsider. Limited/insufficient medical records have been provided by the employees to the City's third party administrator and none of which meet the burden of proof under the state statute.

As the City Manager, it is my responsibility to continue in conjunction with our other government agency partners to take a hard line approach in our fight against Zika, and I am grateful to the hundreds of employees who are on the front line addressing stagnant water, unsanitary conditions and other potential breeding grounds throughout the city. We value each of our 2000+ employees and will continue to apply our personnel rules fairly and consistently. And, if the state legislature amends the workers compensation statute to address Zika, we will certainly comply with any such provisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy Morales". The signature is stylized with a large, sweeping loop that extends to the right and then curves back down to the left, crossing over the text "Jimmy Morales".

Jimmy Morales

cc: Mayor and Commissioners
Chief Daniel Oates
Michael Smith

Exhibit A

Chapter 440.151 (1)(a) – Occupational Diseases: *Where the employer and employee are subject to the provisions of the Workers' Compensation Law, the disablement or death of an employee resulting from an occupational disease as hereinafter defined shall be treated as the happening of an injury by accident, notwithstanding any other provisions of this chapter, and the employee or, in case of death, the employee's dependents shall be entitled to compensation as provided by this chapter, except as hereinafter otherwise provided; and the practice and procedure prescribed by this chapter shall apply to all proceedings under this section, except as hereinafter otherwise provided. Provided, however, that in no case shall an employer be liable for compensation under the provisions of this section unless such disease has resulted from the nature of the employment in which the employee was engaged under such employer, was actually contracted while so engaged, and the nature of the employment was the major contributing cause of the disease. Major contributing cause must be shown by medical evidence only, as demonstrated by physical examination findings and diagnostic testing.*