

MINUTES PCF OVERSIGHT BOARD

October 1, 2009

WOMAN'S HOSPITAL
BATON ROUGE, LA.

Mr. Clark Cosse', Chairman, convened the meeting of the Patient's Compensation Fund Oversight Board, at 6:30 PM on Thursday October 1, 2009, at the Woman's Hospital Corporate Board Room in Baton Rouge.

The following Board Members were in attendance:

Mr. Clark Cosse' III
Dr. Katharine Rathbun
Mr. Kent Guidry

Mr. Joe Donchess
Dr. Melanie Firmin
Mr. James Hritz

Dr. Van Culotta
Dr. William LaCorte
Mr. Manual DePascual

Others present:

Mrs. Lorraine LeBlanc
Mrs. Barbara Woodard
Mr. James Donelon
Mrs. Cindy Amedee
Mrs. Karen Fontana
Mr. Keith Kyler

Mr. Ken Schnauder
Mr. Dave Woolridge
Mrs. Caroline Brock
Mr. Peter Bondy
Mrs. Patricia Bethancourt

Mr. Jim Rachal
Mrs. Amy Phillips
Mr. Warren Byrd
Mr. Tom McCormick
Mrs. Sharon Knight

Mr. Cosse' called the meeting to order. Mr. Cosse' asked that the record show that all board members were in attendance. Mr. Cosse' welcomed the guests to the meeting and asked all present to introduce themselves.

Mr. Cosse' asked for public comments. No public comments were made.

Mr. Cosse' called for the approval of the September minutes. Dr. Rathbun moved for the minutes to be approved with no corrections. Dr. Firmin seconded the motion. The minutes were adopted and there were no dissenting votes.

Mr. Cosse' asked for the financial updates. Mrs. LeBlanc went over the financial sheet handout and explained the year to date collections and informed the Board that the expenditures were as expected this time of year. Mr. Cosse' asked if the amount listed under claim expenditures included the claims being presented at the meeting tonight. Mrs. LeBlanc clarified that the

Minutes
10/1/09

amount listed was actually expended and did not include the claims being presented at the meeting. However, the form did include the amount to be approved at the bottom.

Mr. Cosse' then asked for the claims manager report. Mr. Schnauder went over the informational sheet that was provided to each Board member. He stated the first three months of this year did show a high payout, but the same amount was expended during the same time last fiscal year. Mr. Schnauder stated that he was presenting 31 claims for approval in the amount of \$11,800,000. He informed the Board that the claims section had settled 103 claims, closed 149 claims and last month opened 81 claims. The total open cases were 5,498. There are four new future medical claims added this month bringing the total to 172. Mr. Schnauder further explained that the reported closed claims were either dismissed claims or claims closed with no expense to the PCF. Mr. Schnauder informed the Board that the monthly future medical payments were approximately \$1,200,000 to \$1,400,000, but would increase due to the four new cases. The Board was asked if a more detailed report should be submitted each month identifying the closed files without and with payment and Mr. Cosse' stated a verbal report each month would be sufficient.

Mr. Cosse' asked if there were any public comments. There were none.

Mr. Cosse' explained that the Board would briefly go into Executive Session and that when Commissioner Donelon arrived for his presentation, the Board would reconvene General Session. Dr. Culotta made the motion and Dr. Firmin seconded it. By unanimous verbal vote, the motion passed and the Board went into executive session to discuss claims and other matters involving litigation.

Mr. Cosse' thanked the guests for attending the meeting and the General Session was adjourned. The Board moved into the Executive Session.

Following completion of the executive session, the Board returned to the open, general session and all guests returned to the meeting.

Mr. Cossé welcomed Commissioner Donelon to the meeting. Commissioner Donelon gave Mr. Cossé and the Board members a letter with new recommendations as to the unfunded liability and elimination of the unfunded liability.

Commissioner Donelon thanked the Board members and PCF staff for participating in meetings. He felt these meeting did shed some light on the situation. He stated the staff tells him he has the power and duty to set the PCF rates. While he is not happy about it, he feels it is necessary to protect the victims, which are the citizens of Louisiana. He feels the PCF should be 100% funded and it is his intention to go to the Legislature to clarify this within the statute. He stated he wants the PCF to amortize the unfunded liability in 7 years. He also wants the PCF to file annual financial reports with the Department of Insurance. He urged the PCFOB to increase

Minutes
10/1/09

rates by 5% in 2010. He stated with the current soft market it would be a good time to impose an increase, especially with the potential for the market to change at any time.

Sharon Knight, with the LSMS, stated the PCFOB has had a difficult time overcoming the problems it faced when it took over the administration of the PCF. There were years where the Louisiana Insurance Rating Commission refused and delayed requested rate increases. She stated that completely resolving the unfunded liability in 7 years would be too much of a burden on the health care industry in this economy and she would like him to reconsider his demands. Mr. Donelon stated that while the PCF was a success in that it kept doctors here, he still felt the law states it is his duty to address the funding problem.

Dr. LaCorte stated many physicians are faced with cuts in fees and reimbursements and increases in expenses impacts availability of physicians, especially for the elderly that are mostly Medicare patients. He felt the Board could not commit to increases for 7 years with the constant decreases in reimbursements.

The Tulane representatives expressed concerns as they are self-insured and do not collect for the services provided by residents, but must have medical malpractice insurance for them to practice in hospitals. At some point, it no longer becomes affordable.

Commissioner Donelon stated he also plans to ask the legislature to have 3 consumer representatives added to the PCFOB, in addition to the 100% funding in 7 years. If necessary, court action would be taken.

Mr. Cossé told Commissioner Donelon and his staff that the Board appreciated the time spent in discussions; however, there is some disagreement on the approach and interpretation of the statute. The PCF was set up to protect the medical malpractice system, for the benefit of both the health care provider and the citizens and the PCFOB was responsible for keeping the system working.

Commissioner Donelon stated he must protect the citizens first. He feels there are new medical malpractice insurance companies coming to Louisiana. He is ordering the PCFOB to address this and do so now.

At this point in the meeting, Mr. Cossé thanked the Commissioner and the DOI staff for attending and they left the meeting.

There was some continued discussion regarding legislation and possible litigation between the PCFOB and the DOI and time frames for both.

Dr. Culotta made a motion to increase rates, leveled out so that provider classes pay the appropriate percentage in accordance with the actuary report, for an overall 5% increase and to

Minutes
10/1/09

refuse to agree to a fixed 7 year period to be 100% funded, but rather to review the actuary reports each year and act accordingly. Dr. LaCorte seconded the motion. Mr. Donchess made a substitute motion that the rates for nursing homes remain flat as he feels nursing homes did not cause the unfunded liability and the actions taken by the PCFOB in August were appropriate. Dr. Firmin stated there are other health care providers that have joined the PCF in the last 10 years. All health care providers get the benefit of the protection offered by joining the PCF and all must pay the price so that the system can remain viable. Dr. Firmin offered another motion for a 2% increase for physicians and a 5% increase for nursing homes, hospitals and others. This would result in physicians and hospitals and other paying about 20% towards the unfunded liability and the nursing homes paying about 8%. This was felt to be a fair compromise. Dr. Culotta withdrew his motion.

A verbal vote was taken on Mr. Donchess' substitute motion, and failed with 2 yeas and 6 nays. Dr. Firmin's motion was taken up and by a unanimous verbal vote it passed. The PCFOB also committed to eliminate the unfunded liability by acting responsibly to do what is fiducially prudent and best for all concerned.

Mr. Hritz moved to adjourn the meeting and Dr. Culotta seconded. By unanimous verbal vote, the motion passed and the meeting was adjourned.

Mr. Clark Cosse' III, Chairman