

# MINUTES

## PCF OVERSIGHT BOARD

June 4, 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 June 4, 2009, at the Woman's Hospital Corporate Board Room in Baton Rouge.

The following Board Members were in attendance:

Mr. Clark Cosse'	Dr. Katharine Rathbun
Dr. Melanie Firmin	Mr. James Hritz
Mr. Manual DePascual	
Mr. Kent Guidry	

Board Members absent:

Dr. William LaCorte  
Mr. Joe Donchess  
Dr. Van Culotta

Others present:

Mrs. Lorraine LeBlanc	Mr. Ken Schnauder
Mrs. Barbara Woodard	Mr. Dave Woolridge
Mrs. Aminthe Broussard	Ms. Lynn Duszynski
Ms. Annette Droddy	

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

Mr. Cosse' welcomed the new Board member, Mr. James Hritz to the meeting and asked that counsel administer the oath of office to him. Mr. Woolridge administered the oath to Mr. Hritz.

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

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

Mr. Cosse' asked for the financial updates. Mrs. Woodard explained the year to date collections and informed the Board that the remaining balances in the operating budget would be adequate for the remaining days of this FY; however the claims budget had been expended. Mrs. Woodard informed the Board that the amendment to increase the budget authority for next FY had been verbally approved by the planning and budget office; however the approved paperwork had not been received. Mr. Cosse' explained the BA7 process to Mr. Hritz. Dr. Firmin asked why refunds were issued. Mrs. LeBlanc explained that surcharge refunds were issued when a provider retires, changes classification or terminates coverage with the PCF. Filing Fee refund was issued when a provider named was not qualified. Mr. Cosse' asked if there were any other questions regarding the financial report, there was none.

Mr. Cosse' asked for the claims manager report. Mr. Schnauder reported that the pace had slowed down some this past month because of the lack of funds remaining in the claims budget. He informed the Board that after the budget was loaded in July, claim settlements would pick back up and more than make up for the slack period in June. Mr. Schnauder stated that he was presenting 19 claims for approval in the amount of \$6,085,193. Mr. Schnauder reported 154 files in May were closed and that 128 files were opened. Dr. Firmin asked about older claims. Mr. Schnauder stated that there were older cases still opened mainly because the primary would not settle and had not pushed for a trial. He further explained that older cases are routinely reviewed by the supervisors to see if they can be pushed to closure. While the current balance in the claims budget is \$2, 500,000, there are about \$9,500,000 in settlements to be paid. Next year the claims budget is expected to be set at \$120,000,000. Mr. Cosse' asked if there were any other questions or comments on the claims report. There were none.

Mr. Cosse' then called for a discussion on the 2009 legislation. Mrs. LeBlanc informed the Board that HB 224, the cap bill, had been pulled by Representative Edwards, but with the expectations that there will be ongoing discussions regarding possible changes in the MMA. Mr. Cosse' stated that there had been an agreement by several health care provider groups and insurers to meet and discuss the changes in the cap, medical review panel process, underlying layer and PCF's role. The plan is to establish a timeline for discussions to attempt to negotiate and compromise on issues such as increasing the cap to \$750,000 and changing the cap to exclude economic damages and provide that the cap to be adjusted annually. Other issues involve whether the PCF should be limited to future medicals and related benefits, if the panel process can be streamlined to reduce costs, the impact on self-insureds. He stated that there was a lot of diversity on whether the panel process should remain the same or change. Dr. Firmin commented that as a former nursing home owner, a stronger panel could help reduce meritless cases from being pursued in court and help reduce costs in a small claim. Dr. Rathbun asked if the panel process was doing any good. Mr. Guidry stated that about 5-10 years ago the process

did seem to weed out frivolous claims about 50% of the time, but that seems to be changing. Mr. Hritz asked if PCF had data that showed how many post-panel suits were filed. Mrs. LeBlanc stated that the PCF was not a party to litigation and thus did not have the data. The MMA was changed as of 1/1/09 to have the plaintiff send the PCF a copy of any suit filed, but that this is too new to be able to provide any meaningful statistics.

Mr. Cosse' informed the Board that Dr. John Lemoine had asked him to pose a question before the Board at the meeting tonight that if the cap was raised, would the PCF forgo any rate increase imposed specifically to reduce the unfunded liability for a period of three years. This would help the providers deal with the increase in premium at the primary level. It was determined that this would need to be studied by the actuary before any decision could be made. One of the justifications for working to revise the MMA and increase the cap is the fear that the Supreme Court will declare the MMA unconstitutional which would result in financial hardships for all health care providers and also result in the loss of providers in the state. The PCF will be participating in the continuing discussions. Mr. Cosse' asked if there was any further discussion regarding the medical malpractice bill. There was none.

Several bills are being watched this session. Mrs. LeBlanc informed the Board that HB 671, which dealt with adding nurse practitioner and clinical nurse specialist to the Medical Malpractice Law, was passed. Mr. Cosse' explained that there was a case that was tried and the court determined that the NP was not covered as the MMA did not specifically include them as a health care provider. There is a bill (SB 106) that is moving through the legislature that deals with the burden of proof during a declared state of emergency. There is a bill (SB 267) that deals with all Special Funds, which includes the PCF. Originally, the bill eliminated all such funds and allowed fund money to be taken and put into general funds. It was completely re-written and now provides for the study by a pre-determined commission, of all special funds to see if any can be eliminated, privatized, or merged with another state agency. Mr. Cosse' stated that if the PCF were to continue to exist as we are that the Board might need to consider constitutional protection. The PCF budget is contained in HB 667 and has moved to the senate without any discussions. The PCF is not part of HB 1 as we are an ancillary agency.

Mr. Cosse' asked for discussion on the PCF revised Confidentiality Agreement. He asked that all members review the form and if there were any comments on the revisions of the form to submit them to Mrs. LeBlanc and Mr. Woolridge. Mr. Cosse' asked that the issue be deferred until the next meeting so that the new Board member, Mr. Hritz could review the form and submit any recommendations that he might have. Mr. Cosse' thanked Dr. Rathbun for her recommendations for revisions in the form. Mr. Cosse' asked if there were any further comments on the form. There was none.

Mr. Cosse' asked if there were any public comments, there were none. Mr. Cosse' thanked the guests for attending the meeting and the General Session was adjourned. The Board moved into the Executive Session.

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Mr. Clark Cosse' Jr, Chairman