

MINUTES

PCF OVERSIGHT BOARD

August 5, 2010

WOMAN'S HOSPITAL
BATON ROUGE, LA.

Mr. Clark Cossé Chairman convened the meeting of the Patient's Compensation Fund Oversight Board, at 6:30 PM on Thursday August 5, 2010, at the Woman's Hospital Corporate Board Room in Baton Rouge.

The following Board Members were in attendance:

Mr. Clark Cossé
Dr. Katharine Rathbun
Dr. Van Culotta
Mr. Manual DePascual
Dr. William LaCorte
Mr. Jim Hritz (late arrival)

The following Board Members were absent:

Dr. Melanie Firmin
Mr. Joe Donchess
Mr. Kent Guidry

Others present:

Mrs. Lorraine LeBlanc	Mrs. Barbara Woodard
Mr. Ken Schnauder	Mr. Dave Woolridge
Mrs. Cindy Amedee	Mr. Mark Berger
Mr. Peter Bondy	Mr. Ward Blackwell
Mr. Keith Kyler	Mr. Tom McCormick

Mr. Cossé called the meeting to order and asked that the record reflect five Board Members were in attendance at the meeting tonight. (Mr. Hritz arrived during the financial discussion). Mr. Cossé welcomed the guests to the meeting and asked all present to introduce themselves.

Mr. Cossé asked for public comments. No public comments were made.

Mr. Cossé called for the approval of the July 1, 2010 minutes. Dr. Culotta moved for the minutes to be approved. Mr. DePascual seconded the motion. By verbal vote, the minutes were adopted with no dissenting votes.

Mr. Cossé asked for the financial reports. Mrs. LeBlanc informed the Board that the net collections to date were around \$12,000,000 mainly due to the enrollments received in June. She informed the Board of the expenditures to date for the operating and claim budgets. Mrs. LeBlanc explained to the Board that the additional funds for claims from last fiscal year's budget had been expended. Mrs. LeBlanc informed the Board that due to the recent off budget approval, that Mrs. Woodard would be preparing the FY 11-12 budget for the October Board meeting and would require the Board's review and approval, as the budget is due to the Legislative Fiscal Office, Legislative committees and Legislative Auditor's Office in January. Mrs. LeBlanc informed the Board that the Claim Adjuster position had been filled and that the Accounting Tech position had been posted and interviews would be scheduled soon.

Mr. Cossé asked if the claims that were waiting on payment from last FY were charged any interest because of the delay in receiving the funds and he was informed that no interest was paid due to the delay. All of the attorneys involved were made aware of the potential delay and were very cooperative. Mrs. LeBlanc informed all attending the meeting that the PCF financial information would be available on the website by Friday afternoon. Mr. Cossé asked if there were any further questions from the Board regarding the financial reports. There were none.

Mr. Cossé stated that he thought the Board had discussed and approved additional monies be invested by the State Treasury Office at the November 2009 meeting, but this was not the case.. He asked the Board to direct the State Treasury Office to invest more of the cash on hand and stated he felt at least \$280,000,000 of the \$360,000,000 should be invested. Dr. Culotta asked if it makes sense to have an Investment Manager on the PCF staff to handle the investment options. Mr. Cossé stated that while the PCF was under the control of the State Treasury Office and with the limitations on investments, at this time an Investment Manager would not be needed. Mr. Cossé stated that eventually the PCF could consider an Investment Manager in house when the PCF could invest the same as LWCC with a balanced portfolio with staggered maturity dates. The State Treasurer's investments are limited by law. Out of the \$250,000,000 approved to be invested, \$248,000,000 has been invested. Dr. Culotta made the motion to instruct the State Treasury Office to invest an additional \$200,000,000 and to authorize the Chairman to consult. on what opportunities were available. Dr. Rathbun Seconded the motion. Verbal vote was unanimous. Mr. Cossé asked if there were any other questions or comments regarding the PCF investments. Mr. Bondy stated that his review of the investments indicated an overall earnings of 1.3% and possibly longer terms could earn more.

Mr. Cossé stated that the Board needed to be good stewards of the PCF money and to seek the right advisors in order to survive the market. Mr. Kennedy, State Treasury had stated the PCF Board should consider removing the money from the Treasurer's office and investing it; however the Board would have been limited to CDs and savings accounts only. In order for the PCFOB to expand investment criteria, legislation would have been required and there was not time for the research needed to accomplish that in the last session. Now there is time to do research and prepare. Dr. Culotta made the motion to instruct PCF Counsel to start drafting legislation regarding PCFOB's investments, possibly similar to those used by LWCC. Mr. Hritz seconded the motion. Vote was unanimous.

Mr. Cossé asked for the claims manager report. Mr. Schnauder reported that during the month of July the claims section had opened 104 claim files and closed 162, bringing the total open claims down below 5000. Twenty-three of those closed last month were with payment. Mr. Schnauder reported that there are 175 future medical cases to date. Mr. Schnauder informed the Board that 35 claims were being presented at this meeting for approval totaling \$9,584,029. Mr. Cossé asked if he was in favor of the 2 year prescription time being proposed. Mr. Schnauder stated that he was not in favor of the extended time for prescription due to the possible financial impact on the fund, as well as the potential for those involved not remembering what took place. Mr. Schnauder stated that things were going very smooth considering that July was a catch up month in paying the settlements waiting on the additional funds. Dr. Culotta asked how the PCF could reduce interest on the five year or older claims. Mr. Schnauder stated that he reviewed the older claims frequently and in the vast majority, the delay is at the primary level. His review leads him to believe those claims prior to 1990 will not be costly to the PCF. Dr. Culotta questioned if some of the cases should be reviewed further to see if there was justification for the PCFOB to settle prior to the primary and close the really old claims. Mr. Schnauder stated they are pushing as much as possible to conclude the older files. Mr. Cossé stated this was part of the problem with the 2 tier system, but cautioned that resolving cases without the health care provider having first done so could create problems and each such situation needs to be reviewed carefully by the Board. Further, it was his perspective that interest should be paid by the person(s) dragging their feet to settle since a claim should be complete and closed or settled within 5 years. Mr. Berger complimented the Claims Section on the great service and response time received from Mr. Schnauder and his staff. Mr. Cossé asked if there were any further questions on the Claims Manager report. There were none.

The next item on the agenda was hourly legal fees. The attorney general's office raised the maximum allowed in hourly legal fees and set up four tiers instead of three. The last time the PCFOB raised fees was July 2007, at which time the maximum for an attorney with 10 or more years of experience went from \$125 to \$140 per hour. The current maximum set by the AG is \$170 per hour. Currently, the PCF General Counsel is paid \$140 per hour just as the defense attorneys handling the PCF claims. Mrs. LeBlanc informed the Board that she and Mr. Schnauder had discussed rates and that there were no attorneys that refused to work for the PCF due to the rates. She stated that Mr. Schnauder reviews the billing hours and questions any excessive hours billed and that there was no problems retaining defense attorneys. The list has several attorneys in each major city in the state and requests are received frequently by attorneys wishing to work for the PCF. Ms. LeBlanc stated General Counsel handles different work than defense attorneys. General Counsel does more research and prepares legislation and rule changes; researches multiple laws, including those in other states; defends the statutes and rules in court, and that there was a broader range of expertise needed by General Counsel. Dr. Culotta asked what other General Counsel was used by the PCF. Mrs. LeBlanc stated that the PCF Conflict General Counsel was Stephanie Laborde with Milling Benson. Mr. Cossé asked for a recommendation of rate increase for counsel. Mrs. LeBlanc stated that an increase of at least \$10.00 to \$15.00 per hour should be considered. Dr. Rathbun made the motion for PCF General Counsel rates be increased to \$160.00 per hour, but the hourly rate for other defense attorneys remain the same as is currently paid. Dr. Culotta seconded the motion. Verbal vote was unanimous. Mr. Cossé asked if there were any further questions or comments regarding the rate

in which counsel was paid. Mr. Ward stated that the Louisiana Dental Association has the same General Counsel and that they supported the increase.

Each Board member had been provided with a copy of the annual actuarial study prior to the meeting. During the meeting, Ms. LeBlanc briefly went over the overall findings in the study and explained the supplemental IBNR summary that was distributed. Dr. Culotta stated he would be interested in seeing the combined ratio for each class of provider and the overall combined ratio for the PCF to see if there is a trend that could be used. He was also interested in how the future medical payments were reflected in the rate study and wondered if they should be treated as a different line of business. The Board also felt that higher earnings on investments could offset some of the need for surcharges. There was some discussion on reducing the nursing home rates to two rates and having a rate specifically for assisted living beds. It was felt the definitions for the different bed types for nursing homes could be clearer to ensure the PCF is actually getting paid for the appropriate type of nursing home beds. Mr. Berger felt there were very few injuries in assisted living facilities that would not be considered a general liability claim and the rates should reflect the low risk. Mr. Berger was asked to provide what he thought might be a clearer definition of a nursing home bed, a skilled nursing home bed and an assisted living bed. He stated that an assisted living facility is not licensed as a nursing home and should have a separate rate. He further clarified that there is no swing between beds in an assisted living facility and they cannot take nursing home patients. The actuary will be asked to look at this.

Mr. Bondy asked if the actuary assigns the IBNR and the answer was yes. Mr. McCormick asked if the actuary compares the ultimate loss calculations from each year. This question will be sent to the actuary. Mr. Ward asked about the origin of the 5% deficit reduction load. Mr. Cossé explained that several years ago it was added as a reasonable amount to add to attempt to reduce the unfunded liability over time.

Part-time rates were brought up by Dr. Rathbun who had prepared a summary and recommendation for the Board. It was her findings that most physicians did not work 40 hour weeks, but instead it was closer to 50 hours per week. Her summary explained some of the part-time discounts used in other states. Physicians consider the cost of insurance when deciding to reduce their hours, but there is also some concern that the physician's skills won't be as sharp with a limited practice, especially those of a surgeon. She suggested that discounts for high risk specialties should probably be less or eliminated, such as OB/GYN and general surgery. There is also an issue with the payment of tail coverage for those providers that go to a part-time status. Last year, LAMMICO changed from discounts of 75%, 50%, 25% to 70%, 45% and 25% and will apply for further reductions to 65%, 40% and 25% for 2011. The memorandum done by Dr. Rathbun and attachments will be sent to the actuary for comments at the next Board meeting.

A brief discussion of possible legislative considerations resulted in the restatement that legislation was needed to allow the PCFOB to have control of investments with a proper amount of flexibility and the legislation was needed to ensure the PCF funds were protected from seizure

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by the state. Dr. Culotta made a motion for PCF Counsel to protect the fund constitutionally through a constitutional amendment. Mr. Hritz seconded the motion.

Mr. Cossé thanked the guests for attending the meeting and the General Session was adjourned.

Mr. Hritz made the motion for the Board to move into the Executive Session to discuss matters involving litigation. Mr. DePascual seconded the motion. By unanimous vote, the Board moved into the Executive Session.

Mr. Clark Cossé , Chairman