

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PODIATRY AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF THE DISCIPLINARY : DLSC Case Nos. 12 POD 002,
PROCEEDINGS AGAINST : 12 POD 006, 12 POD 009, 12 POD 013,
: 12 POD 014, 12 POD 016, 13 POD 003,
JOHN S. LANHAM, D.P.M. : 13 POD 004, 13 POD 005, 13 POD 007,
RESPONDENT. : and 13 POD 008

0002545

ORDER OF SUMMARY SUSPENSION

The Petition for Summary Suspension of July 24, 2013, was noticed to be presented at 9:10 a.m. or as soon thereafter as the matter could be heard, on July 30, 2013. At that time, Prosecuting Attorney Arthur Thexton appeared for the Petitioner, Department of Safety and Professional Services, Division of Legal Services and Compliance. Respondent appeared in person and with attorney Kristin Nelson.

The Wisconsin Podiatry Affiliated Credentialing Board, having considered the sworn July 23, 2013, Petition for Summary Suspension; the Affidavit of Steven Merckx, D.P.M., letter from Respondent, to the Bureau of Consumer Protection dated August 1, 2012, and Warning Letter dated October 10, 2012, from the Bureau of Consumer Protection to Respondent, as evidence; having heard the arguments of counsel, hereby makes the following:

FINDINGS OF FACT

1. Respondent John S. Lanham, D.P.M., (dob September 2, 1956), is licensed in the State of Wisconsin to practice podiatric medicine and surgery, having license number 750-25, first issued on June 27, 1997, and current through October 31, 2014. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5720 West Oklahoma Avenue, Milwaukee, Wisconsin 53219.
2. As evidenced by the July 24, 2013, Affidavit of Service of Notice of Presentation and Petition for Summary Suspension of John S. Lanham, a true and accurate copy of the Notice of Presentation of Petition for Summary Suspension, Petition for Summary Suspension and Affidavit of Steven Merckx, D.P.M., was sent by electronic mail (received by Respondent's attorney on July 24, 2013) and both certified and regular U.S. mail to Respondent, and by regular mail to his attorney on July 24, 2013.
3. Respondent was previously disciplined by the Podiatry Affiliated Credentialing Board (Board) on December 26, 2006, in cases number 02 POD 005, 03 POD 004, 03 POD 005, 04 POD 004, 04 POD 007, 04 POD 008, 04 POD 014, 05 POD 003, 05 POD 008, 06 POD 002, 06 POD 003, 06 POD 004, and 06 POD 007, for multiple instances of billing for incision and drainage of abscesses on patients during post operative care when the patients did not have an

infection, an abscess or any other post-operative complication and Respondent did not perform incision and drainage of an abscess; billing for an iontophoresis treatment when none was delivered; and billing for custom orthotics when no orthotic was obtained. Respondent's license was suspended for nine months (stayed after three months, conditioned upon future compliance), he was required to take a three hour course in coding and billing, and to submit to monitoring of his billing for two years. Respondent's unlimited license was restored on May 20, 2009.

4. There is probable cause to believe that as a result of the below violations, Respondent is subject to discipline pursuant to Wis. Stat. § 448.675(1).

5. On January 6, 2012, Respondent billed Patient C under CPT code 76942, Ultrasonic Needle Guidance with Interpretation, in injecting dexamethasone for plantar fasciitis.

6. On April 25, 2012, Respondent billed Patient D under the same code, in performing a cortisone injection for a Morton's neuroma.

7. Additionally, Respondent billed for the injection for Morton's neuroma using CPT codes 64550 ("[injection, anesthetic agent; trigeminal nerve, any division or branch] other peripheral nerve or branch") and 20550 ("injections; single tendon sheath, or ligament, aponeurosis (e.g. plantar "fascia")"), instead of the correct code of 64455 ("injection(s), anesthetic agent and/or steroid, plantar, and digital nerve(s) (e.g., Morton's neuroma)").

8. There is probable cause to believe that by billing his patients in this manner under the circumstances, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Pod 2.01(12). Alternatively, Respondent engaged in unprofessional conduct not otherwise specified in Wis. Admin. Code § Pod 2.01.

9. On or about April 25, 2012, Respondent billed Medicare for a pair of shoe inserts provided to Patient D. The billing was submitted under HCPCS code L3002 ("Foot insert, removable, molded to patient model, plastazote or equal"), in the amount of \$500.08.

10. Code L3002 is further defined in the Local Coverage Determination Policy Article as: "Inserts and other shoe modifications are covered if they are on a shoe that is an integral part of a covered brace and if they are medically necessary for the proper functioning of the brace."

11. The patient did not have a brace of any kind, nor was there any molding to the patient's foot (with a heat gun and casting pillow as is regularly done for accommodative diabetic inserts) or taking an impression of the patient's feet.

12. There is probable cause to believe that by billing Medicare in this manner, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Pod 2.01(12).

13. On August 13, 2012, a subsequent treating physician for Patient E requested the patient's records from Respondent's office. Respondent told the subsequent treating physician's office that payment of \$.31 per page would need to be paid before the records were released.

14. Respondent violated Wis. Stat. § 146.83(1m) by requiring advance payment for patient health care records from a subsequent treating physician; such conduct is unprofessional conduct pursuant to Wis. Admin. Code § Pod 2.01(7) and (22). Alternatively, Respondent engaged in unprofessional conduct not otherwise specified in Wis. Admin. Code § Pod 2.01.

15. For the past several years, Respondent engaged in a routine practice of informing prospective patients that his practice "accepted" insurance from several named companies, when in fact Respondent well knew that he was not in the network of providers pre-approved by any of the named companies. Respondent has informed the Board that he is not currently in the network of providers preapproved by any insurance company, health maintenance organization, preferred provider organization, or similar entity.

16. There is probable cause to believe that by misleading his patients in this manner, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Pod 2.01(12), (14), and (22), and Wis. Stat. § 100.18(1). Alternatively, Respondent engaged in unprofessional conduct not otherwise specified in Wis. Admin. Code § Pod 2.01.

17. For at least the past two years, Respondent routinely billed patients for transporting an ultrasound machine in his personal vehicle, between his 4 regular places of practice, under Healthcare Common Procedure Coding System (HCPCS) code R0070: "Transportation of portable x-ray equipment and personnel to home or nursing home, per trip to facility or location, one patient seen." Respondent further billed such patients under HCPCS code Q0092: "set-up portable x-ray equipment," when an ultrasound examination was performed.

18. There is probable cause to believe that by billing his patients in this manner, Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § Pod 2.01(12). Alternatively, Respondent engaged in unprofessional conduct not otherwise specified in Wis. Admin. Code § Pod 2.01.

19. On October 14, 2011, Respondent performed a bunionectomy upon Patient A, a 55-year-old female. In addition to billing the patient under Current Procedural Terminology (CPT) codes 28290 "Hallux Valgus correction w/wo sesamoidectomy, simple," 28289 "Hallux rigidus correction with cheilectomy and capsula" and 28270 "capsulotomy, MPJ, with or without tenorrhaphy" Respondent (and the facility, which is wholly owned by Respondent) separately billed Patient A for local anesthesia (Marcaine and lidocaine), under CPT code 64450 "injection: peripheral nerve block" and 20550 "injection: single, tendon sheath, ligament, aponeur", and HCPCS code J7799. The 2011 edition of the CPT manual states (p. 52):

"(...) In defining the specific services "included" in a given CPT surgical code, the following services are always included in addition to the operation per se:

- local infiltration, metacarpal/metatarsal/digital block or topical anesthesia (...)"

On October 28, 2011, Respondent performed the excision of an ingrown toenail upon Patient B, a 24-year-old female. In addition to billing the patient under CPT code 11750 "excision of nail and nail matrix, partial or complete (e.g., ingrown or deformed nail), for permanent removal," Respondent (and the facility, which is wholly owned by Respondent) separately billed Patient B for local anesthesia (Marcaine and lidocaine), under CPT code 64450, and HCPCS code J7799. The 2011 edition of the CPT manual states (p. 52):

"(...) In defining the specific services "included" in a given CPT surgical code, the following services are always included in addition to the operation per se:

- local infiltration, metacarpal/metatarsal/digital block or topical anesthesia (...)"

On February 8, 2013, Respondent performed the excision of an ingrown toenail upon Patient F, a 20-year-old male. In addition to billing the patient under CPT code 11750 "excision of nail and nail matrix, partial or complete (e.g., ingrown or deformed nail), for permanent removal," Respondent (and the facility, which is wholly owned by Respondent) separately billed Patient F for local anesthesia (Marcaine and lidocaine), under CPT code 64450, and HCPCS code J7799. The 2013 edition of the CPT manual states (p. 47):

"(...) In defining the specific services "included" in a given CPT surgical code, the following services are always included in addition to the operation per se:

- local infiltration, metacarpal/metatarsal/digital block or topical anesthesia (...)"

Additionally, Respondent presented the patient with a bag containing aftercare supplies, including 100 bandages, for which the patient was charged \$2 each. Based upon the aftercare instructions provided to the patient, no more than 30 of these would have been needed.

20. Billing his patients in this manner under the circumstances, coupled with the Respondent's prior disciplinary history for similar conduct, recent statements to the media acknowledging his misleading actions and continued questionable billing practices evinces a pattern and practice suggestive of an intent to obtain or attempt to obtain any professional fee or compensation of any form by fraud or deceit, contrary to Wis. Admin. Code § Pod 2.01(12). Alternatively, this pattern or practice constitutes unprofessional conduct not otherwise specified in Wis. Admin. Code § Pod 2.01.

CONCLUSIONS OF LAW

1. The Wisconsin Podiatrists Affiliated Credentialing Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.675 and has authority to summarily suspend the license of Respondent John S. Lanham, D.P.M., to practice podiatric medicine and surgery in the State of Wisconsin, pursuant to Wis. Stat. §§ 227.51(3) and 448.675(2) and Wis. Admin. Code ch. SPS 6.

2. Based on the affidavit and exhibits presented to the Board, there is probable cause to believe that Respondent John S. Lanham, D.P.M., has committed unprofessional conduct, and that it is necessary to suspend the license of Respondent John S. Lanham, D.P.M., immediately

to protect the public welfare, based upon the conduct by the Respondent described in the above Findings of Fact.

3. The public health, safety and welfare imperatively requires emergency suspension of the license of John S. Lanham, D.P.M. to practice podiatric medicine and surgery.

ORDER

1. The license of Respondent John S. Lanham, D.P.M. to practice podiatric medicine and surgery in the State of Wisconsin is summarily **SUSPENDED** for 30 days, pending a hearing in this matter, pursuant to Wis. Stat. § 448.675(2), and Wis. Admin. Code ch. SPS 6.

2. The assigned Administrative Law Judge is delegated the authority to extend the suspension for an additional 30 days, if necessary, pursuant to Wis. Stat. § 448.675(2), and to further extend the order until a final decision is issued if Respondent causes any delay in the hearing process.

3. The formal Complaint to be filed with the Division of Hearings and Appeals, alleging that Respondent has committed unprofessional conduct, is approved for filing.

4. Respondent John S. Lanham, D.P.M., is hereby notified of his right, pursuant to Wis. Admin. Code § SPS 6.09, to request a hearing to show cause why this summary suspension order should not be continued and is further notified that any request for a hearing to show cause should be filed with the Wisconsin Podiatrists Affiliated Credentialing Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

5. In the event that Respondent John S. Lanham, D.P.M. requests a hearing to show cause why the summary suspension should not be continued, that hearing shall be scheduled to be heard on a date within 20 days of receipt by the Board of Respondent's request for hearing, unless Respondent requests or agrees to a later time for the hearing.

WISCONSIN PODIATRY AFFILIATED CREDENTIALING BOARD

By:


A Member of the Board

July 31, 2013
Date

