

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PODIATRY AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN S. LANHAM, D.P.M.,
RESPONDENT.

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:
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:

FINAL DECISION AND ORDER

ORDER 0002577

Division of Legal Services and Compliance¹ Case Nos.
12 POD 002, 12 POD 006, 12 POD 009, 12 POD 013, 12 POD 014, 12 POD 016,
13 POD 003, 13 POD 004, 13 POD 005, 13 POD 007, and 13 POD 008

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

John S. Lanham, D.P.M.
5720 W. Oklahoma Avenue
Milwaukee, WI 53219

Wisconsin Podiatry Affiliated Credentialing Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Board on July 30, 2013, and Respondent's license was summarily suspended on that date. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Podiatry Affiliated Credentialing Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

FINDINGS OF FACT

1. Respondent John Stuart Lanham, D.P.M., (dob: September 2, 1956) is licensed in the State of Wisconsin to practice podiatric medicine and surgery, having license number 25-750, first issued on June 27, 1997 and with registration current through October 31, 2014. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5720 W. Oklahoma Avenue, Milwaukee, Wisconsin 53219.

2. Respondent was previously disciplined by the Board on December 26, 2006, in case numbers 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 the 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.

3. The Division has alleged the following conduct. Respondent denies that his conduct has been unprofessional in any respect.

COUNT I

4. On October 14, 2011, Respondent performed a bunionectomy upon Patient A, a 45-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 co-owned by Respondent) separately billed the patient 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.

5. The 2011 edition of the AMA 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 (...)"

COUNT II

6. 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 co-owned by Respondent) separately

billed patient for local anesthesia (Marcaine and lidocaine), under CPT code 64450, and HCPCS code J7799.

7. The 2011 edition of the AMA 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 (...)"

COUNT III

8. On April 25, 2012, Respondent billed Patient D 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)").

COUNT IV

9. On or about April 25, 2012, Respondent billed Medicare for a pair of spenco-type 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. In fact, 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. Respondent knew or should have known that the inserts were not a covered service, or was incorrectly coded, under the circumstances.

COUNT V

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.

COUNT VI

14. 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 co-owned by Respondent) separately

billed the patient for local anesthesia (Marcaine and lidocaine), under CPT code 64450, and HCPCS code J7799.

15. The 2013 edition of the AMA 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 (...)"

16. Additionally, Respondent presented the patient with a bag containing aftercare supplies, including 100 @ 1"x 3" adhesive 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 normally have been needed.

COUNT VII

17. 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 commercial insurance company, health maintenance organization, preferred provider organization, or similar entity except Medicare.

COUNT VIII

18. 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."

19. Respondent further billed patients under HCPCS code Q0092: "set-up portable x-ray equipment," when an ultrasound examination was performed.

COUNT IX

20. Respondent routinely imposes a separate fee for the use of Respondent's facility when procedures are performed, in addition to the professional fees charged for professional services, without adequate prior notice to the patient that such a fee would be charged. None of Respondent's facilities is Medicare certified as an Ambulatory Surgery Center.

CONCLUSIONS OF LAW

1. The Wisconsin Podiatry Affiliated Credentialing Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.675(1), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent engaged in conduct defined by Wis. Admin. Code § Pod 2.01(12) and (22), and Wis. Stat. § 146.83(1m).

3. As a result of the above conduct, John S. Lanham, D.P.M., is subject to discipline pursuant to Wis. Stat. § 448.675(1).

ORDER

1. The attached Stipulation is accepted.

SUSPENSION

2. The license to practice podiatry of John S. Lanham, D.P.M. (license number 25-750), is SUSPENDED for one year, effective July 30, 2013:

- a. The suspension may be stayed after 6 months by the Board or its designee, provided that Respondent is in compliance with the limitations listed below, and provided Respondent demonstrates successful completion, at his own expense, of one of the following courses, or a substantially equivalent course which has been preapproved by the Board or its designee, including taking and passing any exams offered for the courses.
 - Medical Ethics and Professionalism, Case Western Reserve University, Office of Continuing Medical Education.
 - Professional Renewal in Medicine through Ethics (PRiME), Center for Continuing Education and Outreach Education at Rutgers Biomedical and Health Sciences and BioEthics Consulting, LLC.
 - Professional/Problem Based Ethics (ProBE), Competency Assessment Educational Intervention, Denver, Colorado.
- b. Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. Respondent shall cause the program sponsors to communicate directly with the Department Monitor or other designee of the Board, and shall permit the Board, its designee, and Department staff to confer with the course instructors and program sponsors regarding Respondent's performance in the program.
- c. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.

LIMITATIONS

3. The license to practice podiatry of John S. Lanham, D.P.M., (license number 25-750), is LIMITED in the following respects:

Disclosures

- a. Respondent shall, before resuming practice, post, in a manner visible to any person entering the area where patients customarily enter the place of practice, the total amount to be billed (including any facility fees) for his ten most common procedures. Respondent shall not charge more than the amount posted for these ten procedures. Respondent shall provide proof to the Board that said charges reflect his ten most common procedures. The notice shall be preapproved by the Board or its designee (through the Department Monitor), as to content, size (which shall be no smaller than 8" x 10"), and layout.
- b. Respondent and his staff shall respond to all questions concerning insurance coverage with the exception of Medicare, as follows, *verbatim*: "We are not an in-network provider for any insurance company. In most circumstances, therefore, your insurance will not cover your entire bill, or may not cover it at all. You should check with your insurance company to determine your individual coverage." If Respondent does become an in-network provider for any plan, Respondent may propose a modification of this requirement. No modification may be made without the express written approval of the Board or its designee, through the Department Monitor.
- c. Respondent shall post the following notice, visible to any person entering the area where patients customarily enter the place of practice: "Notice: Dr. Lanham accepts Medicare. Dr. Lanham will bill any other insurance company at your request as an out-of-network provider. Be aware that in most circumstances, your insurance will not cover your entire bill, or may not provide any coverage at all. You should check with your insurance company to determine your individual coverage." The notice shall be preapproved by the Board or its designee (through the Department Monitor), as to content, size (which shall be no smaller than 8" x 10", with letters in 48 point type), and layout. If Respondent does become an in-network provider for any plan, Respondent may propose a modification of this requirement. No modification may be made without the express written approval of the Board or its designee, through the Department Monitor. This notice shall be posted at every place where Respondent sees outpatients.
- d. If patients will be charged a facility use fee, Respondent shall post a clear notice, visible to any person entering the area where patients customarily enter the place of practice, informing patients that they will receive a separate facility use bill, and naming the entity owning the facility. The notice shall be preapproved by the Board or its designee (through the Department Monitor), as to content, size (which shall be no smaller than 8" x 10", with letters in 48 point type), and layout. This notice shall be posted at every place where Respondent sees outpatients.

Billing

- e. Respondent shall not submit any bill to either a patient or a third party payor which has not been prepared by a certified professional coder (certified by the American Academy of Professional Coders), who is a member of the Academy and has subscribed to the Academy's Code of Ethics, and who may be a member of Respondent's staff.

- f. Respondent shall not bill under HCPCS codes R0070, R0075, or Q0092, without the express written permission of the Board.
- g. Respondent shall not require prepayment for patient health care record requests from subsequent or concurrent healthcare practitioners.

Professional Mentor

- h. Respondent shall practice only under the oversight of a Professional Mentor approved by the Board.
- i. Respondent is responsible for obtaining a Professional Mentor acceptable to the Board. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). A Professional Mentor shall be actively practicing as a qualified podiatrist or orthopedic physician, hold a current and unlimited Wisconsin license, and shall have read this Final Decision & Order and agree to be Respondent's Professional Mentor.
- j. Oversight by the Professional Mentor shall include weekly meetings, review of charts, including billing records, selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing in a professional, competent, and ethical manner.
- k. Respondent shall arrange for his Professional Mentor to provide formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, including compliance with this order. Respondent's Professional Mentor shall immediately report to the Department Monitor any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient. If a report indicates poor performance, the Board may institute appropriate corrective limitations, in its discretion.
- l. The Professional Mentor may designate another qualified podiatrist or other physician acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks.
- m. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's Professional Mentor, Respondent is responsible for obtaining a new mentor who is acceptable to the Board. Respondent may not practice as a podiatrist until the new mentor has been approved.
- n. The Professional Mentor shall have no duty or liability to any patient or third party, with respect to the duties performed as Professional Mentor. The Mentor's sole duty in this capacity is to the Board.
- o. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
- p. If Respondent chooses to leave solo practice and work for a health care organization, and is no longer responsible for billing patients, he may petition the Board for a stay of the Limitations in Paragraph 3.

5. Respondent shall pay COSTS of this matter in the amount of \$7,800. Respondent shall pay this amount within one year of the date of this order by paying no less than \$650 per month.

6. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

7. The intent of this Final Decision and Order is to address Dr. Lanham's billing and insurance, CPT code billing practices and HCPCS code billing practices as they existed prior to the date of this Final Decision and Order.

8. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a removal of the stay of suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered, Respondent's license (25-750) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has paid them in full, including any accrued interest.

9 This Order is effective on the date of its signing.

WISCONSIN PODIATRY AFFILIATED CREDENTIALING BOARD

by:

William Weis, DPM
A Member of the Board / *W*

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August 23, 2013
Date