

Delaware Conrad State 30/J-1 Visa Program
Board of Director's Meeting
December 2, 2014
12:00 p.m. – 1:30 p.m.
Division of Public Health
Jesse Cooper Building
Dover, Delaware

Board Members Attending

Katherine Collison, Division of Public Health
Gerald Gallucci, MD, DHSS Office of Secretary
Jona Gorra, MD, Seaford Internal Medicine
Marilyn Hill, Beebe Healthcare (by phone)
Larry Jester, Nanticoke Memorial Hospital
Paul Lakeman, Bayhealth Medical Center
Richard Leader, MD, St. Francis Hospital
Mark Meister, Medical Society of Delaware
Kevin Sheahan, MD, Nemours Pediatric Clinic
Wayne Smith, Division of Public Health

Board Members Absent

Brian Olson, La Red Health Center

Staff Attending

Joan Barnwell, Division of Public Health
Judith Chaconas, Division of Public Health
Daniel Isom, Division of Public Health

Guest

Helen Arthur, Delaware Health Care Commission

Call to Order

Judith Chaconas called the meeting to order.

Minutes

Kevin Sheehan made a motion to accept the September 9th, 2014 minutes. Wayne Smith seconded the motion. The motion carried.

Status Report: Federal Fiscal Year 2013

Ms. Barnwell reported the number, type and location of sites approved for physician placement. She reported the following approved slots:

2012 - 8
2013 - 7
2014 - 11
Total = 26 approved slots

Old Business:

None

Site Applications Approved:

- 1.) Family Practice Associates, Family Medicine, Wilmington
All board members scored the evaluation sheet and approved the site application.
- 2.) Bayhealth Medical Center, Endocrinology(1), Gastroenterology(1), General Surgery (1), Dover and Milford
All board members scored the evaluation sheet and approved the site application except Paul Lakeman, who abstained.
- 3.) Christiana Care/Bayhealth Medical Center, Pediatric Hospitalist, Dover
All board members scored the evaluation sheet and approved the site application except Paul Lakeman, who abstained.
- 4.) Apogee Medical Group, Hospitalists(2), Milford
All board members scored the evaluation sheet and approved the site application.

Employment Contract Reviews

- 1.) Parul Singh, MD, Pediatrician, Rainbow Pediatrics, Georgetown
All board members voted to approve.
- 2.) Sandeep Kahlon. MD, Neurologist, CNMRI, PA, Milford/Dover
All board members voted to approve.
- 3.) Alex Nedelcociu, MD, General Surgery, Bayhealth Medical, Dover
All board members voted to approve except Paul Lakeman.
- 4.) Aysha Stilman, MD, Psychiatry, Rockford Center, Newark
All board members voted to approve.
- 5.) Vinoo Ramsaran. MD, Pulmonary/Critical Care, Kent Pulmonary, Dover
All board members voted to approve.
- 6.) Ronald Luna, MD, Internal Medicine, Seaford Internal Medicine, Seaford
All board members voted to approve except Dr. Gorra.

Public Comments:

None

Other Business/Discussion:

An inquiry was made about what the board was able to do if a current J-1 physician wanted to transfer to another site in the middle of their contract to prevent the transfer. Staff informed that the J-1 physician would need to get permission from the United States Immigration and Citizenship Services department. Joan Barnwell and Judy Chaconas referenced that the Deputy Attorney General assigned to the J-1 Board has advised the board that it is not within the purview of the board to intercede relative to an employer and physician contract, beyond that to evaluate and assure that the contract is in compliance with program regulations. If the program receives a notice from a J-1 physician's attorney asking whether the state would object to the transfer, the state (staff) could express a concern about the vacancy that will result from the transfer but that will have no bearing on whether or not the physician can transfer. The USICS makes that decision.

As a part of the Division of Public Health's customer feedback initiative, the board was informed that an email highlighting a Customer Service Survey regarding the J-1 Program would be sent in December. The survey will be sent via email on January 15th.

The State Loan Repayment Program was discussed. The program is funded by federal grant funds that must be matched dollar-for-dollar with state funds. The federal grant requires that awards be limited to clinicians who work in non-profit facilities located in a federally designated Health Professional Shortage Area. Recently, the federal dollar amount awarded to Delaware increased. In order to spend the federal funds, the amount of state funds allocated to the program for the match was increased to same amount as the federal allocation. One result is that state-only-funded awards that in the past were utilized to make awards to clinicians working in for-profit practices are no longer allowed.

There was discussion about the allowance of restrictive covenants and liquidated damages in employment contracts. Deputy Attorney General Rae Mims provided guidance to the J-1 Board on this issue at a previous meeting. As reference, the minutes of that (February 4, 2014) meeting are **attached**.

Next Meeting:

The next meeting will take place on February 3rd, 2015, 12:00 p.m., Third Floor Conference Room, Jesse Cooper State Office Building, 417 Federal Street, Dover, Delaware.

Adjourn:

The meeting adjourned.

Delaware Conrad State 30/J-1 Visa Program
Board of Director's Meeting
February 4, 2014
12:00 p.m. – 1:30 p.m.
Division of Public Health
Jesse Cooper Building
Dover, Delaware

Board Members Attending

Larry Jester, Nanticoke Memorial Hospital
Richard Leader, MD, St. Francis Hospital
Marilyn Hill, Beebe Healthcare
Katherine Collison, Division of Public Health
Gerald Gallucci, MD, DHSS Office of Secretary
Joshua Hunter, Bayhealth Medical Center (Representative for Paul Lakeman)
Kevin Sheahan, MD, Nemours Pediatric Clinic

Board Members Absent

Paul Lakeman, Bayhealth Medical Center
Mark Meister, Medical Society of Delaware
Brian Olson, La Red Health Center
Jona Gorra, MD, Seaford Internal Medicine

Invited Guest Attending

Wayne Smith, Division of Public Health
Rae Mims, Department of Justice

Staff Attending

Joan Barnwell, Division of Public Health
Judith Chaconas, Division of Public Health
Daniel Isom, Division of Public Health

Call to Order

Judith Chaconas called the meeting to order.

Minutes

Marilyn Hill brought to the board's attention that Wayne Smith was not able to second the motion for the December 3rd, 2013 minutes because he was not a board member at the time. Marilyn Hill made a motion to correct and approve. Richard Leader seconded the motion to correct and approve the minutes. The motion carried.

Status Report: Federal Fiscal Year 2013

Ms. Barnwell reported the number, type and location of sites approved for physician placement. She reported the following approved slots:

2012 - 11
2013 - 15
2014 - 11
Total = 37 approved slots

Old Business:

Rae Mims from the Department of Justice was asked to attend the meeting and give an overview of the board's responsibility of dealing with a liquidated damages clause in the employment contracts and to share the definition of "penalty" in the State's code. During the meeting she stated that it isn't up to the board to help the physician in cases where liquidated damages clause is in a contract and that the board only needed to follow its regulations. On February 6th, the following email was sent by Rae Mims to Ms. Barnwell who forwarded it to all the board members on February 12th:

"There is no specific definition of penalty in the Delaware State Code. However, there is a section that provides any word in the Code with no specific language is given the plain meaning of the word, such as what would be in a dictionary or legal dictionary.

The first thing to understand is that liquidated damages and penalty are not synonymous. According to Black's Law Dictionary, liquidated damages means: Cash compensation, agreed to by signed, written contract for breach of contract, payable to the aggrieved party. The contract succinctly specifies what actions, or omissions, constitute a breach. To be legally enforceable, the contract's nature makes damages circumstantially reasonable and difficult to determine. Otherwise, a court could interpret the specified amount as a fine, being in the contract primarily to force proper performance, and not to compensate injury.

Basically, think of liquidated damages as making the aggrieved party whole. If an aggrieved party says they put this much into the person as far as training and certifications, they would like that money back. If they were planning on party breaching the contract to bring in a certain amount of money in the future, they would want that money to make them whole. This is different than just being mad that they left early or breached the contract in some way.

I found two cases here in Delaware that speak to the issue. One, looks like it might be a J-1 situation, but the physician had agreed to stay additionally to the three years. They did the three years but did not stay the additional two. Again, all of this hinges on the language in the contract. The J-1 is responsible their advocacy in signing a contract and not the board.

In *Palekar v. Batra*, the Superior Court stated that: "Liquidated damages provisions are presumptively valid. The Court will uphold such a provision unless it is void as against public policy. Public policy requires the Court to determine whether the liquidated damages provision is the parties' best estimate of unascertainable damages or is a penalty

designed to prevent a party from breaching the contract.” The validity of the provision also involves a review of the parties’ intention to the contract.

Determining whether a stipulated sum is for a penalty or for liquidated damages is answered by application of a two-part test: a stipulated sum is for liquidated damages [and thus valid] when (1) the damages which the parties might reasonably anticipate are difficult to ascertain (at the time of contracting) because of their indefiniteness or uncertainty, and (2) the amount stipulated is either a reasonable estimate of the damages which would probably be caused by the breach or is reasonably proportionate to the damages which have actually been breached.”

Basically the Court is saying it will uphold liquidated damages clauses in contract if the damages stemming from the breach are difficult to ascertain and the fixed amount is reasonable. In and of itself, liquidated damages are not “bad” and contract language is key.”

Regional Medical Group – an approval letter will be sent to the site owner regarding the liquidated damage clause clarification in the employment contract.

Site Applications Approved:

- 5.) Apogee Medical Group – 1 Hospitalists, Milford
- 6.) Rockford Center – 1 Psychiatrist, Newark
- 7.) Bayhealth Medical Group– 1 Endocrinology, Milford

Employment Contract Reviews

- 7.) Luis Tatem, MD, (Hospitalist), Apogee Medical Group, Milford
- 8.) Ilyas Vahora, MD (Hospitalist), Apogee Medical Group, Milford
- 9.) Alvaro Rivera, MD (Hospitalist), Apogee Medical Group, Dover
- 10.) Dimitrios Barmpouletos, MD (Cardiovascular Disease), Delaware Cardiovascular Associates, Lewes
- 11.) Francis Ostrea, MD (Pediatrician), Nemours DuPont Pediatrics, Dover
- 12.) Kristine Parker, MD (Endocrinology), Bayhealth Medical Group, Milford – pending signature on contract.

13.) Valerie Agbeko, MD (Pediatrician), ABC Pediatrics, Dover

Public Comments:

None

Other Business:

Wayne Smith was asked to join the board due to his regular attendance of the J-1 meetings. At the time of the meeting, he said he would consider joining. Later in the day he accepted the position to become a board member. His first meeting as a J-1 board member will be May 6th, 2014.

Next Meeting:

The next meeting will take place on May 6th, 2014, 12:00 p.m., Third Floor Conference Room, Jesse Cooper State Office Building, 417 Federal Street, Dover, Delaware.

Adjourn:

The meeting adjourned.