

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for April 12, 2011**

**Attendees:**

Susan J. Lucas, MD, PhD, Chair  
Susan Riddick-Grisham, RN, BA, Vice-Chair  
David Barrett  
McLain O'Ferrall  
Jennifer Ogburn  
John W. Seeds, MD  
Gwen Taylor, Esq., MSW  
J. Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Affairs Coordinator  
Carla Collins, Office of the Attorney General  
Ann Rostant Jones, Jones & Rostant PC

**Call to Order:**

Susan J. Lucas, MD, Chair, called the April Board meeting to order at 1:00 p.m.

**Introductions:**

Introductions were made by all parties in attendance including Board Members who stated their name and the type of seat held, Program staff and visitors.

**Minutes:**

Susan Lucas motioned to accept the March Board minutes. David Barrett seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the March 2011 financials. The Program has 116 active claimants. Dr. Susan Lucas motioned to approve the financial report. Susan Riddick-Grisham seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall stated there's been a very small change, 0.003%, in the Program's investments. The Program's investments are still doing well.

**Legislative:**

Linda Chenoweth stated Governor McDonnell vetoed the medical malpractice cap increase but legislators overrode his veto. The Board was reminded this is an election year for legislators and some turnover is expected.

**Public Comment:**

Ann Jones stated she came on behalf of Rebecca Figueroa to discuss the issue of reimbursement for au pair agency fees regarding requests from Ms. Nelson. Ms. Jones noted that au pair agency fees include screening, host family health insurance for au pair and training.

George Deebo noted the Program is set up to pay direct hourly costs for caregivers. General discussion regarding the use of au pairs ensued.

During discussion it was noted that to the Program's knowledge only one family is utilizing an au pair. It also was noted that agencies sponsoring au pairs may provide differing benefits for the au pairs.

In regards to why it had taken so long to submit a request for reimbursement Ms. Jones stated she was engaged for representation by Ms. Jones last November and has been in communication with the Program since then.

Dr. Lucas asked Ann Jones to address the Board about another issue regarding Hershberger (Ms. Macerelli). Ms. Jones stated she wasn't prepared to speak to the Hershberger case, but would do the best she could and noted she believes everyone would like to resolve the issue. Mrs. Hershberger, whom she represents, has given her authority to negotiate the request for reimbursement. General discussion ensued.

Ms. Jones then informed the Board she needed to leave due to another appointment. She gave her contact information to Carla Collins and advised the Board to get back with her on this issue.

At this point the Board decided move into closed session.

**Closed Session (Claimant Issues):**

Dr. Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Lain O'Ferrall, and passed unanimously.

Dr. Susan Lucas moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas,

Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Carla Collins excused herself from closed session during the first portion of the session. She returned to the closed session once Old Business was completed.

**Results of Closed Session (Claimant Issues):**

Dr. Susan Lucas, as a business decision, moved that the Board authorize reimbursement to Ms. [REDACTED] of actual costs for medically-necessary care at hourly rates up to but not to exceed OES rates minus the \$22,183.00 already paid by the Program and pursuant to other applicable current Program Guidelines. Lain O'Ferrall seconded the motion and it passed with one dissenting vote (Dr. John Seeds).

Dr. Susan Lucas motioned to table Ms [REDACTED] issue. Susan Grisham seconded the motion and it passed unanimously.

**Closed Session (Old Business/Case Update):**

Dr. Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Dr. John Seeds, and passed unanimously.

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**New Business:**

Gwen Taylor suggested the Board needs to create a policy for nursing alternatives. George the staff will begin work on the issue.

**Executive Director's Report:**

George Deebo informed the Board the Program now has an updated server which was installed by Hermetic Networks.

**Adjournment:**

A motion to adjourn was made by Dr. Susan J. Lucas at 3:22 pm and passed unanimously.