

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for November 13, 2007  
Holiday Inn Koger South Conference Center, Richmond, VA**

**Attendees:**

Ralph Shelman, Chairperson  
Robert Boyle, MD  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
Laine O'Ferrall  
Jennifer Ogburn  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Angela Conley, Executive Assistant  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Susan Ward, Virginia Hospital and Healthcare Association  
Chris LaGow, Property Casualty Insurers of America  
Ann Hughes, Medical Society of Virginia  
Melanie Gerheart, Virginia Society of Obstetrics and Gynecology  
Gwen Taylor, Workers Compensation Commission  
Rob Walling, Pinnacle Actuarial Resources, via conference call  
Bill McKelway, Richmond Times Dispatch  
Mark Ames, Claimant Family  
Claire Gesalman, Claimant Family  
LeeAnn Hershberger, Claimant Family  
David Keeler, Claimant Family  
Sturgis Kidder, Petitioning Family

**Call to Order:**

Ralph Shelman, Chair, called the meeting to order at 9:05am.

The meeting began with a conference call with Rob Walling, Pinnacle Actuarial Resources, with an overview of his report of potential remedies for improving the financial condition of the Program and reducing the current Fund deficit. In his review, Mr. Walling discussed the following:

- Assessment Increases
- Elimination of Non-Resident Fee Exemption
- Implementation of a Managed Care Fee Schedule
- Use of loss reserving methodology currently used by the Florida NICA

At 10:40am, the Board asked for comments from the members of the Stakeholders meetings:

- Susan Ward, Virginia Hospital and Healthcare Association, commented that she agreed that the Program was good and she wants to see its continuation. Mrs. Ward supports the recommendation provided by the Stakeholders Report.
- Melanie Gerheart, Virginia Society of Obstetrics and Gynecology, also commented that she supported the recommendations and the continuation of the Program.
- Ann Hughes, Medical Society of Virginia, commented that currently they have over 9,000 members and are 100% committed to the continuation of the Program and support of the recommendations.
- Chris LaGow, Property Casualty Insurers of America disagreed with the recommendation of having a claimant family member added to the Board and did not see how that would curb the current deficit.

Claimant family participants also commented:

- LeeAnn Hershberger stated that she felt that participation should be expanded to include other types of specialty doctors such as neonatologist. Ms. Hershberger accepted the Medicaid 120 recommendation but thought some families might be affected.
- Mark Ames supports the parent Board member along with mandatory assessments.
- David Keeler stated that the primary reason for the stakeholders meeting was to resolve the Program's deficit but that the recommendations would not eliminate the deficit. Mr. Keeler also had concerns with the Medicaid 120 program.

Additional discussion on various aspects of the Stakeholder recommendations ensued.

The regularly monthly business meeting was called to order at 1:15pm.

**Minutes:**

Laine O'Ferrall made a motion to accept the October Board minutes. The motion was seconded by Bob Boyle and passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. Lynn Chapman motioned to accept the October financial statements. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Investment:**

Laine O'Ferrall stated that currently the market was not doing well but the Program saw a 3.4 overall increase. Mr. O'Ferrall reminded the Board that the next scheduled Investment Committee and Finance and Audit meeting will be Tuesday, November 27<sup>th</sup>, 2007, at 10:00 am at the Program offices.

**Public Comment:**

Sturgis Kidder stated that oral arguments regarding his petition had been set for December 20<sup>th</sup>, 2007. Mr. Kidder feels that his son's case will be won on presumption because he meets all parts of the definition of the Program requirements. Mr. Kidder stated that the Program expert,

Dr. Morton, wrote another report for another child whose petition was similar to his with a 96% surety that his child should be admitted into the Program. Mr. Kidder stated that his son's case was very similar and he cannot understand why his son has not been accepted into the Program as of yet. Additionally he expressed concern that the physician was "biased" toward any child being accepted into the Program. Mr. Kidder requested the Board to send a letter to the Workers Compensation Commission directing his son to be admitted into the Program.

### **Claimant Presentation**

Claire Gesalman presented a slide show of the differences of being a parent of a normal child versus that of a brain injured Program child.

Ralph Shelman, Chairperson, thanked Mrs. Gesalman for her presentation and her attendance at the Board meeting.

### **Closed Session Regarding (Claimant Issue):**

Laine O'Ferrall moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) of the Code of Virginia that the Board go into closed meeting for the purpose of discussing claimant issues and 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 probable litigation. Jennifer Ogburn seconded the motion and it passed unanimously.

Laine O'Ferrall 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.

### **Results of Closed Session (Claimant Issue):**

Robert Doyle, MD, motioned to approve the housing request from [REDACTED] for adaptable housing items except for the request for a generator. Dalal Salomon seconded the motion, and it passed unanimously.

**New Business:**

Resignation:

- Ralph Shelman announced to the Board that Lynn Chapman would be resigning her seat as a Board member due to her leaving her current employment with Nationwide Insurance. Mrs. Chapman has agreed to stay on the Board until a replacement has been appointed.

Board Elections:

- Board members nominated were Susan Lucas, MD, as Chairperson and Laine O’Ferrall as Vice-Chairperson. Dalal Salomon motioned to accept the nominations. Jennifer Ogburn seconded the motion. The Board voted unanimously to accept the slate of new officers.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, Chairperson. The motion was seconded and unanimously agreed to at 3:20 p.m.