

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
DRAFT - Minutes for December 8, 2009**

**Attendees:**

Susan Lucas, MD, Ph.D., Chair  
Lain O'Ferrall, Vice-Chair  
Robert "Bob" Boyle, MD  
Jennifer Ogburn  
Susan Riddick-Grisham, RN, LCP  
Dalal Salomon  
Gwen Taylor, Esq, MSW  
Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Carla Collins, Assistant Attorney General, Office of the Attorney General

Scott Early, Perimeter Security Services (sat outside conference room)  
Bill McKelway, Richmond Times Dispatch

**Call to Order:**

Susan Lucas, Chair, called the December Board meeting to order at 1:10 pm.

**Minutes:**

Corrections recommended by Carla Collins. Lain O'Ferrall motioned to accept changes to the November Board minutes. Bob Boyle seconded the motion and it passed unanimously. Lain O'Ferrall motioned to accept the November Board minutes. Susan Riddick-Grisham seconded the motion and it passed unanimously.

**Finance:**

Bob Boyle motioned to accept the November Financial reports. Scott Walters seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall stated that for the quarter to date the Program's investments were up by 2.2% and overall up by 19.6 % for 2009. Total investments are at \$216 million to date, and doing relatively good due to large cap growth and emerging markets.

**Public Comment:**

Bill McKelway inquired about the deadline for physician participation and how many physicians had paid for 2010 to date. George Deebo responded that information would not be available until later, assessment payments are coming in daily, and that there is not absolute deadline for participation.

**Closed Session (Claimant Issue)**

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 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.

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.

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

(Regarding request from ██████████) A motion was made to reimburse family for van rental expense of \$479, and if there is a claim against the conversion warranty while it is in effect, the Program will consider reimbursing the claimant for that expense. Motion was seconded by Jennifer Ogburn, and passed unanimously.

**New Business:**

Board Elections took place at the December Board Meeting. Susan Lucas nominated Bob Boyle for the position of Chair of the Board, seconded by Gwen Taylor, and passed unanimously. Susan Lucas nominated Gwen Taylor for the position of Vice-Chair of the Board, seconded by Susan Grisham, and passed unanimously.

Lain O’Ferrall commended Susan Lucas for a good job as Chair.

**Closed Session Regarding (Legal and Case Update):**

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) 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 pending litigation pursuant to Virginia Code § 2.2-3711 (A)(1). The motion was seconded by Susan Grisham, and passed unanimously.

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.

**Closed Session Regarding (Personnel):**

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) 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 a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1). The motion was seconded by Bob Boyle, and passed unanimously.

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.

Program staff left the room for this closed session.

**Executive Director's Report:**

George Deebo noted that a one page listing of Program and Board actions related to the alleged embezzlement was available. The Board requested that document be placed as an addendum to the Board minutes.

**Adjournment:**

A motion to adjourn was made by Susan Lucas, Chair, at 3:40 pm. It passed unanimously.

December 8, 2009

## **Birth-Injury Board Continues Actions Regarding Alleged Embezzling**

The Board of Directors and Staff of the Virginia Birth-Related Neurological Injury Compensation Program consider the current situation regarding alleged embezzling by a former employee very serious. In response the Board has authorized several key measures including the following:

▶ **Forensic Auditor Engaged** - The Program interviewed CPA firms and engaged a forensic auditor to review relevant information from the past three years. The firm of Steve Walls and Associates has been hired. Mr. Walls is a CPA, Certified Fraud Examiner (CFA) and is Certified in Financial Forensics (CFF).

▶ **Aggressive Prosecution** - The Program continues to work with state and federal officials towards the prosecution of the alleged embezzlement. Currently 29 counts been filed by authorities in federal court.

▶ **Aggressive Recovery Efforts** – The Program is in the process of hiring an attorney specializing in recovery of assets.

▶ **Insurance Recovery** – \$110,000 has been recovered through theft insurance.

▶ **Identity Theft Protection** - Participation in Identity Theft monitoring has been made available to all Program families through TrustedID, one of the top monitoring companies in the nation.

▶ **New Annual Auditor** – A Request for Proposals has been initiated to engage a new firm for annual auditing services.

▶ **Review and Revision of Internal Financial Controls** – While the Program has always reviewed and revised financial controls every year based on auditor recommendations, additional changes have been completed utilizing data from several sources including staff review, re-evaluation of annual audits and law enforcement input. Additional review and revision will occur as new information becomes available.