

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for February 10, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Jennifer Ogburn
Dalal Salomon
Ralph Shelman
Gwen Taylor, Esq., MSW
Scott Walters

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Iris Allen, Claims Manager
Angela Conley, Executive Assistant
Shirley Ricks, Legislative Affairs Coordinator
Carla Collins, Assistant Attorney General, Office of the Attorney General
Sturgis Kidder
Frances and Brittney Fox

Call to Order:

Susan Lucas, Chair, called the February Board meeting to order at 1:00 pm. Susan Lucas, Chair, made general introductions for those who were present.

Minutes:

Scott Walters motioned to accept the January Board minutes. Lain O'Ferrall seconded the motion and it passed unanimously.

Finance:

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. Program has \$180 million in investments. There are currently 111 active children in the program. Dalal Salomon motioned to accept the January Financial reports. Lain O'Ferrall seconded the motion and it passed unanimously.

Investment:

Dalal Salomon reported to the Board results of the Investment Committee meeting that occurred earlier in the morning. The program assets for YTD are down by 21% as of February 10th, 2009. In response to the investment advisors recommendation to rebalance, the investment committee decided to sell \$5 million in money market accounts and reinvest in fixed asset managers and large cap equity managers.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that she had met with many legislators over the last couple of weeks and handed out over 150 packets of information on the program. Currently, there are two bills that could impact the program. SB 843 would increase malpractice amounts from \$2 million to \$ 2.75 million. SB 1389 creates a patient compensation fund where any medical expenses over \$2 million would come from this fund.

Scott Walters asked if the program supported any proposed bills? Shirley Ricks responded that we did not. George Deebo added that the program usually only raises concerns of how the bill will affect the program.

Public Comment:

None.

Claimant Issues (Open Session):

Mrs. Fox declined to present her request in closed session. Frances and Brittney Fox were present to request reconsideration for their housing benefit to allow reimbursement greater than the actual cost for the benefit. Mrs. Fox read a letter to the Board members asking for reconsideration of their housing benefit due to Mr. and Mrs. Fox's health conditions, the location of the home since they would be moving to a different area to be closer to family members and the accessibility for Brittney to be more independent in the home.

Mr. Kidder declined to present his request in closed session. Sturgis Kidder requested that the Board allow reimbursement of caregiver costs and transportation costs primarily prior to entry into the Program without providing substantiating documentation. Regarding transportation he informed Board members that he could not get pharmacy records prior to 2000. Mr. Kidder stated he could possibly obtain files from physicians to help substantiate travel, however the providers might require payment for researching all patient files. Susan Lucas asked what he thought the cost of the medical records would be. Mr. Kidder stated that he had no idea. Mr. Kidder informed the Board that Andrew went on the Medicaid Waiver Program in 2000 so many expenses have been covered through them. Regarding caregiver reimbursement Mr. Kidder related that he did not have any documentation substantiating payment to caregivers over the past 18 years. The Board also noted, per Program guidelines, a letter of medical necessity is required to substantiate caregiver hours along with payment documentation.

Closed Session Regarding (Claimant)

Jennifer Ogburn 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 goes 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 and case updates to the Program's Guidelines. The motion was seconded by Ralph Shelman and passed unanimously.

Jennifer Ogburn 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):

Susan Lucas motioned that the Board has reconsidered Mrs. Fox's request. At this time, it declines to override the decision of the Program staff and encourages the claimant to continue working with staff. Jennifer Ogburn seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board has determined that it wishes to table the request from Mr. Kidder pending the outcome of a pertinent case before the Workers Compensation Commission or until the claimant provides requested documentation. Lain O'Ferrall seconded the motion and it passed unanimously.

Director's Report:

George Deebo noted that the Program will be receiving another Board member, however, it likely will not occur until after the current General Assembly Session.

Old Business:

Scott Walters informed Board members that he had an associate of his to review the Spanish guidelines had been translated into Spanish and the translation has several issues. George Deebo thanked Mr. Walters and he will have the guidelines reviewed again.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:02 pm. It passed unanimously.