

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for June 12, 2007**

**Attendees:**

Ralph Shelman, Chair  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
McLain O'Ferrall  
Jennifer Ogburn  
Melina Dee Perdue  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Executive Assistant  
Iris Allen, Claims Manager  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Frank Ferguson, Assistant Attorney General, Office of the Attorney General  
Bill McKelway, Richmond Times Dispatch  
Sturgis Kidder, father of petitioning claimant

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 10:10am.

**Minutes:**

Melina Dee Perdue motioned to accept the May Board minutes. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Finance:**

In Candace Thomas' absence, George Deebo, Director, asked Board members if there were any questions in regards to the May Financial information that had been received. No discussion was necessary.

Melina Dee Perdue motioned to accept the May financial statements. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Investment:**

Laine O'Ferrall asked Dalal Salomon to present remarks from the last Investment Committee meeting. Dalal Salomon shared with the Board that the committee had made some minor changes to a few of the assets/funds due to changes in the market. She also stated that the

committee felt that we were paying too much in manager fees especially with Tamro. Laine O’Ferrall, Dalal Salomon, and Jim Rorrer, Investment Consultant with CapGroup, would be looking at negotiating on the manager fees. Dalal Salomon felt that they could reach a platform on for the manager fees.

Melina Dee Perdue motioned to accept the Investment Committee report (even though a motion was not necessary. Changes in investments do not need to be approved by the Board members). Lynn Chapman seconded the motion.

**Special Training provided by the Attorney General’s Office:**

Carla Collins and Frank Ferguson of the Office of the Attorney General were present to discuss the Virginia Birth-Related Neurological Injury Compensation Act (Virginia Code §§ 38.2-5000 through 38.2-5021) with emphasis on how the Act was setup, its purpose, and how it affects the role of the Board members.

Carla Collins reviewed the following general items for the Act:

- Purpose of Act and Definition of Birth-Related Injury
- Process of Petition for Benefits
- Process of Petition Documentation (Medical Records, Panel Reports, etc.)
- Petition (Case) Litigation (Deputy Commissioner, Full Commission and Court of Appeals)

Carla Collins then reviewed the Roles and Responsibilities of the Board Member:

- Composition of the Board (Seven members)
- Voting
- Meeting requirements as a “public body” via in person, telephone and email
- General powers set forth in Virginia Code § 38-2-5016(F) including fiduciary duty.
- Maintain procedures set forth in the Plan of Operation.

**Presentation: Susan Lucas, MD, Ph.D.**

Board Member, Susan Lucas, MD, Ph.D., presented “A Study of Issues Related to Premature Infants and the Virginia Birth-Related Neurological Injury Compensation Program”. The purpose of the study was to see if premature infants are a factor in the increased expenses incurred by the Program. The summary of the findings of Dr. Lucas’ study showed that premature infants were not incurring any additional expenses as compared to other term infant claimants currently in the Program. Also, the number of premature infants entered into the program has remained at a constant rate over the course of the Program’s existence.

**Closed Session Regarding Legal:**

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 involving the Board in eligibility determinations and regarding materials presented for deliberations regarding advice for potential legislative changes.

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 specific legal matters requiring the provision of legal advice by such counsel regarding the potential impact of litigation on future regulatory actions . The motion passed unanimously.

Laine O’Ferrall moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation 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 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 Claimant:**

Lynn Chapman 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 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 the potential impact of litigation on future regulatory actions. The motion passed unanimously.

Lynn Chapman moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation 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 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:**

Melina Dee Perdue motioned to request an appropriate physician review of [REDACTED] request for a second caregiver to assist with daughter’s non-traditional therapy exercises (to be done ten minutes every hour). Susan Lucas seconded the motion and it passed unanimously.

**Old Business:**

Due to time limitations, the Board unanimously agreed to table the issue of discussing paying parents as caregivers to the July Board meeting.

**Executive Director's Report:**

George Deebo, Director, asked Lynn Chapman to report on the committees discussions on the issues of the review of current guideline policies and the Program's upcoming newsletter.

Lynn Chapman reported that the Policy Committee, which comprised of Jennifer Ogburn, Ralph Shelman, George Deebo, and herself, had meet on May 30th to discuss the process to review the current guideline policies. The committee members were asked to review the guideline policies and provide a list of policies that needed to be revised. This work is still in process and will be continued at the next meeting, to be scheduled.

Lynn Chapman reported that the Newsletter Committee had decided to create two separate newsletters to be distributed to the families and the public. At this time, George Deebo is waiting on price quotes for production of the newsletter to present to the Board before moving forward.

**Public Comment:**

Sturgis Kidder addressed the Board regarding his pending case to have his son entered into the Program. Mr. Kidder acknowledged that this was his fifth month attending the Program's Board meeting in an attempt to have the Board request his son, Andrew, be entered into the Program. Mr. Kidder stated that his son would be having surgery soon which Andrew would have a long road to recovery; however, his doctors are concerned that the surgery would not have a positive outcome for Andrew. Mr. Kidder stated that the Board has been presented with Andrew's medical records and expert documentation that attest to his son's birth injury. Mr. Kidder stated that it seemed to him that the Program along with the Attorney General's office were more concerned with procedural matters than focusing on the medical information that surrounded his son's injury.

Ralph Shelman, Chairperson, thanked Mr. Kidder for presenting his information.

**Closed Session Regarding Personnel:**

Lynn Chapman 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 a personnel issue. 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 the potential impact of litigation on future regulatory actions. The motion passed unanimously.

Lynn Chapman moved the adoption of the following resolution:

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**Adjournment:**

A motion to adjourn was made by Ralph Shelman, chairperson and unanimously agreed to at 3:40 p.m.