

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for July 14, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Susan Riddick-Grisham, RN, LCP
Ralph Shelman
Gwen Taylor, Esq, MSW

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Angela Conley, Executive Assistant
Shirley Ricks, Legislative Affairs Coordinator
Carla Collins, Assistant Attorney General, Office of the Attorney General

Scott Early, Perimeter Security Services
Luis and Roxana Bustios
Sturgis Kidder

Call to Order:

Susan Lucas, Chair, called the July Board meeting to order at 1:02 pm. Introductions followed.

Minutes:

George Deebo stated there a few minor word changes that Carla Collins had suggested. Lain O'Ferrall motioned to accept the June Board minutes with changes per Carla Collins. Ralph Shelman seconded the motion and it passed unanimously.

Gwen Taylor questioned the motion that was made on behalf of a claimant issue from the June Board meeting. She wanted clarification that the motion that was made was correct or was it partially correct. The motion had three parts to it, and George Deebo along with other Board members agreed that at the time the motion was made at the June Board meeting, it was correct in its entirety. However, since then the information has changed.

Finance:

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. The Program has \$192 million in investments. There are currently 114 active claimants in the program. Ralph Shelman motioned to accept the June Financial reports. Gwen Taylor seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall reviewed investment report as of June 30th with the Board. Program investments had an increase of 5.4% closing out the 2nd quarter of 2009. Mr. O'Ferrall stated this figure was

deceiving due to losses received in November and December 2008. However, investments were doing well overall.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that she had met with Senator John Edwards and Delegate Kilgore. Both meetings were positive and legislators stated support for the Program. Senator Edwards asked questions about the living wage benefit and if it was taxable to the family (Wage Benefit). George Deebo stated if the wage benefit is set up through in a trust account, then generally it was not taxable. However, if there is no trust account set up, then possibly the family would be taxed and SSI benefits may be impacted.

Mrs. Ricks stated that meetings were scheduled to discuss medical malpractice cap legislation, however the meetings were only for direct stakeholders, which does not include the Program. Meetings will be held in June, July, August and September, with a final report to be presented to the General Assembly prior to the start of the session. Mrs. Ricks will keep the Board posted as new information is available.

Public Comment:

Sturgis Kidder commented on the motion question brought up by Gwen Taylor. Mr. Kidder stated there were no outstanding documents as mentioned in the motion. Mr. Kidder stated that he has provided all documentation to the Board and/or George Deebo, and Mr. Kidders feels that the motion makes him non-compliant with the Program's requests, which is not the case.

Closed Session Regarding (Claimant Issues)

Susan Lucas, MD, 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 Ralph Shelman, and passed unanimously.

Susan Lucas, MD, 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):

A motion was made to accept documentation of checks and receipts currently received from [REDACTED] as final resolution of all pre-award expenses. The Board members voted with a result of 5-0. Motion passed. Additionally the Board requested that Program counsel draft and include a waiver to be signed by [REDACTED].

Open Session

As Mr. Kidder reentered the Conference room, George Deebo restated the motion to him. As the Board prepared to return to closed session, Mr. Kidder without being recognized by the Chair questioned the Board about post-award expenses. Dr. Lucas, Chair, as well as Lain O'Ferrall, Vice-Chair, stated to Mr. Kidder that the Board had only discussed the pre-award expenses. Mr. Kidder became very agitated, arguing as to why it had not been discussed. George Deebo attempted to answer him. Mr. Kidder interrupted several times. Dr. Lucas requested of Mr. Kidder, several times, that he allow the Board to continue its business. At this point Dr. Lucas, Chair, summoned Officer Early to escort Mr. Kidder from the Board meeting. As Officer Early asked Mr. Kidder to leave the conference room, Mr. Kidder stated he was insulted that the Board found it necessary to have a security officer on site for him. Officer Early then escorted him out of the meeting and Program offices.

Closed Session Regarding (Legal and Personnel):

Susan Lucas, MD, 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 and a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1).

Executive Director's Comments:

George Deebo informed the Board that Angela Conley would be assuming the role of Claims Manager.

Board member, Ralph Shelman's term ended as of June 30th, and the Program had been notified that a new member had been appointed. We hope to have the new member with us at the next scheduled Board meeting.

Adjournment:

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