

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for September 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  
Scott Walters

**Also Present:**

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

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

**Call to Order:**

Susan Lucas, Chair, called the September Board meeting to order at 1:05 pm. Introductions followed.

**Minutes:**

Lain O'Ferrall motioned to accept the July Board minutes. Susan Riddick-Grisham 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. The Program has \$204.5 million in investments. There are currently 113 active claimants in the program. Scott Walters motioned to accept the July Financial reports. Bob Boyle seconded the motion and it passed unanimously. The Annual Financial Report was provided to each Board member.

**Investment:**

Lain O'Ferrall commented that the Program had a gain of \$24 million in investment thus far for 2009. Mr. O'Ferrall stated investments performing good overall at this point.

Susan Lucas, Chair, mentioned that during today's investment committee meeting Lain O'Ferrall had asked that an additional Board members become involved in the Investment and Audit Committees. Scott Walters volunteered to serve on both committees.

**Public Comment:**

Bill McKelway, Richmond Times Dispatch, asked about an item within the Annual Financial Report that commented on material weaknesses in verifying receipt of goods and/or services. Mr. McKelway wanted to know if the Program had an amount this was related to. George Deebo noted that he could not speak to the actual figure, but the Board of Directors were aware of the issues. Mr. McKelway asked if the Board members had been made aware of the arrest of a former employee. George Deebo stated that the Board had been notified and were well aware of the situation.

**Claimant Issue (Open Session)**

Kimberly Nelson, mother of Rebecca Figueroa, appeared before the Board to discuss the cap amount on Conductive Education since it is classified as experimental therapy. Ms. Nelson was asked if she desired to present her information in closed session. She decided to present in open session.

Ms. Nelson was looking for clarification of what to do next for her daughter's therapy to continue. Rebecca receives limited physical therapy, occupation therapy and speech therapy in school. Rebecca receives 2 hours weekly of Conductive Education that incorporate all of the above therapy along with music therapy. Rebecca also receives an hour of music therapy weekly through another individual therapist. Ms. Nelson feels that the Conductive Education is not experimental and her daughter has shown progress. She requested that the Board approve expenses that would allow her daughter to continue with Conductive Education through the end of the year with an additional expense of about \$3,500.

**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 Lain O'Ferrall, 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):**

Susan Lucas, MD, motioned that the Board will maintain its current limit of \$6,000 per year for experimental therapy. In addition, Susan Grisham will re-evaluate placement of Conductive Education under Experimental Therapy at the October Board meeting. Bob Boyle seconded the motion and it passes unanimously.

**Old Business:**

George Deebo commented that he had received a claimant request today to present to the Board however, due to the late arrival of request, it could not be presented. Mr. Deebo will present the request under caregiver services for the October Board Meeting.

**New Business:**

George Deebo commented that the Annual Financial Report had been provided to all Board members, and to review the report and call or email if anyone had questions, or to bring questions and/or concerns to the October Board Meeting.

Scott Walters agreed to serve on the Investment and Audit Committees.

**Executive Director's Comments:**

George Deebo commented on the loss of Shirley Ricks, Legislative Affairs Coordinator, who passed away due to a tragic automobile accident. Staff members were represented at her viewing and funeral, Mrs. Ricks will be dearly missed.

Program staff has advertised for the position, and resumes will be reviewed in the next week or so to set up interviews.

**Closed Session Regarding (Legal, Case Update 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).

Susan Lucas, MD, moved the adoption of the following resolution:

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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.

**Adjournment:**

A motion to adjourn was made by Susan Lucas, Chair, at 3:10 pm. It passed unanimously.