

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting**

Minutes for May 13, 2014 - Draft

Attendees:

David Barrett, Chair
Hope Cupit, CPA
Francoise Mullen
Vanessa S. Rakestraw, Ph.D., CRC
John Seeds, MD

Also Present:

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

Call to Order:

David Barrett called the meeting to order at 10:35 a.m.

Minutes:

Dr. John Seeds moved to approve the March minutes, with revisions recommended by Carla Collins. Hope Cupit seconded the motion and it passed unanimously.

Finance:

Candace Thomas reported that no new claimants were admitted into the Program in April. Revenue for the month of April totaled \$374 million compared to \$340 million the previous year. Due to the recommendations made by the Program's auditors, investments now will be reconciled on a trade-date basis instead of based upon settlement statements. Because of this change, investment information will be one month behind. Candace Thomas also reported that the audit for this year has been completed.

Investment:

David Barrett, George Deebo, and Candace Thomas met with Cap Group Advisors on Friday, May 9th. Dave Barrett reported that the advisors are constantly looking at asset allocations, and monitoring and rebalancing investments such that investments are on a good track for this year. A follow-up meeting with the investment consultants will take place in June. Investments were up 4% for April and 1% for year-to-date.

Public Comment:

None

Closed Session (Voting Ratification and Case Updates):

Dr. John Seeds moved 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 pending litigation.

Upon the conclusion of the closed session, Dr. John Seeds 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 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.

The Board members were polled individually and each member certified the motion.

Results of Closed Session (Voting Ratification and Case Updates):

Hope Cupit made a motion to ratify all votes made by the Board during the following dates: June 11, 2013, July 9, 2013, November 20, 2013, December 10, 2013, January 14, 2014, March 11, 2014, and April 8, 2014. The motion was seconded by Francoise Mullen and passed unanimously. (Please see attached for additional information, which is incorporated here by reference as if fully set forth here.)

Case designation B14-01- [REDACTED] David Barrett moved to authorize Counsel, Assistant Attorney General Carla Collins, to negotiate a settlement of pre-Petition reimbursement compensation for family care. Vanessa Rakestraw seconded the motion and it passed unanimously.

Case designation B13-06 – [REDACTED] David Barrett, moved to ratify the settlement of pre-Petition compensation claims for Claimant. Hope Cupit seconded the motion and it passed unanimously.

Case designation B13-05 – [REDACTED] David Barrett, moved to ratify the settlement of pre-Petition compensation claims and the claim for fees and costs for Claimant. Additionally, Dave Barrett moved to ratify the Program's agreement to pay the award of compensation pursuant to Virginia Code §38.2-5009.1. Francoise Mullen seconded the combined motion and it passed unanimously.

New Business:

George Deebo has called the Office of Appointments regarding the three Board positions that will be vacant as of June. Neal Schulwolf has been re-nominated to sit on the Board. Board members are asked to send any suggestions for nominees to George Deebo.

Carla Collins read the proposed revisions to the Plan of Operations. Dave Barrett moved to forward the proposed revisions to the Plan of Operations to the State Corporation Commission for approval. Hope Cupit seconded the motion and it passed unanimously.

Prior to adjournment, the Board recognized Francoise Mullen for her service and dedication to the Board. Ms. Mullen's term expires next month.

Adjournment:

David Barrett adjourned the meeting at 11:50 a.m.

Votes to be Ratified:

June 11, 2013:

Approving the April 2013 Board Minutes

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii) and obtain legal advice concerning them

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes regarding the specific Claimant Issues:

Denying the request for a portable ramp based upon a duplication of benefits (One dissenting vote)

Authorizing payment of the requested amount in lieu of litigation

Authorizing reimbursement related solely to the portion of pre-admission health insurance premiums attributable to the admitted infant claimant's coverage solely in lieu of litigation and subsequent to the receipt of additional information requested by the Program

Approving the contract (MOU wt OAG) and authorizing Executive Director George Deebo to endorse the contract and accept its terms and conditions.

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3711(A)(1) to discuss a personnel matter pursuant to §2.2-3711(A)(1)

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

July 9, 2013:

Approving the June 11, 2013 Board Minutes with revisions provided by AAG Carla Collins

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii) and obtain legal advice concerning them

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the Board's tabling of the Claimant's request until the next Board Meeting in September so that staff could gain additional information and provide their recommendations so that prudent and reasonable expenditures to the fund can be established.

November 20, 2013:

Approving the July 9, 2013 Board Minutes with one revision requested by Dep Dir Candace Thomas

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii) and obtain legal advice concerning them and to discuss pending litigation

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes regarding the specific Claimant Issues:

Authorizing Carla Collins to meet with claimant's attorney to settle the claim with one caveat whereby the Program has the right to examine and deny any future claims.

To allow up to the cost of a stair lift (\$20,000) that can be used to either purchase said stair lift or apply the funds toward the purchase of an elevator with the claimant being responsible for the additional cost.

To request a release of information form from the claimant and for the Program's consulting physician to contact the treating physician resulting in a more specific recommendation from the consulting physician.

December 10, 2013:

Approving the November 20, 2013 Board Minutes with one revision by Carla Collins, Asst Atty Gen

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii) and obtain legal advice concerning them

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes regarding the specific Claimant Issues:

Authorizing and Approving the settlement for the agreed upon terms

Approving payment of up to the requested amount based on expert's review to be used to support medically necessary equipment for claimant.

To approve a new full-size wheelchair accessible van.

Nominating and electing the Officers for the Board for 2014

January 14, 2014:

Approving the December 10, 2013 Board Minutes with three revisions by Carla Collins, Asst Atty Gen

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) to obtain legal advice concerning pending litigation

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes following the Closed Session:

To ratify settlement agreements for attorney fees and costs regarding 4 cases.

March 11, 2014:

Approving the January 14, 2014 Board Minutes

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii), to obtain legal advice concerning them, and to discuss pending litigation

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes regarding the specific Claimant Issue:

To approve claimant's request to pay the additional cost for a video monitor system and to increase the allowance for such items to \$150. Claimants will be reminded that they must provide the necessary paperwork stated in the guidelines of the Program prior to any purchase.

April 8, 2014:

Approving the March 11, 2014 Board Minutes with revisions provided by Carla Collins, AAG

Holding a Closed Session pursuant to Virginia Code §§2.2-3711(A)(7) and 2.2-3705.5(16) to discuss claimants' issues pursuant to §38.2-5002.2(iii), to obtain legal advice concerning them, and to discuss pending litigation

Certifying, pursuant to Virginia Code §2.2-3712, that the Closed Session was conducted in conformity with Virginia law, specifically in conformity with the requirements of FOIA

Ratifying the votes regarding the specific Claimant Issue:

To table the claimant's issue until the next Board meeting while the Program's staff obtains additional information

The Board also authorized Carla Collins, AAG, and Director Deebo to settle the pending case as specified and in accordance with the terms and conditions discussed.