

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for January 9, 2007**

**Attendees:**

Ralph Shelman, Chair  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
Jennifer Ogburn  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Executive Assistant  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Bill McKelway, Richmond Times Dispatch  
Jim Rorrer, Investment Consultant, CapGroup  
Sturgis Kidder

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:10 p.m.

**Minutes:**

Susan Lucas motioned to accept the December Board minutes. Jennifer Ogburn seconded the motion and the motion passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included Balance Sheet, Profit and Loss Report. Susan Lucas motioned to accept the December financial statements. Lynn Chapman seconded the motion and the motion passed unanimously.

**Investment:**

Jim Rorrer, Investment Consultant with CapGroup, was present to answer any questions Board members had regarding the program's investments. As of January 5<sup>th</sup>, 2007, the investment values totaled \$185 million but had not been finalized. Fourth quarter results had not been completed but Mr. Rorrer stated that the stocks and bonds investments had received gains of over 8% and that was above the Program's long-term goal.

**Finance Committee:**

No report for the December meeting.

**Update:**

- **Lobbyist – General Assembly 2007**

Jackie Epps and Luder Milton from Morris and Morris were present to introduce themselves to the Board and discuss actions for the beginning of the 2007 session of the General Assembly. Both Ms. Epps and Mr. Milton gave a brief overview of their experience working with the General Assembly. Ms. Epps stated that she was aware of a bill that was going to be introduced that would have some impact on the Program. She was going to contact the legislator to find out more information about the bill.

Ralph Shelman thanked Ms. Epps and Mr. Milton for coming to the Board meeting and that the Board looked forward to working with them.

**Public Comment:**

██████████, father of ██████████, spoke to the Board regarding an appeal for entry into the Program for his son. He thought that money could be saved by him addressing the Board and requesting a "shortcut" in the petition process.

Ralph Shelman thanked ██████████ for addressing the Board and sharing his information.

**Continued Business – Intensive Physical Therapy:**

Susan Lucas reported that she, George Deebo, Lynn Chapman and Ginny Tweel, Nurse Case Manager, met to discuss allowing use of intensive physical therapy under the same administrative guidance as is currently used for Conduction Education. The combined policy would allow families a benefit of using either or both therapies in the policy with a maximum cap of \$6,500.

Susan Lucas motioned to expand coverage for intensive physical therapy by applying the same administrative guidelines used for conductive education and to review the coverage annually. Lynn Chapman seconded the motion and the motion passed unanimously.

**Other:**

Susan Lucas asked Carla Collins how many pending petitions the Program currently had. Ms. Collins responded that the Program had between 10 – 12 pending cases that she was working on. Ralph Shelman, chairperson, asked George Deebo or Carla Collins to periodically provide a report on pending cases.

Susan Lucas commented that she would like to see that the minutes are posted to the website in a more time manner.

Susan Lucas commented that she did not think that the stakeholders meeting had not accomplished anything for the Program. She stated that the lobbyists got what they wanted which was no financial increase.

Susan Lucas informed the Board that she had been working on a final review of all claimants. She had found that 39 records could not be located. She had contacted the WCC and was told that it would be researched.

Susan Lucas questioned whether a special trust account would need to be opened for the claimants who would be receiving the wage benefit. George Deebo commented that letters had

been sent out with basic information and that he or Candace Thomas would be contacting the families about three months prior to their child's birthday to discuss more specific options for the wage benefit. It would be up to the family to set up any appropriate accounts.

**Closed Session Regarding Claimant Issues:**

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:**

Susan Lucas informed [REDACTED] that the Board could not take any action at this time, as it would be premature since the petition is before the Commission.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, chairperson and unanimously agreed to at 3:45 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for February 13, 2007**

**Attendees:**

Ralph Shelman, Chair  
Melina Dee Perdue, RN, MBA, CNA, Vice-Chair (via telephone)  
Susan Lucas, MD, Ph.D. (via telephone)  
Laine O'Ferrall  
Jennifer Ogburn  
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  
Bill McKelway, Richmond Times Dispatch  
Sturgis Kidder  
Ann LaCroix Jones, counsel for Sturgis Kidder  
Leslie Zork, counsel for Sturgis Kidder

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:10 p.m.

**Minutes:**

Melina Perdue requested a change of the December Board minutes to correct attendees. Melina Perdue was not present at the last Board meeting. Laine O'Ferrall motioned to accept the January Board minutes. Jennifer Ogburn seconded the motion and the motion passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included Balance Sheet, Profit and Loss Report.

Melina Perdue asked in comparing January 2007 to January 2006 Participating Physician Income and Mandating Physician Fee had an increase. George Deebo stated that the increase may be due to an increasing number of participating physicians responding promptly as well as increased fees.

Bill McKelway asked Melina Perdue why hospital participation seemed to be declining. Melina Perdue responded that she could not know for sure without researching the issue, however thought a couple of hospitals had ceased operation of delivering babies at smaller hospitals.

Also, she noted that some of the smaller hospitals did not participate because of the effect it caused in their margin bottom line.

Laine O'Ferrall motioned to accept the January financial statements. Dalal Salomon seconded the motion and the motion passed unanimously.

**Investment:**

Laine O'Ferrall stated that the Program ended the 4<sup>th</sup> quarter with about an 8 ¼% increase with the investments. Overall, it had been a good quarter and the Program ended the year with higher numbers than had been expected. Laine O'Ferrall commented that Jim Rorrer, Investment Consultant with CapGroup, had done a great job with the Programs investments.

The Board requested to add Dalal Salomon to the Investment Committee. All members present agreed unanimously.

Ralph Shelman, Chair, asked Dalal Salomon if she would be interested in joining the financial committee as well. Dalal Salomon responded that she would be interested in finding out more of what the financial committee was working on; however, she would assist in any area she could.

**Finance Committee:**

No report for the January meeting. Next financial committee meeting is scheduled for Friday, February 23, 2007.

**Legislative Update:**

George Deebo updated the Board members that SB 774 was not approved by the Labor and Commerce Committee.

**Public Comment:**

Sturgis Kidder, father of Andrew Kidder, spoke to the Board along with Ann LaCroix Jones and Leslie Zork, counsel for Mr. Kidder, regarding an appeal for his son's petition. Ms. Jones gave a review of Andrew's situation.

Carla Collins, counsel for the Program, stated that she had received all the petition's documentation and will have a general assessment of the petition for by Friday, February 16<sup>th</sup>, 2007.

Ralph Shelman, Chair, thanked Sturgis Kidder, Ann Jones and Leslie Zork for presenting their information to the Board.

**Closed Session Regarding Legal and Claimant Issues:**

Jennifer Ogburn 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.

Jennifer Ogburn 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:**

Laine O'Ferrall motioned to take no action of the request from [REDACTED] for the Board to provide financial assistance for housing regarding his new home in Florida. Jennifer Ogburn seconded the motion and the motion passed unanimously.

Dalal Salomon motioned to deny the request from [REDACTED] for travel expenses for an additional family member. Laine O'Ferrall seconded the motion and it passed unanimously.

**Other Business:**

George Deebo had provided the Board members with information regarding the Florida program with regards to compensating parents to care for their children. After a brief discussion the Board members decided to table the discussion until the March Board meeting.

George Deebo announced that a new Plan of Operation had been submitted to the State Corporation Commission for informal review.

George Deebo announced that Program staff had a few personnel changes, Ty Banks, Accounting Specialist and Sara Goodwyn, part-time Nurse Case Manager, were no longer employed with the Program.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, chairperson and unanimously agreed to at 3:45 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for March 13, 2007**

**\*\*AMENDED\*\***

**Attendees:**

Ralph Shelman, Chair  
Melina Dee Perdue, RN, MBA, CNA, Vice-Chair  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
Laine O'Ferrall

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Executive Assistant  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Bill McKelway, Richmond Times Dispatch  
Sturgis Kidder

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:05 p.m.

**Minutes:**

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

**Finance:**

Candace Thomas reviewed the financial highlights that included Balance Sheet, Profit and Loss Report for February.

Susan Lucas, MD, asked what was included in the Professional Services account. Candace Thomas stated that account is for consultants (Cap Group) and lobbyist (Morris & Morris). Dr. Lucas also asked where costs for medical reviews and for Jock Haight, Construction Consultant, were recorded. Candace Thomas responded that the medical reviews were recorded under a separate account for medical expert reviews. Mr. Haight expenses are recorded until construction management; however, no invoices have been received in 2007 as of yet.

Dr. Lucas inquired about how the Attorney General's Office was paid. Candace Thomas stated that the Attorney General Office is set up on an automatic schedule to be paid each quarter.

Laine O'Ferrall motioned to accept the February financial statements. Susan Lucas, MD, seconded the motion and the motion passed unanimously.

**Investment:**

Laine O'Ferrall asked George Deebo to give a summary of the last investment committee meeting held on February 22<sup>nd</sup>, 2007, since he was not in attendance. During the investment committee meeting, it was discussed to continue to post the summary of the investment report on the Program's website. Overall, the market was stable. The committee will be looking to make some possible changes in some of the investment accounts in future meetings.

**Legislative Update:**

George Deebo mentioned that the Stakeholders meeting were in the process of being scheduled with tentative dates in April and May. As soon as the dates were finalized, he would contact the Board with the meeting information.

**Public Comment:**

Sturgis Kidder, father of Andrew Kidder, was present and distributed to Board members copies of his attorney's brief filed with the Workers Compensation Commission. He requested the that the Board make a decision to accept his son into the Program. He also thought that by the Board making a decision to accept his son into the Program it would reduce cost in legal fees for the Program. Mr. Kidder also stated that he and his attorneys had offered to meet with the Attorney General's regarding the information. However, he had received no response from the Attorney General's office.

Carla Collins of the Attorney General's office noted she had talked with the his attorney's following last month's meeting.

Mr. Kidder requested that the January Board minutes be amended to reword or take out the phrase "short-cut" in regards to his request that the Board accept his son and not complete the prescribed admission process. George Deebo stated that he would look at the minutes and amend them accordingly.

Ralph Shelman, Chair, thanked Sturgis Kidder for coming to the meeting.

**Closed Session Regarding Legal and Claimant Issues:**

Melina Dee Perdue, Vice-Chair, 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.

Melina Dee Perdue, Vice-Chair, 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, Vice-Chair, stated that without detailed information on the Attorney General's findings, the board could not make any educated recommendations regarding the petition for Sturgis Kidder.

Lynn Chapman motioned to deny request of [REDACTED] for a different type of trust home because the benefit has already been provided and it is a one-time housing benefit. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Other Business:**

In February, George Deebo had provided the Board members with information regarding the Florida program with regards to compensating parents to care for their children. After a brief discussion the Board members decided to table the discussion until the April Board meeting due to time conflict.

George Deebo announced that in April he wanted to discuss with the Board a concern for housing where families live in townhomes where renovations/modifications for their child cannot be made. There has not been a specific request for a benefit, but that the concern has been expressed by a claimant parent. Board members felt that it would be beneficial for the claimant family with concerns to provide specific requests.

Dr. Lucas stated that she believed the Program was not making good decisions regarding accepting or opposing petitioners to enter the Program and cited that the Program was not winning most of those cases.

George Deebo explained that the purpose of accepting or opposing petitions was not about winning or losing. He noted that the Program has a statutory obligation to assure that each petition meets the legislative requirements and that was the basis of all actions. He added that when either the objective physician panel report or the independent physician reviewer determine, based on medical records, that a petitioner does not meet the statutory requirements it is the obligation of the Program have the Workers' Compensation Commission make a decision. In cases where the panel and the Program's independent physician reviewer agree the petition should be accepted, the Program generally agrees to accept the petitioner.

Carla Collins noted that many of the petitions Dr. Lucas referred to were actually accepted by the Program prior to any hearing. The reason is that in some cases the Program does not

immediately have all the relevant information or the Program determines it cannot overcome the "presumption" for the petitioner as outlined in the law.

Ralph Shelman noted that Melina Dee Perdue would complete her second term June 30, 2007. Since Ms. Perdue was a participant of the Stakeholders meetings, he asked for a volunteer to replace her at the meetings. Lynn Chapman agreed to replace Melina Dee Perdue as participant with the Stakeholders meeting.

After a brief discussion, the Board members directed George Deebo to move forward with planning to begin a newsletter to be produced on a quarterly basis for families, physicians, hospitals and the general public. Lynn Chapman agreed to assist George Deebo with working on the newsletter. Topics for the newsletter include general information, concerns of claimant families and articles on families. George Deebo will have more information regarding price, format and distribution at the next Board meeting.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, chairperson and unanimously agreed to at 3:30 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for April 11, 2006**

**\*\*AMENDED\*\***

**Attendees:**

Melina Dee Perdue, Chair  
William "Bill" LeHew, MD, Vice-Chair  
Edward Mazur, CPA  
McLain O'Ferrall  
Ralph Shelman

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Angela Conley, Executive Assistant  
Frank Ferguson, Deputy Attorney General, OAG  
Bill McKelway, Richmond Times Dispatch

**Call to Order:**

Melina Dee Perdue, Chair, called the meeting to order at 1:10 p.m.

**Minutes:**

Ed Mazur presented changes to the March Board minutes for clarification. Ralph Shelman seconded the motion and the motion passed unanimously. Revised minutes will be sent to the Board members in the May Board packet.

**Finance:**

Candace Thomas reviewed the financial highlights that included Balance Sheet, Profit and Loss Report, and introduction of option for physicians to pay their annual assessment with credit cards effective February 1<sup>st</sup>, 2006. Ed Mazur asked Candace Thomas to look at the Program's level of cash to see if it was earning any type of interest while in the bank. He also asked if the Program had an Accounts Payable policy in place so that we are paying invoices in a timely manner. Candace Thomas responded that she would verify the interest with the bank and that the Program did have a policy in place for timely payment of invoices.

Candace Thomas asked the Board members if they wanted to continue to receive the detailed financial statements or if they would prefer a condensed version of the reports. Ed Mazur and Melina Dee Perdue, Chair, both commented that they preferred the detailed financial statements and would like her to continue with that format.

Ed Mazur made a motion to approve the March financial statements. Ralph Shelman seconded the motion and the motion carried unanimously.

**Finance Committee:**

Edward Mazur stated that Cherry, Bekaert and Holland, the Program's Public Account Firm, had completed the 2005 Audit Report as of March 15, 2006 and the report was available as of March 31, 2006. Candace Thomas provided copies of the Audit Report for the Board members. Ed Mazur asked the Board members to read the Audit Report carefully and bring any questions back for discussion at the next Board meeting.

**Investment Committee:**

Laine O'Ferrall notified the Board members that the Investment Committee had met with Jim Rorrer, Investment Consultant with Cap Group, earlier in the morning and had decided on the Large Cap Growth and Value managers. The Investment Committee had chosen Intech/Janus Capital Group and Rainier Investment Management, Inc. as the large cap growth managers. Great Lakes Advisors and Alliance/Bernstein were chosen as the large cap value managers. The Program invested eight million in each manager. At its next scheduled meeting, the Investment Committee would be looking at managers for the Bonds.

No motion was necessary for the Investment Committee actions. Laine O'Ferrall did request that George Deebo, Executive Director, consult with financial advisor to draft contract for the selected managers and to seek counsel from the Attorney General's Office regarding communication with the Virginia Retirement System and to be in compliance with the current legislation.

**Public Comment:**

Bill McKelway, Richmond Times Dispatch, stated that during the recent presentation at the Medical Society of Virginia information was stated that the Program had a deficit but was also financially sound. Was that accurate information? Ed Mazur explained that the Program had enough financial resources to meet current obligations on a timely basis, but that the Program's reserves and future revenues were not sufficient to cover the full long-term liability to current and IBNR (Incurred But Not Reported) claimants. It was noted that the Program has tried to use terminology that the public can understand and relate the Program to.

**Closed Session Regarding Personnel and Claimant Issues:**

Melina Dee Perdue, Chair, moved that the meeting convene in a closed session to discuss claimant issues pursuant to the exemption at 2.2-3705 (this references §38.2-5002.2). The motion was seconded by Bill LeHew, Vice-Chair, and unanimously passed.

Melina Dee Perdue, Chair, made a motion that the Board certify the closed session, to the best of each member's knowledge, discussed only public business matters lawfully exempted and only such matters as were identified in the motion that closed the meeting. The motion was seconded and unanimously passed.

**Results of Closed Session:**

- Edward Mazur motioned to approve the request of the addition of a roll-in shower in the home of [REDACTED]. Motion passed unanimously.

- Ed Mazur motioned to extend the rental assistance for [REDACTED] over the next 12 months. At the end of 12 months, the Board will review the monthly benefit based on the normal methodology of calculating rental housing assistance. Melina Dee Perdue seconded the motion. Motion passed unanimously.

**Closed Session Regarding Legal Advice:**

Melina Dee Perdue, Chair, moved that the meeting convene in a closed session to discuss legal issues pursuant to the exemption at 2.2-3705 (this references §38.2-5002.2). The motion was seconded and unanimously passed.

Melina Dee Perdue, Chair, made a motion that the Board certify the closed session, to the best of each member's knowledge, discussed only public business matters lawfully exempted and only such matters as were identified in the motion that closed the meeting. The motion was seconded and unanimously agreed.

**Executive Director's Report:**

George Deebo, Executive Director, mentioned to the Board that he and Bill LeHew had participated in a meeting with the Medical Society of Virginia and it was a good turnout and went well. George Deebo announced that in 2006 the Program had the highest amount of participating physicians totaling more than 550. This is the highest amount participating in the history of the Program.

**Adjournment:**

A motion to adjourn was made by Melina Dee Perdue, Chair, and unanimously agreed to at 2:50 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for May 8, 2007**

**Attendees:**

Ralph Shelman, Chair  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
McLain O'Ferrall  
Jennifer Ogburn  
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  
Bill McKelway, Richmond Times Dispatch  
Sturgis Kidder, father of petitioning claimant

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:05 p.m.

**Minutes:**

Lynn Chapman motioned to accept the April Board minutes. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included Balance Sheet, Profit and Loss Report for March.

Also, Candace Thomas stated that the 2006 audit was finished and the Final Audit Report had been received. The audit report and the first quarter investment report would be reviewed and discussed by the Investment and Finance Committee at their next scheduled meeting, May 24<sup>th</sup>, 2007, and then distributed. The auditor, David Bolton, would be available at the meeting to answer any questions.

Lain O'Ferrall motioned to accept the April financial statements. Lynn Chapman seconded the motion and it passed unanimously.

**Investment:**

Laine O'Ferrall stated that the first quarter report of 2007 would be presented at the next Investment Committee meeting. Laine O'Ferrall stated that overall the stock market was stable and the Program received positive returns during the first quarter. The first quarter report would be available to all Board members at the next Board meeting scheduled for June 12<sup>th</sup>, 2007.

**Legislative Update:**

George Deebo stated that the first legislative stakeholders was held on April 19<sup>th</sup>, 2007 with discussion on possible options for the Program. The second legislative stakeholders meeting will be held on Wednesday, May 9<sup>th</sup>, 2007 with members discussing more in-depth the options provided during the first meeting. Additional meetings dates are currently being established.

**Public Comment:**

Bill McKelway asked Candace Thomas if the Program's deficit amount had been decreased compared to 2006. Candace Thomas stated that from 2006 to 2007 the deficit had remained approximately the same.

Sturgis Kidder made comments regarding his pending case to have his son entered into the Program. He noted that Program's counsel in case filings had asked for legislative background information included in the claimant's brief be excluded from the record.

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

**Closed Session Regarding Legal and Claimant Issues:**

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:**

Laine O'Ferrall motioned to increase the current limit for Conductive Education/Intensive Therapy from \$12,000 to \$18,000 to meet the increased costs/services based on information received in a letter [REDACTED] claimant parent. Susan Lucas seconded the motion and it passed unanimously.

**New Business:**

Dalal Salomon motioned for the Program to hire outside counsel to review the Program's legislation and advise on the role and responsibilities of Board members. The motion was seconded.

Ms. Dalal explained that she felt that there are several gray areas that need to be clarified. Discussion of the motioned followed. No action was taken on the motion. However, by consent, the Board asked the Office of the Attorney General to prepare training regarding Board member roles and responsibilities as prescribed in the Birth-Injury Act for presentation during an extended meeting in June. Ralph Shelman, chairperson, asked for a committee to be created to come up with specific questions to be addressed by the consultation group. The committee members will consist of Dalal Salomon, Susan Lucas, MD, and Laine O'Ferrall. Questions from all Board members are to be emailed to George Deebo, Executive Director, and Ralph Shelman, Chairperson, and then presented to the committee members for review.

The training session will be conducted at the next scheduled Board meeting, which will be extended from 10:00am to 4:00pm.

Ralph Shelman asked to appoint a committee to review overall Program policies. Board members who agreed to be on the committee are Lynn Chapman, Jennifer Ogburn and Ralph Shelman.

**Executive Director's Report:**

George Deebo distributed a document listing 2005 and 2006 Program cases that had completed the petitioning process. The document displayed that out of 23 completed cases, the Program has taken the position that the petitioner did not qualify in 10 cases. Of those 10, by determination of the Virginia Workers' Compensation Commission, four were admitted, four not admitted and two withdrew their petitions. Additionally, in 21 of the 23 cases, the Program's expert reviewers agreed with the assessment of the objective medical panels. It was also noted that in many cases the Program initially must oppose entry because all the required information, often including critical medical records, has not been provided. Once all the needed information is available, the Program reevaluates the case.

George Deebo announced that a training session for Board members would be scheduled during the month of September. Program staff would be emailing dates to Board members to check availability. The training session will be an all day event.

Program staff will also be contacting the Newsletter Committee to set up a conference call over the next couple of weeks. Newsletter Committee consists of Lynn Chapman, Jennifer Ogburn and George Deebo, Executive Director.



**Adjournment:**

A motion to adjourn was made by Ralph Shelman, chairperson and unanimously agreed to at 3:30 p.m.

**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:

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.

**Adjournment:**

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

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for July 10, 2007**

**Attendees:**

Ralph Shelman, Chair  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
Jennifer Ogburn  
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  
Bill McKelway, Richmond Times Dispatch  
Sturgis Kidder, father of petitioning claimant

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:10pm.

**Minutes:**

Lynn Chapman motioned to accept the June Board minutes with recommended corrections mentioned by Carla Collins. Susan Lucas, MD, 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. Candace Thomas added a key on the Profit and Loss Report for a few accounts where Board members in previous months had made inquiries. A new spreadsheet was added to capture the Investment Manager Fees from January to June 2007. Dalal Salomon commented that there were other fees that the Program was paying that are not seen on the financial reports. Candace Thomas will contact Jim Rorrer with CapGroup to inquiry about these other fees.

Susan Lucas, MD, motioned to accept the June financial statements. Lynn Chapman seconded the motion and it passed unanimously.

**Investment:**

No report for the July meeting.

**Legislative Update:**

George Deebo, Executive Director, informed the Board that proposals were forthcoming from the next Stakeholders meeting that would be held on Thursday, July 12<sup>th</sup>, 2007.

Susan Lucas, MD, commented that Mark Rubin, facilitator, was doing a good job with leading the meetings.

**Closed Session Regarding Legal:**

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 probable litigation and discussion of duplicate payments for DME. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.

Lynn Chapman 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 (Legal):**

Ralph Shelman, Chair, commented that in response to Sturgis Kidder, the Board has agreed to move forward utilizing the current process as set by the Virginia Workers' Compensation Commission.

**Closed Session Regarding (Petition Report):**

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 discussion of current and ongoing litigation on pending petitions. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.



Lynn Chapman 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.

**Old Business:**

In the absence of Lain O'Ferrall, the discussion of paying families for care would be tabled until the September Board meeting.

**Public Comment:**

Bill McKelway, Richmond Times Dispatch, per the audit report, the number of deceased claimants admitted into the Program had increased a great deal from 2004 to 2006. He wanted to know if the numbers contained claimants who were already deceased when awarded into the program. Candace Thomas responded that the number included both claimants who were deceased when admitted into the Program and those claimants who died after being in the Program for a period of time. In 2006, two claimants died, both of which had been in the Program for at least five years or more.

Bill McKelway, Richmond Times Dispatch, asked why assumptions differed from actual audit report. Candace Thomas commented that from year to year the assumptions are more defined.

Sturgis Kidder, father of Andrew Kidder petitioning claimant, commented regarding the role of the Attorney General's office in representing the Program.

Bill McKelway, Richmond Times Dispatch, asked how many claimants had reapplied under bill 632 and if the program had tried to contact any claimants that they could reapply. George Deebo commented that four claimants had reapplied and the Program had not contacted any claimants in that regard.

Bill McKelway, asked why a former medical expert Dr. McGivov was no longer being used as a medical expert as he had been under the leadership of the former Program director. Carla Collins commented that his opinions were still a part of the file. Medical documentation cannot be removed once it has been presented with or for a petition.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, Chair. The motion was seconded by Susan Lucas, MD, and unanimously agreed to at 3:50 p.m.

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

**Attendees:**

Ralph Shelman, Chair  
Lynn Chapman  
Robert Doyle, MD  
Susan Lucas, MD, Ph.D.  
Laine O'Ferrall  
Jennifer Ogburn  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Frank Ferguson, Deputy Assistant Attorney General, Office of the Attorney General  
Gwen Taylor, Virginia Workers Compensation Commission  
Bill McKelway, Richmond Times Dispatch  
Mahesh, Vanita and Anjali Patel

**Call to Order:**

Ralph Shelman, Chairperson, called the meeting to order at 1:00pm.

**Minutes:**

Ralph Shelman motioned for minutes to be accepted. Carla Collins requested minor changes to pages 3. A motion was made by Susan Lucas to accept the July minutes with the proposed revisions. Lynn Chapman 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. She also noted the Program is now paying the wage benefit to qualifying claimants. Lynn Chapman asked if this was the wage they would have earned if they could have been working. George Deebo responded with an explanation of how the wage benefit was formulated per the Birth-Injury Act. Laine O'Ferrall motioned to accept the August financial statements. It was seconded by Susan Lucas and it passed unanimously.

**Investment:**

Laine O'Ferrall announced that an investment meeting was held on September 12<sup>th</sup>, 2007, at 10:00 am. The committee's discussion ended with no new changes being made to the portfolio.

He noted that even in the downturn occurring in the second quarter of 2007 the Program only lost \$36,000 in a 193 million dollar portfolio. Lynn Chapman motioned to accept the Investment Report. It was seconded by Susan Lucas and it passed unanimously.

Ralph Shelman, Chair, commented that he was grateful for Dalal Salomon and Laine O'Ferrall for being on the investment committee and that they were doing an excellent job.

**Closed Session Regarding (Claimant Issues/Legal):**

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 claimant issues and 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 probable litigation. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.

Lynn Chapman 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/Legal):**

Susan Lucas motioned to apply the use of the Conductive and Intensive Therapy Policy to ██████████ request for additional caregivers for therapy purposes for his daughter, ██████████ Robert Boyle, seconded the motion and it passed unanimously.

Lynn Chapman motioned to reimburse ██████████, for nursing care for her son, Tommy, because no other source of care was available. This type of reimbursement must be verified by staff prior to processing reimbursement to family. Susan Lucas, MD, seconded the motion and it passed unanimously.

Laine O'Ferrall motioned to deny ██████████ request for additional van insurance for her daughter, Chloe, because the guidelines do not provide for additional insurance coverage. Lynn Chapman seconded, and it was unanimously approved.

**Closed Session Regarding (Petition Report):**

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 discussion of current and ongoing litigation on pending petitions. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.

Lynn Chapman 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.

**Old Business:**

Based on information from the Stakeholders meeting, the Board has decided to wait on making a decision to pay parents for caring for their child. Members of the Stakeholders meeting will be proposing a plan of action that will include possible legislation for paying parents. If proposed legislation passes, the Program can begin paying parents as early as March 2008, once an hourly rate has been established.

**Executive Director's Report:**

George Deebo, Director, commented that the Program is considering new office space at "The Boulders" and if it works out would move by January 2008. This move will provide more office space and a larger conference room at nearly the same cost as the current space.

George Deebo, Director, Susan Lucas, Ralph Shelman and other members of the Stakeholders meeting are working on a draft of the proposed plan. Part of the proposed plan is to expand the Board with replacing an investment member with a finance member, and the disabled parent with a parent of a program claimant.

**Public Comment:**

None.

**Adjournment:**

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

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for October 9, 2007**

**Attendees:**

Lynn Chapman, Acting Chairperson  
Robert Boyle, MD  
Susan Lucas, MD, Ph.D.  
Laine O'Ferrall  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Bill McKelway, Richmond Times Dispatch  
David Keeler, Claimant Family  
Sturgis Kidder, Petitioning Family

**Call to Order:**

Lynn Chapman, Acting Chairperson, called the meeting to order at 1:05pm.

**Minutes:**

Susan Lucas made a motion to accept the corrections proposed by Carla Collins to the July minutes and August minutes. The motion was seconded by Bob Boyle and passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. Susan Lucas, MD, motioned to accept the August financial statements. The motion was seconded by Bob Boyle and it passed unanimously.

**Investment:**

No report given. Laine O'Ferrall stated that the market was down. Next scheduled Investment Committee and Finance and Audit meeting will be Tuesday, November 27<sup>th</sup>, 2007, at 10:00 am.

**Public Comment:**

Sturgis Kidder asked the Board to again, consider, accepting his son, Andrew, into the Program. He stated that another child who was recently admitted into the Program had the same situation as Andrew.

Bill McKelway, Richmond Times Dispatch, asked why claimant expenses had a 20% decrease in September compared to a year ago. Candace Thomas responded that the Program had not purchased as many vans and the nursing expense was lower than it had been in 2006.

Bill McKelway also asked why the Program had purchased a swing through an out of the area DME supplier, Carolina Mobility and Seating, alleging something less expensive could have been found closer in Richmond.

Bill McKelway stated that in previous Board meeting, a request had been made to seek outside counsel to determine the members' responsibilities to the Board. Also, had any changes been made to the petition process so that Board members were aware of pending petitions, the actions being taken on those petitions, and what actions the Board needed to take if it so choose to? Susan Lucas, MD, stated that Carla Collins, Office of the Attorney General, was providing the Board with a monthly report of the petitions and their status. The Board is being kept up to date, however, the decision to accept or decline a petition is the responsibility of the Workers Compensation Commission and not that of the Program's Board members.

George Deebo noted the process for Board decision making regarding petitions currently under review by the Virginia Workers Compensation Commission has been noted and reviewed in open session at Board meetings several times this year.

**Closed Session Regarding (Claimant Issues #1):**

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 claimant issues and 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 probable litigation. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.

Lynn Chapman 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 #1):**

Susan Lucas, MD, motioned to deny [REDACTED] request for payment of personal property taxes, however, the Board would have staff write a form letter for [REDACTED] to use to request assistance from the Board of Supervisors. Also, deny [REDACTED] request for additional van insurance fees due to it exceeds the Program benefit of \$500 which has already been paid to the claimant. Lynn Chapman seconded the motion, and it passed unanimously.

**Closed Session Regarding (Claimant Issues #2):**

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 claimant issues and 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 probable litigation. The motion was seconded by Lain O'Ferrall. The motion passed unanimously.

Lynn Chapman 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:**

Dalal Salomon motioned to approve reimbursement to [REDACTED] for medically necessary equipment due to non-specific benefits under the guidelines. Lynn Chapman seconded the motion, and it passed unanimously.

**Closed Session Regarding:**

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 claimant issues and 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 probable litigation. The motion was seconded by Lain O'Ferrall. The motion passed unanimously.

Lynn Chapman 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:**

No motion was necessary for the requests made from [REDACTED] on behalf of her son, [REDACTED] for medically necessary modifications to their Program van along with therapeutic lessons for driving. The Board directed staff to request letter of medical necessary for driving lessons.

Susan Lucas, MD, motioned to allow [REDACTED] to receive two visits to Dr. Gail Henry, Houston Chiropractic Neurology, in Houston, Texas, along with applicable customary rates for travel. A plan of care and/or evaluation after each session with a progress report must be submitted to Program staff. Lynn Chapman seconded the motion, and it passed unanimously.

**Closed Session Regarding (Petition Report):**

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 discussion of current and ongoing litigation on pending petitions. The motion was seconded by Susan Lucas, MD. The motion passed unanimously.

Lynn Chapman 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.



**Executive Director's Report:**

George Deebo, Director, briefed the Board on the recommendations of the Stakeholders meeting that wrapped up its discussions in September. He reviewed the recommendations of increasing revenues, stabilizing costs, and implementing actuarial methodology. He stated that he would be compiling a more detail report to be available to Board members shortly. The report would need to be discussed at length at the next scheduled Board meeting. David Keeler, claimant parent and parent representative at the Stakeholders Meeting, stated that he would be willing to share any information with the Board members and answer any questions they may have.

It was decided that the next Board meeting would be extended, beginning in the morning to allow discussion of the Stakeholders Report.

**Adjournment:**

A motion to adjourn was made by Lynn Chapman, Acting Chair. The motion was seconded and unanimously agreed to at 4:15 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for November 13, 2007  
Holiday Inn Koger South Conference Center, Richmond, VA**

**Attendees:**

Ralph Shelman, Chairperson  
Robert Boyle, MD  
Lynn Chapman  
Susan Lucas, MD, Ph.D.  
Laine O'Ferrall  
Jennifer Ogburn  
Dalal Salomon

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Angela Conley, Executive Assistant  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Susan Ward, Virginia Hospital and Healthcare Association  
Chris LaGow, Property Casualty Insurers of America  
Ann Hughes, Medical Society of Virginia  
Melanie Gerheart, Virginia Society of Obstetrics and Gynecology  
Gwen Taylor, Workers Compensation Commission  
Rob Walling, Pinnacle Actuarial Resources, via conference call  
Bill McKelway, Richmond Times Dispatch  
Mark Ames, Claimant Family  
Claire Gesalman, Claimant Family  
LeeAnn Hershberger, Claimant Family  
David Keeler, Claimant Family  
Sturgis Kidder, Petitioning Family

**Call to Order:**

Ralph Shelman, Chair, called the meeting to order at 9:05am.

The meeting began with a conference call with Rob Walling, Pinnacle Actuarial Resources, with an overview of his report of potential remedies for improving the financial condition of the Program and reducing the current Fund deficit. In his review, Mr. Walling discussed the following:

- Assessment Increases
- Elimination of Non-Resident Fee Exemption
- Implementation of a Managed Care Fee Schedule
- Use of loss reserving methodology currently used by the Florida NICA

At 10:40am, the Board asked for comments from the members of the Stakeholders meetings:

- Susan Ward, Virginia Hospital and Healthcare Association, commented that she agreed that the Program was good and she wants to see its continuation. Mrs. Ward supports the recommendation provided by the Stakeholders Report.
- Melanie Gerheart, Virginia Society of Obstetrics and Gynecology, also commented that she supported the recommendations and the continuation of the Program.
- Ann Hughes, Medical Society of Virginia, commented that currently they have over 9,000 members and are 100% committed to the continuation of the Program and support of the recommendations.
- Chris LaGow, Property Casualty Insurers of America disagreed with the recommendation of having a claimant family member added to the Board and did not see how that would curb the current deficit.

Claimant family participants also commented:

- LeeAnn Hershberger stated that she felt that participation should be expanded to include other types of specialty doctors such as neonatologist. Ms. Hershberger accepted the Medicaid 120 recommendation but thought some families might be affected.
- Mark Ames supports the parent Board member along with mandatory assessments.
- David Keeler stated that the primary reason for the stakeholders meeting was to resolve the Program's deficit but that the recommendations would not eliminate the deficit. Mr. Keeler also had concerns with the Medicaid 120 program.

Additional discussion on various aspects of the Stakeholder recommendations ensued.

The regularly monthly business meeting was called to order at 1:15pm.

**Minutes:**

Laine O'Ferrall made a motion to accept the October Board minutes. The motion was seconded by Bob Boyle and passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. Lynn Chapman motioned to accept the October financial statements. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Investment:**

Laine O'Ferrall stated that currently the market was not doing well but the Program saw a 3.4 overall increase. Mr. O'Ferrall reminded the Board that the next scheduled Investment Committee and Finance and Audit meeting will be Tuesday, November 27<sup>th</sup>, 2007, at 10:00 am at the Program offices.

**Public Comment:**

Sturgis Kidder stated that oral arguments regarding his petition had been set for December 20<sup>th</sup>, 2007. Mr. Kidder feels that his son's case will be won on presumption because he meets all parts of the definition of the Program requirements. Mr. Kidder stated that the Program expert,

Dr. Morton, wrote another report for another child whose petition was similar to his with a 96% surety that his child should be admitted into the Program. Mr. Kidder stated that his son's case was very similar and he cannot understand why his son has not been accepted into the Program as of yet. Additionally he expressed concern that the physician was "biased" toward any child being accepted into the Program. Mr. Kidder requested the Board to send a letter to the Workers Compensation Commission directing his son to be admitted into the Program.

**Claimant Presentation**

Claire Gesalman presented a slide show of the differences of being a parent of a normal child versus that of a brain injured Program child.

Ralph Shelman, Chairperson, thanked Mrs. Gesalman for her presentation and her attendance at the Board meeting.

**Closed Session Regarding (Claimant Issue):**

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 discussing claimant issues and 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 probable litigation. Jennifer Ogburn seconded the motion and it passed unanimously.

Laine O'Ferrall 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 Issue):**

Robert Doyle, MD, motioned to approve the housing request from [REDACTED] [REDACTED] for adaptable housing items except for the request for a generator. Dalal Salomon seconded the motion, and it passed unanimously.

**New Business:**

**Resignation:**

- Ralph Shelman announced to the Board that Lynn Chapman would be resigning her seat as a Board member due to her leaving her current employment with Nationwide Insurance. Mrs. Chapman has agreed to stay on the Board until a replacement has been appointed.

**Board Elections:**

- Board members nominated were Susan Lucas, MD, as Chairperson and Laine O'Ferrall as Vice-Chairperson. Dalal Salomon motioned to accept the nominations. Jennifer Ogburn seconded the motion. The Board voted unanimously to accept the slate of new officers.

**Adjournment:**

A motion to adjourn was made by Ralph Shelman, Chairperson. The motion was seconded and unanimously agreed to at 3:20 p.m.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for December 11, 2007**

**Attendees:**

Susan Lucas, MD, Ph.D., Chair  
Laine O'Ferrall, Vice-Chair  
Lynn Chapman  
Jennifer Ogburn  
Dalal Salomon  
Ralph Shelman

**Also Present:**

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

**Call to Order:**

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

**Minutes:**

Laine O'Ferrall motioned to accept the November Board minutes. Ralph Shelman 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. Mrs. Thomas noted that during November six new claimants were admitted into the Program, one of which was deceased. Laine O'Ferrall motioned to accept the November financial statements. Jennifer Ogburn seconded the motion and it passed unanimously.

**Investment:**

Laine O'Ferrall stated that the Investment Committee met on November 27<sup>th</sup>, 2007. As of today, the Program has \$216 million in investments. Our portfolios have an overall profit of 11%. The program investments are ranked in the top 7% of all institutional portfolios. Mr. O'Ferrall stated that overall the Program's investments were in a very good position.

**Legislative Update:**

George Deebo reported that he had been talking with representatives to possibly carry upcoming legislation based on the stakeholder meeting recommendations. However, he had nothing confirmed as to who would be interested in carrying the bill for the Program. He has spoken with Delegate Harvey Morgan and Senator Richard Saslaw about carrying the legislation, however currently there was no final commitment other than to have something drawn up by legislative services. The program should have more information in about 2 or 3 weeks.

George Deebo commented that the Program would be working with Morris and Morris as the lobbyists for the 2008 General Assembly.

**Public Comment:**

None.

**Closed Session Regarding (Claimant Issue):**

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 goes into closed meeting for the purpose of discussing claimant issues and 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 probable litigation. Ralph Shelman seconded the motion and it passed unanimously.

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**Results of Closed Session (Claimant Issue):**

Lynn Chapman motioned to deny the [REDACTED] request for bathroom modifications due to previous use of the one-time housing benefit. Dalal Salomon seconded the motion, and it passed unanimously.

Ralph Shelman motioned to deny the [REDACTED] request for prior years' expenses for specialty therapist due to not meeting Program guidelines/regulations. Lynn Chapman seconded the motion, and it passed unanimously.

**Open Discussion:**

Laine O'Ferrall opened a discussion regarding adding a claimant parent to the Board as recommended in the Proposed Recommendations to reduce the Program deficit. Mr. O'Ferrall commented that he felt that adding a claimant parent to the Board would be a conflict of interest. It could cause the claimant parent to be under too much pressure and his/her decisions on claimant issues would be bias.

A discussion ensued regarding placing a claimant family member on the Board of Directors. It was noted that doing so may place such a person in a difficult position with other claimants. Additionally it was suggested that having such a member on the board might improve relations and communication between the Board and claimants. It also was stated that adding such a member might help claimants understand the process and responsibilities of the Board.

**Adjournment:**

A motion to adjourn was made by Susan Lucas, Chair. The motion was seconded and unanimously agreed to at 2:25 p.m.