

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for January 13, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Robert Boyle, MD
Dalal Salomon
Ralph Shelman
Gwen Taylor, Esq., MSW
Scott Walters

Also Present:

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

Call to Order:

Susan Lucas, Chair, called the January Board meeting to order at 1:00 pm. George Deebo introduced Scott Walters, new Board member, to the Board, and general introductions were made.

Minutes:

Ralph Shelman motioned to accept the November Board minutes. Bob Boyle 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. Program has \$186 million in investments due to transfer of new assessment revenue from checking account into Trust account and subsequently invested into various funds. There are currently 111 active children in the program. Dalal Salomon motioned to accept the December Financial reports. Gwen Taylor seconded the motion and it passed unanimously.

Investment:

Dalal Salomon and Susan Lucas reported to the Board results of the Investment Committee meeting that occurred earlier in the morning. The program investors are maintaining all possible controls to prevent any fraud issues. The investment committee decided to remove Alliance Bernstein as one of the many investment managers due to underperformance, senior management turnover and change in their investment strategies. Replacing them will be Boston Partners.

Public Comment:

None.

Claimant Issues (Open Session):

George Deebo informed the Board that the claimant issue on the agenda will be tabled until the February Board meeting because the family did not get all the necessary information to Program staff.

Sturgis Kidder presented his concerns on housing. Mr. Kidder stated that he had two construction bids that were over the allowable amount for the housing benefit, however, he has made attempts to discuss the bids with the Program's construction manager, Mr. Singh, but has not heard back from him yet. Mr. Kidder wanted to know the status of his request for reimbursement that was provided to the Program in early December. Mr. Kidder also stated that he is working with delegates on bills for the General Assembly for assistance.

George Deebo responded that Mr. Kidder's request had been received in early December, however, due to the multiple requests within the reimbursement, as well as holidays, the length of time for review has been quite normal. However, Mr. Deebo noted a response has already been drafted and given to legal for review.

Gwen Taylor commented that she did not think it was a good idea for issues to be going through legislation rather than being handled by the Program and maybe additional procedures or processes were needed.

George Deebo responded there is a legislatively prescribed process for reviewing requests. Following review and decisions from staff families can take their concerns before the Board, then appeal to the Workers' Compensation Commission (WCC) if they desire to. Following WCC decisions families may appeal to the Virginia Court of Appeals.

Mr. Kidder stated that he wants a timeline for processing requests.

Scott Walters suggested that Program staff could review current process for requests to determine if procedural changes are needed.

New Business:

Board Elections:

- Dalal Salomon nominated Susan Lucas to the position of Chair, seconded by Gwen Taylor and it passed unanimously.
- Dalal Salomon nominated Lain O'Ferrall to the position of Vice-Chair, seconded by Gwen Taylor and it passed unanimously.

Susan Lucas brought it to the Board's attention that after reviewing the annual calendar it looked like Board meetings for the months of September, October, and November occurred either a day before or a day after a holiday. Dr. Lucas asked if anyone wanted to possibly change the Board meeting dates. Board members did not want to change any dates at this time.

Director's Report:

George Deebo noted that the Program guidelines had been translated into Spanish. Copies were available for their review. George Deebo will have them reviewed by a third party to make sure they are translated adequately.

George Deebo informed the Board that the Participant Handbook had been revised. Mr. Deebo was having the handbooks reformatted for families to find forms more easily.

With recent review of healthcare premiums for Program staff, Mr. Deebo informed Board that this year's increase across the board was from 20-60% and he would be looking into other health insurers for better rates.

George Deebo informed Board that staff would be doing a telephone conference call with Kenney Shipley, Director, on Friday, January 16, 2009.

In this month's packet there is a letter from Pinnacle Actuary Services briefly reviewing the state's annual actuarial report on the Program. The letter also suggests areas of the report to monitor.

Other:

Shirley Ricks, Legislative Affairs Coordinator, shared with the Board that the General Assembly's session starts on Wednesday, January 14, 2009, and she will be there meeting with various legislators. As of right now, there are no specific bills that will impact the Program.

Closed Session Regarding (Case Updates)

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Ralph Shelman and passed unanimously.

Susan Lucas 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.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 1:57 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for February 10, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Jennifer Ogburn
Dalal Salomon
Ralph Shelman
Gwen Taylor, Esq., MSW
Scott Walters

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Iris Allen, Claims Manager
Angela Conley, Executive Assistant
Shirley Ricks, Legislative Affairs Coordinator
Carla Collins, Assistant Attorney General, Office of the Attorney General
Sturgis Kidder
Frances and Brittney Fox

Call to Order:

Susan Lucas, Chair, called the February Board meeting to order at 1:00 pm. Susan Lucas, Chair, made general introductions for those who were present.

Minutes:

Scott Walters motioned to accept the January Board minutes. Lain O'Ferrall 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. Program has \$180 million in investments. There are currently 111 active children in the program. Dalal Salomon motioned to accept the January Financial reports. Lain O'Ferrall seconded the motion and it passed unanimously.

Investment:

Dalal Salomon reported to the Board results of the Investment Committee meeting that occurred earlier in the morning. The program assets for YTD are down by 21% as of February 10th, 2009. In response to the investment advisors recommendation to rebalance, the investment committee decided to sell \$5 million in money market accounts and reinvest in fixed asset managers and large cap equity managers.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that she had met with many legislators over the last couple of weeks and handed out over 150 packets of information on the program. Currently, there are two bills that could impact the program. SB 843 would increase malpractice amounts from \$2 million to \$ 2.75 million. SB 1389 creates a patient compensation fund where any medical expenses over \$2 million would come from this fund.

Scott Walters asked if the program supported any proposed bills? Shirley Ricks responded that we did not. George Deebo added that the program usually only raises concerns of how the bill will affect the program.

Public Comment:

None.

Claimant Issues (Open Session):

Mrs. Fox declined to present her request in closed session. Frances and Brittney Fox were present to request reconsideration for their housing benefit to allow reimbursement greater than the actual cost for the benefit. Mrs. Fox read a letter to the Board members asking for reconsideration of their housing benefit due to Mr. and Mrs. Fox's health conditions, the location of the home since they would be moving to a different area to be closer to family members and the accessibility for Brittney to be more independent in the home.

Mr. Kidder declined to present his request in closed session. Sturgis Kidder requested that the Board allow reimbursement of caregiver costs and transportation costs primarily prior to entry into the Program without providing substantiating documentation. Regarding transportation he informed Board members that he could not get pharmacy records prior to 2000. Mr. Kidder stated he could possibly obtain files from physicians to help substantiate travel, however the providers might require payment for researching all patient files. Susan Lucas asked what he thought the cost of the medical records would be. Mr. Kidder stated that he had no idea. Mr. Kidder informed the Board that Andrew went on the Medicaid Waiver Program in 2000 so many expenses have been covered through them. Regarding caregiver reimbursement Mr. Kidder related that he did not have any documentation substantiating payment to caregivers over the past 18 years. The Board also noted, per Program guidelines, a letter of medical necessity is required to substantiate caregiver hours along with payment documentation.

Closed Session Regarding (Claimant)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Ralph Shelman and passed unanimously.

Jennifer Ogburn 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):

Susan Lucas motioned that the Board has reconsidered [REDACTED] request. At this time, it declines to override the decision of the Program staff and encourages the claimant to continue working with staff. Jennifer Ogburn seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board has determined that it wishes to table the request from [REDACTED] pending the outcome of a pertinent case before the Workers Compensation Commission or until the claimant provides requested documentation. Lain O'Ferrall seconded the motion and it passed unanimously.

Director's Report:

George Deebó noted that the Program will be receiving another Board member, however, it likely will not occur until after the current General Assembly Session.

Old Business:

Scott Walters informed Board members that he had an associate of his to review the Spanish guidelines had been translated into Spanish and the translation has several issues. George Deebó thanked Mr. Walters and he will have the guidelines reviewed again.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:02 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for March 10, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert Boyle, MD
Jennifer Ogburn
Dalal Salomon
Ralph Shelman
Gwen Taylor, Esq, MSW
Scott Walters, Esq

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Iris Allen, Claims Manager
Angela Conley, Executive Assistant
Shirley Ricks, Legislative Affairs Coordinator
Carla Collins, Assistant Attorney General, Office of the Attorney General
Kimberly Nelson

Call to Order:

Susan Lucas, Chair, called the March Board meeting to order at 1:00 pm. Susan Lucas, Chair, made general introductions for those who were present.

Minutes:

Carla Collins made a few minor suggestions to the minutes regarding public comment. Susan Lucas motioned to accept the suggested changes. Laine O'Ferrall seconded the motion and it passed unanimously. Laine O'Ferrall motioned to accept the February Board minutes. Gwen Taylor 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. Program has \$173 million in investments. There are currently 110 active children in the program. As of February 2009, 38 hospitals have participated with the Program compared to 30 hospitals in 2008. Candace Thomas informed the Board that the audit fieldwork would begin by the end of the week. Ralph Shelman motioned to accept the February Financial reports. Bob Boyle seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall reported to the Board that as of February 28th, 2009, the YTD return was -7.7%. Stock market still looking bad but once the economy turns, the Program will see better numbers.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that the General Assembly session ended on February 28th. Shirley Ricks notified the Board that several organizations, among them the Medical Society of Virginia, Virginia Health and Hospital Association, Virginia Trial Lawyers Association, will be working together to develop possible legislation regarding the malpractice cap. Mrs. Ricks will keep the Board informed of the committee discussions as it becomes available. Mrs. Ricks also plans to visit with key legislatives over the summer.

Public Comment:

None.

Closed Session Regarding (Claimant)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Susan Lucas and passed unanimously.

Jennifer Ogburn 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):

Susan Lucas motioned that the Board request additional information from the Program's medical consultant as well as the Program's construction manger and table [REDACTED] request until the April Board meeting. Lain O'Ferrall seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board decline [REDACTED] request because all available resources have not been exhausted per the Birth-Injury Act and Program Guidelines. Scott Walters seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board declined to take any action to alter the physician's order for [REDACTED]. Jennifer Ogburn seconded the motion and it passed unanimously.

Closed Session Regarding (Case Updates)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Susan Lucas and passed unanimously.

Jennifer Ogburn 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.

Director's Report:

George Deebo noted that the Program has developed a process to implement the Florida Actuarial methodology and as a part of that a form will be sent to the primary physician of each claimant requesting information required for the study. George Deebo commented that there still has been no word on the additional Board member.

Old Business:

George Deebo informed the Board that he was still working on the review of the Spanish guidelines.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:15 pm. It passed unanimously.

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

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert Boyle, MD
Jennifer Ogburn
Dalal Salomon
Ralph Shelman
Gwen Taylor, Esq, MSW

Also Present:

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

Call to Order:

Susan Lucas, Chair, called the April Board meeting to order at 1:10 pm. Susan Lucas, Chair, made general introductions for those who were present.

Minutes:

Carla Collins made a few minor suggestions to the minutes. Bob Boyle motioned to accept the suggested changes. Gwen Taylor seconded the motion and it passed unanimously. Gwen Taylor motioned to accept the March 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. Program has \$167 million in investments. There are currently 112 active children in the program. Ralph Shelman motioned to accept the March Financial reports. Jennifer Ogburn seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall handed out the Preliminary Performance Review as of March 31, 2009, to the Board. Laine O'Ferrall stated that the program funds had a realized loss of 3.5%.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that she has made contact with several legislators to meet individually over the upcoming months to discuss legislative issues. Mrs. Ricks will keep the Board informed of the discussions.

Public Comment:

None.

Closed Session Regarding (Claimant)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Ralph Shelman and passed unanimously.

Jennifer Ogburn 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):

Susan Lucas motioned that the Board pay up to \$500 as an allowance for additional heating per the housing request for [REDACTED] Lain O'Ferrall seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board approve a combined payment of \$40,000 to cover Program allowances for bathroom remodeling, door replacement, and ramps for the home of [REDACTED] per the request of [REDACTED]. Alternatively, the parents of the claimant may request an independent consultant to render an opinion, at the Program's expense, within 30 days, with a recommendation to the Board for a final decision on payment. Ralph Shelman seconded the motion and it passed unanimously.

Closed Session Regarding (Personnel Issue and Case Update)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board goes 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 a personnel matter pursuant to Virginia code §2.2-3711 (A) (1) and pending litigation. The motion was seconded by Susan Lucas and passed unanimously.

Jennifer Ogburn 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.

Director's Report:

George Deebo commented that Program staff would be sending out the new participant handbook over the next couple of weeks. Plan of Operation has been updated and will be sent to the SCC for approval in the next couple of weeks. Program staff has sent out the life expectancy questionnaires as required by new methodology. Many questionnaires have been received back. Program staff will then forward the forms to Dr. Robert Shavelle, Life Expectancy Project, for review.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:30 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for May 12, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert Boyle, MD
Jennifer Ogburn
Dalal Salomon
Gwen Taylor, Esq, MSW

Also Present:

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

Sturgis Kidder
Jock Haight, Construction Consultant

Call to Order:

Susan Lucas, Chair, called the May Board meeting to order at 1:03 pm. Susan Lucas, Chair, introduced Jock Haight, Program's Construction Consultant to the Board.

Minutes:

Carla Collins made a minor revision suggestion under minutes "as revised". Board members agreed. Lain O'Ferrall motioned to accept the revised April Board minutes. Jennifer Ogburn 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. Program has \$175 million in investments with \$8 million of unrealized gain for April. There was a \$2 million gain from March. There are currently 112 active children in the program. Lain O'Ferrall motioned to accept the April Financial reports. Gwen Taylor seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall read the market highlight from the CapGroup report (aloud to Board members). Program has 50% in growth and 50% in value, Lain explained that one does well while the other may not so it is good that the investments are split in that manner. Lain shared that the fixed income (bonds) had a 5% gain for the first quarter of 2009. Currently, the market is weak for stocks and bonds. Housing market is down by 32%. The Program's investments are at a loss of 3.7%. The next investment committee is scheduled for today following the Board meeting at 3pm.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that site visits were made to Delegate Harvey Morgan, Senator Charles Colgan and Delegate William Howell. They expressed support of the Birth Injury Program. They asked for the names of the Board of Directors. They asked questions about funding of the program and whether the Program has funding concerns since it is a lifetime of help. They also were interested to know when the Florida methodology evaluation will be completed and whether the Program has any legislation it wants to propose for the next session.

Public Comment:

Jock Haight, Program's Construction Consultant, gave an overview of his role and his tenure with the Program. He shared information regarding what he provides to the family and how the construction process works.

Open Session (Claimant Issues)

Mr. Sturgis Kidder was asked if desired to present his material in closed session and he declined. Mr. Kidder, father of Andrew Kidder, presented additional information for Program staff and Board to consider for pre-award expenses (originally submitted in January 2009) and attendant care. Mr. Kidder handed out several pages of material. He commented that he is only seeking reimbursement for approximately 20 hours a week for an after school program that Andrew attends.

Closed Session Regarding (Claimant Issues)

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Susan Lucas, MD, and passed unanimously.

Jennifer Ogburn moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public

business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Results of Closed Session (Claimant Issues):

Susan Lucas motioned that the Board table the request from [REDACTED] for reimbursement of pre-award and attendant care for staff to review additional information presented in today's meeting. Lain O'Ferrall seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board table the request from [REDACTED] for reimbursement of van repair to allow staff to request additional information regarding the maintenance and care of the van. Jennifer Ogburn seconded the motion and it passed unanimously.

Old Business:

George Deebo informed the Board that staff had received approximately 90 of the required questionnaires to be used to implement the Florida methodology.

Director's Report:

George Deebo present all Board members with a new participant handbook. Mr. Deebo commented that the Program's decision to hire a part-time legislative staff member instead of hiring a lobbyist had been well worth it. We are getting more valuable information from Mrs. Ricks, and her presence in the General Assembly is very beneficial to current and upcoming legislative efforts that may affect the Program.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:00 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for June 9, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert Boyle, MD
Susan Riddick-Grisham, RN
Dalal Salomon
Gwen Taylor, Esq, MSW
Scott Walters, Esq.

Also Present:

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

Scott Early, Perimeter Security Services
Bill McKelway, Richmond Times Dispatch

Ted and Roni Arven
Sturgis Kidder

Call to Order:

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

Minutes:

Lain O'Ferrall motioned to accept the May Board minutes. Bob Boyle seconded the motion and it passed unanimously.

Finance:

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. The Program has \$193 million in investments. There are currently 114 active children in the program. Lain O'Ferrall motioned to accept the May Financial reports. Scott Walters seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall informed the Board that the Investment Committee met prior to the Board meeting. The committee decided to add two emerging market managers (international markets) and two bond market managers.

Legislative Update:

Shirley Ricks, Legislative Affairs Coordinator, reported that she was scheduled to meet with Senator John Edwards and Delegate Onzlee Ware from Roanoke but they unfortunately had to cancel. Mrs. Ricks met with Senator Henry Marsh. Senator Marsh noted his support for the Program and stated to keep him apprised of any upcoming legislation that would affect the Program. He would be happy to sponsor legislation on behalf of the Program. Susan Lucas asked if there was any new information on the medical malpractice legislation. Mrs. Ricks noted several medical and legal groups were involved in discussions however nothing had been announced yet. The Program has not been a part of those discussions but has been staying in touch with appropriate organizations.

Public Comment:

None.

Open Session (Claimant Issues)

Mr. Sturgis Kidder was asked if he desired to present his material in closed session and he declined. Mr. Kidder, father of Andrew Kidder, asked the Board why there was a hold up with his reimbursement request. He understood that his doctor's order of 24 hours had been sent to a reviewer but wanted to know why it was taking so long. He was concerned that the reimbursement request submitted was not for 24 hour care so why had it not been paid to him yet. He also stated that he had the order from his doctor, Dr. Frank, and did not understand what the problem was since Dr. Frank's signed off the form for 24 hours of nursing care.

George Deebo, Executive Director, explained that most requests for 24 hours of nursing care were reviewed along with medical information to see if the 24 hours of nursing care was warranted. Once the reviewer had sends in their report, then the Program would be able to move forward with Mr. Kidder's reimbursement request.

Closed Session Regarding (Claimant Issues)

Scott Walters moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Susan Lucas, MD, and passed unanimously.

Scott Walters moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Results of Closed Session (Claimant Issues):

A motion was made to reimburse the van repair expense for [REDACTED]. The Board members voted with a result of 5-2. Motion passed.

A motion was made to table [REDACTED] request for reimbursement until the independent reviewer provides his report. In addition, the Program needs permission to contact Medicaid for documentation, as well as permission for our reviewer to speak with [REDACTED]. In order to expedite reimbursement of properly reimburseable expenses, we again request that the parent provide documentation previously requested but not yet provided. The Board members voted with a result of 7-0 passing the motion.

Closed Session Regarding (Personnel)

Scott Walters moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1).

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 3:45 pm. It passed unanimously.

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

Attendees:

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

Also Present:

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

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

Call to Order:

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

Minutes:

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

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

Finance:

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

Investment:

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

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

Legislative Update:

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

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

Public Comment:

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

Closed Session Regarding (Claimant Issues)

Susan Lucas, MD, moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Ralph Shelman, and passed unanimously.

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

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Results of Closed Session (Claimant Issues):

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

Open Session

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

Closed Session Regarding (Legal and Personnel):

Susan Lucas, MD, moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1).

Executive Director's Comments:

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

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

Adjournment:

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

August No Meeting

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for September 8, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert "Bob" Boyle, MD
Jennifer Ogburn
Susan Riddick-Grisham, RN, LCP
Dalal Salomon
Scott Walters

Also Present:

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

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

Call to Order:

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

Minutes:

Lain O'Ferrall motioned to accept the July Board minutes. Susan Riddick-Grisham seconded the motion and it passed unanimously.

Finance:

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. The Program has \$204.5 million in investments. There are currently 113 active claimants in the program. Scott Walters motioned to accept the July Financial reports. Bob Boyle seconded the motion and it passed unanimously. The Annual Financial Report was provided to each Board member.

Investment:

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

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

Public Comment:

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

Claimant Issue (Open Session)

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

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

Closed Session Regarding (Claimant Issues)

Susan Lucas, MD, moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Lain O'Ferrall, and passed unanimously.

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

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public

business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Results of Closed Session (Claimant Issues):

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

Old Business:

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

New Business:

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

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

Executive Director's Comments:

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

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

Closed Session Regarding (Legal, Case Update and Personnel):

Susan Lucas, MD, moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1).

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

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.

Adjournment:

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

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
Minutes for October 13, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert "Bob" Boyle, MD
Jennifer Ogburn
Susan Riddick-Grisham, RN, LCP
Dalal Salomon
Gwen Taylor, Esq, MSW

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Carla Collins, Assistant Attorney General, Office of the Attorney General

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

Call to Order:

Susan Lucas, Chair, called the September Board meeting to order at 1:00 pm.

Minutes:

Sue Lucas motioned to accept the July Board minutes. Laine O'Ferrall seconded the motion and it passed unanimously.

Finance:

Sue Lucas motioned to accept the July Financial reports. Bob Boyle seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall commented that the Program's reserves have rebounded to \$214 million.

Public Comment:

Bill McKelway asked several questions related to the recent embezzlement case. Board members and staff responded.

Claimant Issue (Open Session)

Anne Jones, attorney for Ms. Nelson, discussed the use of conductive education for her client. A discussion ensued regarding the use of Conductive Education by claimants.

Closed Session

Susan Lucas, MD, moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Lain O'Ferrall, and passed unanimously.

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

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

Results of Closed Session (Claimant Issues):

Sue Lucas moved that regarding [REDACTED] per statute 38.2-5009 that [REDACTED] cannot be reimbursed for caregivers that are eligible to be paid by Medicaid. The motion was seconded by Laine O'Farrell and passed unanimously.

Sue Lucas moved that regarding the request for [REDACTED], the Program delete the 180-day requirement for paying expenses allowed in the Medical Service Dog Guidelines Statement. The motion was seconded by Gwen Taylor and passed unanimously.

Sue Lucas moved that regarding the request from [REDACTED], if an appropriate physician says care can be provided by [REDACTED] as an LPN, then the Program will allow up to 40 hours per week by [REDACTED] as an LPN at the prevailing rate for [REDACTED] area at the Program's normally allowed rate.

Old Business:

Susan Grisham presented a report regarding the status of Conductive Education. Her written report noted that "Literature does not provide conclusive evidence either in support or against CE as an intervention strategy. The limited number of studies and their weak quality makes it impossible for the literature alone to guide the decision-making regarding CE.

Additionally Ms. Grisham made several inquiries with experts and to the Inter-American Conductive Education Association, Inc., however at this point has received limited responses.

She also noted there is not a recognized system of accreditation or certification for CE practitioners.

Following additional discussion, Sue Lucas moved and Dalal Saloman seconded, to move Conductive Education from experimental therapy to a transitional status and allow reimbursement up to \$18,000 per year with the requirement of an annual medical assessment proving efficacy and/or maintenance of achievement for the claimant. Additionally the Conductive Education services must be provided in the claimant's state of residence. The motion passed unanimously.

The change will require a change of Program Guidelines.

New Business:

Gwen Taylor introduced a discussion regarding the Program's response to recent indictments of a former employee for embezzlement. After discussion, it was the consensus to form a working group of Gwen Taylor, Dalal Saloman and staff to review and recommend actions with consideration of the following:

- Conducting a forensic audit
 - o To include a full accounting of actions and losses
- Program's response to annual audit (annual response plan)
 - o To include annual benefits statement for claimants
- Response to claimant letters/Communication with claimants
- Steps to protect claimants from identity theft
- Parental advisory group
- Survey of families
- Re-bidding for audit services
- Request current auditor provide letter explaining:
 - o Reasons alleged embezzlement amounts nor readily identified by them
 - o Recommended controls
 - o Recommendations to make embezzlement detectable sooner

Closed Session Regarding (Legal, Case Update and Personnel):

Board members were polled and all certified the motion.

Adjournment:

A motion to adjourn was made by Susan Lucas, Chair, at 4:20 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
DRAFT - Minutes for November 11, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert "Bob" Boyle, MD
Jennifer Ogburn
Susan Riddick-Grisham, RN, LCP
Dalal Salomon
Gwen Taylor, Esq, MSW
Scott Walters, Esq.

Also Present:

George Deebo, Executive Director
Candace Thomas, Deputy Director
Carla Collins, Assistant Attorney General, Office of the Attorney General

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

Call to Order:

Susan Lucas, Chair, called the November Board meeting to order at 1:00 pm.

Minutes:

Lain O'Ferrall motioned to accept the October Board minutes. Gwen Taylor seconded the motion and it passed unanimously.

Finance:

Scott Walters motioned to accept the October Financial reports. Lain O'Ferrall seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall commented that the Investment Committee had met earlier in the morning with Jim Rorrer with Cap Group. The investment committee voted to sell \$6 million from Vanguard Total Bond Index Fund and invest \$5 million in Pimco Total Return Fund and \$1 million in the Loomis Sayles Global Fund. Lain O'Ferrall stated that for the 3rd quarter the Program's investments were up by 11% and overall up by 18.1 % for 2009.

FOIA Review

Carla Collins, Assistant Attorney General with the Office of the Attorney General gave the Board members a quick review of the practices of the Freedom of Information Act.

Public Comment:

Bill McKelway inquired into the funeral benefit provided by the Program and asked if staff attended the funerals. George Deebo responded that the Program does assist with burial expenses, and that flowers are sent but staff members generally do not attend.

Bill McKelway asked if families who were utilizing the wage benefit were losing their Medicaid benefits and how many. George Deebo stated that the Wage Benefit was causing loss of Medicaid benefits for some families, however the Program is looking into other avenues to prevent loss for future families and had provided all impacted families with specific information on how to set up a trust that would eliminate the problem. About four families have been impacted.

Closed Session

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Sue Lucas, MD, and passed unanimously.

Jennifer Ogburn 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):

(Regarding request from ██████████) A motion was made that the Board agree to contribute \$200 toward the cost of a monitoring system. Motion was seconded by Scott Walters, and passed unanimously.

(Regarding ██████████) A motion was made that the Board agrees to the order as written. Motion was seconded by Lain O'Ferrall, and passed unanimously.

(Regarding ██████████) A motion was made to finalize the proposed agreement and authorize counsel to spend the necessary funds to affect the agreement. Motion seconded by Susan Riddick-Grisham, and passed unanimously.

Old Business:

The Board has agreed to revise the Conductive Education benefit under the current guidelines. The revised guidelines will be posted in The Register. Then, there will be a 60 day review/comment period for the public. After the 60 days, the Board will need to vote to accept the revised guidelines regarding the Conductive Education benefit.

George Deebo informed the Board that, Steve Walls and Associates, a forensic auditor, has been hired by Program to review records in connection with the current embezzlement case.

Gwen Taylor recapped previously discussed items from the October Board meeting in regards to the recent embezzlement case. It was also discussed to search for an attorney with a financial background to review the recent audit for legal concerns regarding the recent embezzlement case. George Deebo and Gwen Taylor Taylor will be researching and reviewing credentials to find an attorney by the next Board meeting.

New Business:

The Annual Actuarial Report provided by Oliver Wyman Actuarial Consulting, Inc. were handled out to the Board members. George Deebo asked that the Board members review the report and bring any questions to the December Board meeting for further discussion.

Board Elections: Sue Lucas' term as Board Chair will expire on December 31st, 2009, and has decided to step down. Nominations for Board Chair need to be emailed to Sue Lucas for a vote at the December Board meeting.

Closed Session Regarding (Legal, Case Update and Personnel):

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1). The motion was seconded by Sue Lucas, MD, and passed unanimously.

Jennifer Ogburn 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.

**Virginia Birth-Related Neurological Injury Compensation Program
Board of Director's Meeting
- Minutes for December 8, 2009**

Attendees:

Susan Lucas, MD, Ph.D., Chair
Lain O'Ferrall, Vice-Chair
Robert "Bob" Boyle, MD
Jennifer Ogburn
Susan Riddick-Grisham, RN, LCP
Dalal Salomon
Gwen Taylor, Esq, MSW
Scott Walters, Esq.

Also Present:

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

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

Call to Order:

Susan Lucas, Chair, called the December Board meeting to order at 1:10 pm.

Minutes:

Corrections recommended by Carla Collins. Lain O'Ferrall motioned to accept changes to the November Board minutes. Bob Boyle seconded the motion and it passed unanimously. Lain O'Ferrall motioned to accept the November Board minutes. Susan Riddick-Grisham seconded the motion and it passed unanimously.

Finance:

Bob Boyle motioned to accept the November Financial reports. Scott Walters seconded the motion and it passed unanimously.

Investment:

Lain O'Ferrall stated that for the quarter to date the Program's investments were up by 2.2% and overall up by 19.6 % for 2009. Total investments are at \$216 million to date, and doing relatively good due to large cap growth and emerging markets.

Public Comment:

Bill McKelway inquired about the deadline for physician participation and how many physicians had paid for 2010 to date. George Deebo responded that information would not be available until later, assessment payments are coming in daily, and that there is not absolute deadline for participation.

Closed Session (Claimant Issue)

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board go into closed meeting for the purpose consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding: Discussion of records the Virginia Birth-Related Neurological Injury Compensation Program is required to keep confidential pursuant to Virginia Code Section §38.2-5002.2; more specifically, records concerning the deliberations of the Board of Directors in connection with specific claims, as prevented from being disclosed by Virginia Code Section §38.2-5002.2 (iii). The motion was seconded by Lain O'Ferrall and passed unanimously.

Susan Lucas 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):

(Regarding request from ██████████) A motion was made to reimburse family for van rental expense of \$479, and if there is a claim against the conversion warranty while it is in effect, the Program will consider reimbursing the claimant for that expense. Motion was seconded by Jennifer Ogburn, and passed unanimously.

New Business:

Board Elections took place at the December Board Meeting. Susan Lucas nominated Bob Boyle for the position of Chair of the Board, seconded by Gwen Taylor, and passed unanimously. Susan Lucas nominated Gwen Taylor for the position of Vice-Chair of the Board, seconded by Susan Grisham, and passed unanimously.

Lain O'Ferrall commended Susan Lucas for a good job as Chair.

Closed Session Regarding (Legal and Case Update):

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the

provision of legal advice by such counsel regarding pending litigation pursuant to Virginia Code § 2.2-3711 (A)(1). The motion was seconded by Susan Grisham, and passed unanimously.

Susan Lucas 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.

Closed Session Regarding (Personnel):

Susan Lucas moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3711 (A)(1) of the Code of Virginia that the Board go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding a personnel matter pursuant to Virginia Code § 2.2-3711 (A)(1). The motion was seconded by Bob Boyle, and passed unanimously.

Susan Lucas 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.

Program staff left the room for this closed session.

Executive Director's Report:

George Deebo noted that a one page listing of Program and Board actions related to the alleged embezzlement was available. The Board requested that document be placed as an addendum to the Board minutes.

Adjournment:

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

December 8, 2009

Birth-Injury Board Continues Actions Regarding Alleged Embezzling

The Board of Directors and Staff of the Virginia Birth-Related Neurological Injury Compensation Program consider the current situation regarding alleged embezzling by a former employee very serious. In response the Board has authorized several key measures including the following:

▶ **Forensic Auditor Engaged** - The Program interviewed CPA firms and engaged a forensic auditor to review relevant information from the past three years. The firm of Steve Walls and Associates has been hired. Mr. Walls is a CPA, Certified Fraud Examiner (CFA) and is Certified in Financial Forensics (CFF).

▶ **Aggressive Prosecution** - The Program continues to work with state and federal officials towards the prosecution of the alleged embezzlement. Currently 29 counts been filed by authorities in federal court.

▶ **Aggressive Recovery Efforts** – The Program is in the process of hiring an attorney specializing in recovery of assets.

▶ **Insurance Recovery** – \$110,000 has been recovered through theft insurance.

▶ **Identity Theft Protection** - Participation in Identity Theft monitoring has been made available to all Program families through TrustedID, one of the top monitoring companies in the nation.

▶ **New Annual Auditor** – A Request for Proposals has been initiated to engage a new firm for annual auditing services.

▶ **Review and Revision of Internal Financial Controls** – While the Program has always reviewed and revised financial controls every year based on auditor recommendations, additional changes have been completed utilizing data from several sources including staff review, re-evaluation of annual audits and law enforcement input. Additional review and revision will occur as new information becomes available.