

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for January 12, 2010**

**Attendees:**

Robert "Bob" Boyle, MD, Chair  
Gwen Taylor, Esq., MSW, Vice-Chair  
Lain O'Ferrall  
Susan Riddick-Grisham, RN, LCP  
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

Bill McKelway, Richmond Times Dispatch

**Call to Order:**

Bob Boyle, MD, Chair, called the January Board meeting to order at 1:00 pm.

**Minutes:**

Minor corrections recommended by Carla Collins and Gwen Taylor, Vice-Chair. Lain O'Ferrall motioned to accept the recommended changes and approve the December Board minutes. Gwen Taylor, Vice-Chair, seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the financials reports. Program currently has \$235 million in investments compared with \$186 million last year (January 2009). Gwen Taylor, Vice-Chair, motioned to accept the December Financial reports. Susan Grisham seconded the motion and it passed unanimously.

George Deebo shared a few highlights of 2009 with the Board that consisted of highest physician participation (648), highest level of hospital participation (38), highest total annual income (\$30.36 million), highest participating physician and hospital income, and highest level of financial reserves (\$235 million).

**Investment:**

Lain O'Ferrall stated that for the YTD for 2009 investments has a gain of 21%. Investments for the first quarter are up by 3.3%. Lain O'Ferrall states revenue has increased steadily over the past five years.

**Public Comment:**

Bill McKelway inquired about the final amount of embezzlement case. George Deebo stated that the final report had not been completed, but that the amounts were about the same.

Bill McKelway inquired about input from the Board on current willful neglect cases that are pending in circuit court.

Bill McKelway also questioned whether or not the Board thought the level of injury would be considered in a willful neglect case. George Deebo responded that it was an open question.

Bill McKelway inquired about payer of last resort. Is there a clear line between Medicaid and the Program as being payer of last resort? George Deebo stated that the Program has been payer of last resort and there have been few problems. Generally, if a claim is denied by Medicaid, the Program does pay.

Susan Grisham asked if any children were on Medicare. George Deebo stated that he was not aware of any.

#### **Closed Session (Claimant Issue)**

Susan Grisham 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 Scott Walters and passed unanimously.

Susan Grisham 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):**

Scott Walters made a motion to deny request of [REDACTED] for reversal of prior decision of van warranties (December). Motion was seconded by Susan Grisham, and passed unanimously.

Gwen Taylor, Vice Chair, made a motion to deny additional payment over the allowable amount for experiment therapy (ABT) for [REDACTED]. Motion was seconded by Susan Grisham, and passed unanimously.

**Closed Session Regarding (Case Update):**

Susan Grisham 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 Bob Boyle, MD, Chair, and passed unanimously.

Susan Grisham 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 shared with the Board that a piece of legislation would be introduced that may or may not have an impact on the Program. HB87 proposes a similar program as the Birth Injury Program; however, it excludes birth injury cases.

George Deebo stated that interviews were being conducted this week with attorneys regarding possible civil settlement in connect with the embezzlement case. After the interview committee has selected a firm, the recommendation will be brought back to the Board for final approval.

George Deebo informed the Board that it may be necessary to reschedule the February Board meeting due to the impending embezzlement case scheduled for trial February 8<sup>th</sup>-10<sup>th</sup>. After a brief discussion, Board members selected to meet on Friday, February 19<sup>th</sup> in lieu of Tuesday, February 9<sup>th</sup> if needed.

The impending trial will may also impact the next scheduled Investment Committee meeting which Candace Thomas suggested could be moved to the March Board Meeting. Candace Thomas will notify the committee members once new date has been confirmed.

George Deebo informed the Board that there are now two positions available on the Board. We will need someone with a CPA background and investment experience.

**Adjournment:**

A motion to adjourn was made by Bob Boyle, MD, Chair, at 3:10 pm. It passed unanimously.

February No Meeting

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for March 9, 2010**

**Attendees:**

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

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Linda Chenoweth, Legislative Coordinator  
Wes Russell, Office of the Attorney General  
Carla Collins, Office of the Attorney General  
Steve Walls, Walls and Associates  
Ginger Edwards, Walls and Associates

**Call to Order:**

Bob Boyle, Chair, called the January Board meeting to order at 1:00 pm.

**Minutes:**

Minor corrections recommended by Carla Collins. Lain O'Ferrall motioned to accept the recommended changes and approve the December Board minutes. Scott Walters seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the January and February 2010 financial reports. Scott Walters motioned to accept the financial reports. Susan Grisham seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall stated that the Investment Committee met prior to the Board meeting. No changes are recommended at this time.

**Public Comment:**

None

**Closed Session (Claimant Issue)**

Susan Grisham 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 Scott Walters and passed unanimously.

Susan Grisham 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):**

Scott Walters made a motion to deny the request of [REDACTED] to be reimbursed as an LPN for family caregiver services. The motion was seconded by Sue Lucas and passed unanimously.

#### **Old Business**

Laine O'Farrell moved to hire the firm of Morris and Morris to provide legal advice to the Program regarding recovery of funds due to the embezzlement. Susan Grisham seconded the motion and it passed unanimously.

#### **Executive Director's Report:**

George Deebo noted the following:

- As required by legislation financial and investment reports have been sent to the appropriate offices of the Commonwealth of Virginia.
- A document with information they requested regarding the number of births in Virginia, the top delivering hospitals and physicians has been distributed.
- Two nominations for Board membership have been submitted to the Office of the Secretary of the Commonwealth.

## **Old Business Continued**

### **Closed Session Regarding (Personnel):**

Susan Grisham 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 personnel matters 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 Sue Lucas and passed unanimously.

Susan Grisham 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.

Carla Collins was not present for this closed session.

### **Open Session**

Steve Walls provided a very brief presentation on recommendations for future financial controls.

### **Adjournment:**

A motion to adjourn was made by Bob Boyle, MD, Chair, at 4:20 pm. It passed unanimously.

April No Meeting



**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for May 19, 2010**

**Attendees:**

Robert Boyle, MD, Chair  
Gwen Taylor, Esq, MSW, Vice-Chair  
Lain O'Ferrall  
Jennifer Ogburn  
Susan Riddick-Grisham, RN, LCP  
Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Coordinator  
Wes Russell, Office of the Attorney General  
Carla Collins, Office of the Attorney General

Phil Morris, Morris and Morris Attorneys at Law  
Matt Green, Morris and Morris Attorneys at Law

**Call to Order:**

Bob Boyle, Chair, called the May Board meeting to order at 1:05 pm.

**Minutes:**

Minor corrections recommended by Carla Collins. Scott Walters motioned to accept the recommended changes and approve the March Board minutes. Gwen Taylor seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the April 2010 (March 2010 provided) financial reports. Lain O'Ferrall motioned to accept the financial reports. Susan Grisham seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall stated that there had been little movement so far for the 3<sup>rd</sup> quarter. The next Investment Committee will be on Tuesday, June 8<sup>th</sup>, 2010, at 11:30am prior to the June Board meeting.

**Legislative:**

Linda Chenoweth provided a two-page summary of the proposed Health Care Reform for Board members to review.

**Public Comment:**

None

**Old Business (Continued):**

George Deebo noted the completion of the public comment period regarding draft revisions to the Program Guidelines concerning conductive education and experimental therapy. No comments were received.

Bob Boyle motioned to accept the recommended changes for conductive education therapy to the Program Guidelines. Lain O'Ferrall seconded the motion and it passed unanimously.

**Closed Session Regarding (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 personnel matters 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 Scott Walters 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.

Carla Collins was not present for this closed session.

**Closed Session (Claimant Issue)**

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 Jennifer Ogburn 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):**

Bob Boyle made a motion to authorize staff to reimburse [REDACTED] for family caregiver services. The motion was seconded by Lain O'Ferrall. The vote was 5 for the motion and 1 opposed the motion.

Bob Boyle made a motion to authorize purchase request of handicapped accessible van for [REDACTED] based on medical necessity. The motion was seconded by Jennifer Ogburn, and it passed unanimously.

**Executive Director's Report:**

George Deebo stated that he had spoken to the Governor's Office in regards to the Board membership nominations, and we should have the results in about 2 weeks.

**General Comments:**

Gwen Taylor asked if any actions had been taken to follow-up to the report of Steve Walls presented in January during her absence. George Deebo stated that the Audit Committee has been reviewing the recommendations and after the Audit Committee meets in June information will be provided to the Board.

**Adjournment:**

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

June No Meeting

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for July 13, 2010**

*\*Revised per Board Meeting of September 14<sup>th</sup>, 2010\**

**Attendees:**

Robert Boyle, MD, Chair  
Gwen Taylor, Esq, MSW, Vice-Chair  
Lain O'Ferrall  
Susan Lucas, MD  
Susan Riddick-Grisham, RN, LCP

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Coordinator  
Carla Collins, Office of the Attorney General

Jeffrey Still, Parent

**Call to Order:**

Bob Boyle, Chair, called the July Board meeting to order at 1:05 pm.

**Minutes:**

Minor corrections recommended by Carla Collins. Lain O'Ferrall motioned to accept the recommended changes and approve the May Board minutes. Susan Grisham seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the June 2010 financials. Lain O'Ferrall asked about total income received to date. It was reported to be \$26 million. He wanted to know if any additional monies would be received. Candace Thomas answered that the majority of the assessments have been received with a few that will still come in but not in any substantial amount. Total Income is about the same as it was last year this time. Lain O'Ferrall also asked about Administrative Expenses. The Programs' Administrative Expenses account for 8% of Total Income. Susan Grisham asked about the Refund of Overpayment. Candace Thomas stated these are monies that are paid back to either the physician or physician's offices when overpayment is made on behalf of the physician or if a physician leaves the practice, the Program prorates the amount refunded. Lain O'Ferrall motioned to accept the financial reports. Susan Grisham seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall stated that the Investment Committee met prior to the Board meeting with Jim Rorrer of CapGroup. The possibility of moving up to 10% into alternative investments, in-line with the practices of most institutional funds similar to the Program was discussed in the

meeting. Jim Rorrer with CapGroup will be at the September Board meeting to make a presentation regarding alternative funds and to answer any questions the Board may have.

**Public Comment:**

None

**Old Business:**

Gwen Taylor asked if the Board would be discussing the Audit Report. George Deebo stated it was not on the agenda for this meeting, but he could put it on the agenda for the September meeting. Additionally the Audit Committee has reviewed and accepted the report and the committee meeting minutes were distributed to all board members.

**Open Session (Claimant Issue):**

Jeffrey Still, father of Calley Still, addressed the Board in regards to his request for reimbursement for an additional lift on the back of their home. Mr. Still informed the Board that due to property codes, entry into their backyard to gain access to the pool was impossible for their daughter's wheelchair. They looked into getting a ramp but the ramp would need to be 55" long and no possible due to the elevation. Additionally the codes would not allow a paved walkway from the front of the house. The only remedy was an additional lift on the rear of the home. The first lift was paid for by the EDCD waiver through Medicaid.

**Closed Session (Claimant Issue):**

Bob Boyle, MD, Chair, 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.

Bob Boyle, MD, Chair, moved the adoption of the following resolution:

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

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

A motion was made by the Board to reimburse for the lift in question, as supported by the letter of medical necessity, given the circumstances (██████████). The motion was seconded by Gwen Taylor.

A motion was made that the Board offer the parents (of ██████████) one of the three choices of vehicles already offered. The motion was seconded by Lain O'Ferrall, and it passed unanimously.

A motion was made that the Board offer the equivalent cost of an addition that would cover the bedroom, bathroom and storage area and any legally required upgrades to the septic system not to exceed \$125,000 (██████████). The motion was seconded by Lain O'Ferrall.

**New Business:**

None

**Closed Session Regarding (Case Updates):**

Bob Boyle, MD, 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 pending litigation. The motion was seconded by Sue Lucas, MD, and passed unanimously.

Bob Boyle, MD, Chair, moved the adoption of the following resolution:

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

**Executive Director's Report:**

George Deebo stated that a new MOU had been signed with the OAG to continue services for the next three years.

**Other:**

At 3:00 pm, the Board excused staff members and legal counsel to discuss the annual evaluation of George Deebo, Executive Director.

**Adjournment:**

A motion to adjourn was made by Bob Boyle, Chair, at 3:20 pm. It passed unanimously.



August No Meeting

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for September 14, 2010**

**Attendees:**

Robert Boyle, MD, Chair  
Gwen Taylor, Esq, MSW, Vice-Chair  
Lain O'Ferrall  
Jennifer Ogburn  
Susan Lucas, MD  
Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Carla Collins, Office of the Attorney General  
Jim Rorrer, CapGroup  
Ann Jones, Jones and Rostant, PC  
Bill McKelway, Richmond Times Dispatch

**Call to Order:**

Bob Boyle, Chair, called the September Board meeting to order at 1:05 pm.

**Minutes:**

July minutes were corrected prior to Board meeting. The proposed revisions were provided to Board members at the meeting. Lain O'Ferrall motioned to accept and approve the revised July Board minutes. Bob Boyle, MD, Chair seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the August 2010 financials. The Program has 115 active claimants. The Program has approximately \$233 million in investments. Lain O'Ferrall motioned to accept the financial reports. Susan Lucas, MD, seconded the motion and it passed unanimously.

**Old Business: Alternative Investments Presentation**

Jim Rorrer, Investment Consultant with CapGroup, provided an overview of "Strategies to Reduce Portfolio Risk." The presentation provided information on alternative investments that would further diversify the Program's portfolio. The Investment Policy Statement needs to be revised to add alternative investments to the allocations to allow for the change.

**Investment:**

Lain O'Ferrall distributed copies of the Quarterly Performance Report (as of 8/31/10) to the Board. He stated the Program had a 1.4 increase in investments so far for the quarter. Lain O'Ferrall motioned to revise the Investment Policy Statement to change allocations as proposed; stocks 40%, bonds 35%, cash 5% and Hedge Funds 20%. Gwen Taylor seconded the motion and it passed unanimously.

**Public Comment:**

None

**Closed Session (Claimant Issue):**

Bob Boyle, MD, Chair, 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.

Bob Boyle, MD, Chair, 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;

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

Susan Lucas, MD, motioned on behalf of the Board that the Program staff prepare a detailed flowchart and analysis of each case. Discussion will continue at the October Board Meeting. The motion was seconded by Scott Walters.

**New Business:**

None

**Executive Director's Report:**

George Deebo stated that three appointments have been made for vacant positions for the Board of Directors. The Governor's office is still waiting on documentation before the appointments will be publicly announced.

**Adjournment:**

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

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for October 12, 2010**

**Attendees:**

Gwen Taylor, Esq, MSW, Vice-Chair  
Hope Cupit, CPA  
Lain O'Ferrall  
Jennifer Ogburn  
Susan Riddick-Grisham, RN, BA  
Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Affairs Coordinator  
Carla Collins, Office of the Attorney General

**Call to Order:**

Gwen Taylor, Vice-Chair, called the October Board meeting to order at 1:05 pm.

**Introductions:**

Board Members, Program staff and Carla Collins introduced themselves to Hope Cupit, new Board member. Board Members stated their name, and the type of seat held on the Board.

**Minutes:**

Lain O'Ferrall motioned to accept the September Board minutes. Scott Walters seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the September 2010 financials. The Program has 115 active claimants. The Program has approximately \$243 million in investments as of September 2010 compared to \$211 million in September 2009. Scott Walters asked why there was a difference on the Profit and Loss in Total Income versus Net Income. Candace Thomas stated that she would research the information and provide a response at the November Board meeting.

**Investment:**

Lain O'Ferrall stated that the Program had a gain of \$15 million in investment accounts. Due to computer problems, Cap Group was unable to provide the Monthly Performance Report (as of 9/30/10) to the Board. A Board member asked about the start of the alternative investments account. Lain O'Ferrall and Candace Thomas stated that the investment policy had to be

revised first which would need to take place in the next 30 days before the Hedge Fund account would be set up.

**Public Comment:**

None

**Closed Session (Claimant Issue):**

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 Scott Walters, 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):**

Scott Walters motioned for the Program Staff to request more information about medical necessity and an analysis of all equipment for claimant #1 [REDACTED]. Susan Riddick-Grisham seconded the motion.

Gwen Taylor, Vice-Chair, motioned to deny the request for pre-admission expenses for claimant #2 [REDACTED] because the request was outside Program Guidelines based on time of submission. Susan Riddick-Grisham seconded the motion.

Board Members extensively debated policy related to the Program's Family Caregivers benefit. Policy will be drafted reflecting the Board's decision for approval at the next scheduled Board meeting in November. At that time, Board will make a decision in pending issues before.

**Executive Director's Report:**

George Deebo stated that the State Corporation Commission (SCC) has been producing actuarial reports annually, however, notification received today (10/12/10) that the SEC will return to the legislatively allowed practice of producing the actuarial reports every other year.

Elections for Board Chair and Vice Chair will take place in November. Lain O'Ferrall volunteered to receive nominations for the open chair position. Elected Chair will start in January.

Dr. Robert Boyle was not reappointed to the Board, however, Board agreed to send Dr. Boyle a letter of gratitude for his service.

**Adjournment:**

A motion to adjourn was made by Gwen Taylor, Vice-Chair, at 3:45 pm. It passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for November 9, 2010**

**Attendees:**

Gwen Taylor, Esq, MSW, Vice-Chair  
Hope Cupit, CPA  
Susan Lucas, MD  
Lain O'Ferrall  
Susan Riddick-Grisham, RN, BA  
John Seeds, MD  
Scott Walters, Esq.

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Affairs Coordinator  
Carla Collins, Office of the Attorney General

**Call to Order:**

Gwen Taylor, Vice-Chair, called the November Board meeting to order at 1:00 pm.

**Introductions:**

Board Members, Program staff and Carla Collins introduced themselves to John Seeds, MD, new Board member. Board Members stated their name, and the type of seat held on the Board.

**Minutes:**

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

**Finance:**

Candace Thomas reviewed the October 2010 financials. The Program has 116 active claimants. The Program has approximately \$249 million in investments as of October 2010 compared to \$210 million in October 2009. George Deebo stated that the annual assessments had been mailed and payments were already being received.

**Investment:**

Lain O'Ferrall stated that overall the Program investments were doing well. Since January, there has been a \$4 million gain in the investment accounts and our accounts have outperformed the indexes. Cap Group has identified two managers that they will be watching for performance concerns: Boston Partners (owner recently passed away) and Atlantic Asset



Management (fixed assets). Lain reminded the Board of the recent change of investments: 20% Alternatives (hedge funds), 40% fixed and 40% equity.

**Public Comment:**

None

**Closed Session (Claimant Issue):**

Sue 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.

Sue 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 motioned to accept the proposed document for paying family caregiving pre and post admission as amended. Also, this document is to be added to the minutes for the record. Gwen Taylor, Vice-Chair, seconded the motion.

\*\*\*\*

**Clarification regarding family-caregiver requests as approved  
by the Board of Directors on November 9, 2010**

**Pre-Program Admission:**

If the request is for reimbursement of services rendered prior to the claimant's admission into the Program, the Program will reimburse retroactively to July 1, 2008, unless the claimant's date of birth occurred after that date. In that case, the Program will reimburse retroactively to the date of birth. However, all required documentation must be submitted and accepted by the Program within two years of the Program admission date, as with all pre-admission reimbursement requests.

**Post Program Admission:**

The Program will allow retroactive reimbursement for services rendered up to one year prior to the first request for reimbursement pursuant to the family caregiver benefit. However, all required documentation must be submitted and accepted by the Program within one year following the date of service, as with all post-admission requests for reimbursement.

For each of the situations above the following documentation must be received and approved by the Program prior to any reimbursement:

1. Release and Waiver of Liability, Discharge, Covenant Not to Sue, and Indemnity Agreement of Admitted Claimant (notarized).
2. Release and Waiver of Liability, Discharge, Covenant Not to Sue, and Indemnity Agreement by Caregiver (notarized).
3. Certification, Waiver and Release Regarding Family Member Caregiver's or Independent Caregiver's Prior Criminal History.
4. Family Member Caregiver Competency Certification.

Important Note: No prospective family caregiver who has been convicted of an offense listed as a barrier crime according to Virginia Code §372-314, 372-416 or 372-506 can be hired or reimbursed as a claimant's caregiver.

All usual and customary Program Guidelines that apply will be applied. Those include, but are not be limited to:

-A treating physician's letter of medical necessity must be received prescribing allowable number of hours

-All required care documentation must be submitted to include signed and dated timesheets and monthly report forms. After the initial request for the benefit is made (during the post admission period), the requests for reimbursement and the supporting documentation must be submitted each month as set forth in the Guidelines.

- As with all care reimbursed by the Program, the caregiver must be solely providing care to the claimant during those hours

- As with all care reimbursed by the Program the caregiver must be awake and attentive to the claimant during those hours.

The rate of reimbursement will be as prescribed in the Program Guidelines.

\*\*\*\*

(Minutes continue next page)

Gwen Taylor, Vice-Chair, motioned that following adoption of policy (adopted clarifications for pre and post admission of family caregiving benefit) with regard to claimant #1 (██████████), reimbursement to the family is approved for the period of 7/1/08 – 4/1/10 provided documentation is submitted by 4/1/12 and 4/2/10 – 7/12/10 provided documentation is submitted within one year of service, however, submission of all documentation must be received in order for reimbursement to be paid. Susan Lucas, MD, seconded the motion.

Gwen Taylor, Vice-Chair, motioned that with respect to claimant #2 (██████████) and adoption of policy, reimbursement to the family is approved for all preadmission expenses submitted by 5/25/12, however, submission of all documentation must be received in order for reimbursement to be paid. Susan Lucas, MD, seconded the motion.

Gwen Taylor, Vice-Chair, motioned with respect to claimant #3 (██████████) and adoption of policy, preadmission expenses are denied because of family submitting documentation after the deadline of 5/3/08, however, expenses for services of 8/11/09 to current would be approved provided all necessary documentation was submitted within one year of service, however, let it be noted that September 2010 and October 2010 will be reimbursement provided all documentation has been received. Finally, reimbursement rate for family caregiving is based on hourly rate stipulated in guidelines. Susan Lucas, MD, seconded the motion.

Susan Riddick-Grisham motioned that per the request of four DME items by the family to approve up to \$10,000 for an appropriate bed and air mattress for claimant #4 (██████████), however, the other items would be denied because they are not medically necessary. Hope Cupit seconded the motion.

#### **New Business:**

- **Elections**

Nominations for the positions of Chair and Vice-Chair were submitted to Lain O'Ferrall and were as follows:

- **Chair: Sue Lucas, MD**

Lain O'Ferrall motioned to accept the nomination of Sue Lucas, MD, to the position of Chair. It was seconded by Gwen Taylor, and passed unanimously.

- **Vice-Chair: Susan Riddick-Grisham, RN, BA**

Lain O'Ferrall motioned to accept the nomination of Susan Riddick-Grisham, RN, BA to the position of Vice-Chair. It was seconded by Scott Walters, and passed unanimously.

#### **Closed Session (Case Update):**

Sue Lucas, MD, 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 pending litigation. The motion was seconded by Lain O'Ferrall, and passed unanimously.

Sue 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.

**Executive Director's Report:**

George Deebo stated that Program staff had advertised for the vacant position of Administrative Assistant. Program had been using a temporary employee, and that person had resigned to take another position. Mr. Deebo stated that the Program would hopefully have the position filled by the next Board meeting.

George Deebo stated that Dr. Robert Boyle's letter of gratitude would be mailed out this week.

**Adjournment:**

A motion to adjourn was made by Gwen Taylor, Vice-Chair, at 3:00 pm. It was seconded by Hope Cupit, and passed unanimously.

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for December 14, 2010**

**Attendees:**

Susan Lucas, MD, Chair  
David Barrett  
Lain O'Ferrall  
Jennifer Ogburn  
John Seeds, MD  
Gwen Taylor, Esq, MSW

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Angela Conley, Claims Manager  
Linda Chenoweth, Legislative Affairs Coordinator  
Carla Collins, Office of the Attorney General  
Crystal Twitty, Office of the Attorney General

Bill McKelway, Richmond Times Dispatch

**Call to Order:**

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

**Introductions:**

Board Members, Program staff and Assistant Attorney General Carla Collins introduced themselves to David Barrett, the newest Board member. Crystal Twitty with the Office of the Attorney General was also introduced to everyone in attendance.

**Minutes:**

John Seeds, MD, motioned to accept the November Board minutes as amended. Gwen Taylor seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the November 2010 financials. The Program has 117 active claimants. The Program has approximately \$248 million in investments as of November 2010 compared to \$216 million in November 2009. Candace Thomas stated financial disclosures were mailed to the Board members. She asked Board members to complete and return the forms to her.

Actuarial reports were provided to Board members present. Susan Lucas, MD, Chair, asked whether there were any changes from last year.

**Investment:**

Lain O'Ferrall stated that the Program investments had a YTD Rate of Return of 8.5%.

**Public Comment:**

Bill McKelway, Richmond Times Dispatch, asked whether the case in which healthcare providers' attorneys requested fees had been adjudicated. Bill McKelway asked whether the Program would be proposing any legislation when the General Assembly convenes in January. George Deebo stated that the petition is still pending, and that the Program is not expecting to seek any legislation.

**Closed Session (Claimant Issue):**

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, Chair, 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):**

Sue Lucas, MD, motioned to approve a request of a generator for [REDACTED] based on factual information and specific circumstance. Gwen Taylor, Vice-Chair, seconded the motion.

**Public Comment:**

Bill McKelway asked whether a request for a generator for a ventilated child would be approved automatically by Program staff. George Deebo responded that it usually would, however, the request being made is not for a child on a ventilator.

**Closed Session (Case Update):**

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 pending litigation. The motion was seconded by Susan Lucas, MD, Chair, 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.

**Adjournment:**

A motion to adjourn was made by Susan Lucas, MD, Chair, at 3:00 pm. It was seconded by Lain O'Ferrall, and passed unanimously.