

Lifetimes

SUMMER 2002

Virginia Birth-Related Neurological Injury Compensation Program

Understanding the Birth-Injury Program: A Brief Overview and History

Background: Averting A Malpractice Crisis

Established in 1987, the Birth-Injury Program was a legislative response to a statewide crisis in malpractice insurance. This crisis threatened to leave many obstetricians without coverage, and thus thousands of Virginians without access to care. The Program, the first of its kind nationwide, has been successful in helping maintain access to obstetrical services throughout Virginia.

Another wave of soaring malpractice rates is now sweeping the nation. In some states, including West Virginia, Texas, and Nevada, emergency actions have been required to maintain the healthcare system. Virginia has been more fortunate – proactive measures have helped assure reasonable malpractice insurance increases.

Program Admission: Entrance Is Through Workers' Comp

To qualify for the Program, a child must be delivered by a participating physician or in a participating healthcare facility. The child must have a serious birth-related neurological injury, defined by Virginia law as *an injury to the brain or spinal cord caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period.* Additionally, the statute states that a child must be *“...permanently mortorically disabled and developmentally disabled ...and permanently in need of assistance in all activities of daily living.”*

With an injury of this type, the child's family may apply to the Program. If a malpractice case is filed in court, the court will refer the case to the Virginia Workers' Compensation Commission for a ruling. The Workers' Compensation Commission is solely responsible for making a determination of admission into the Program.

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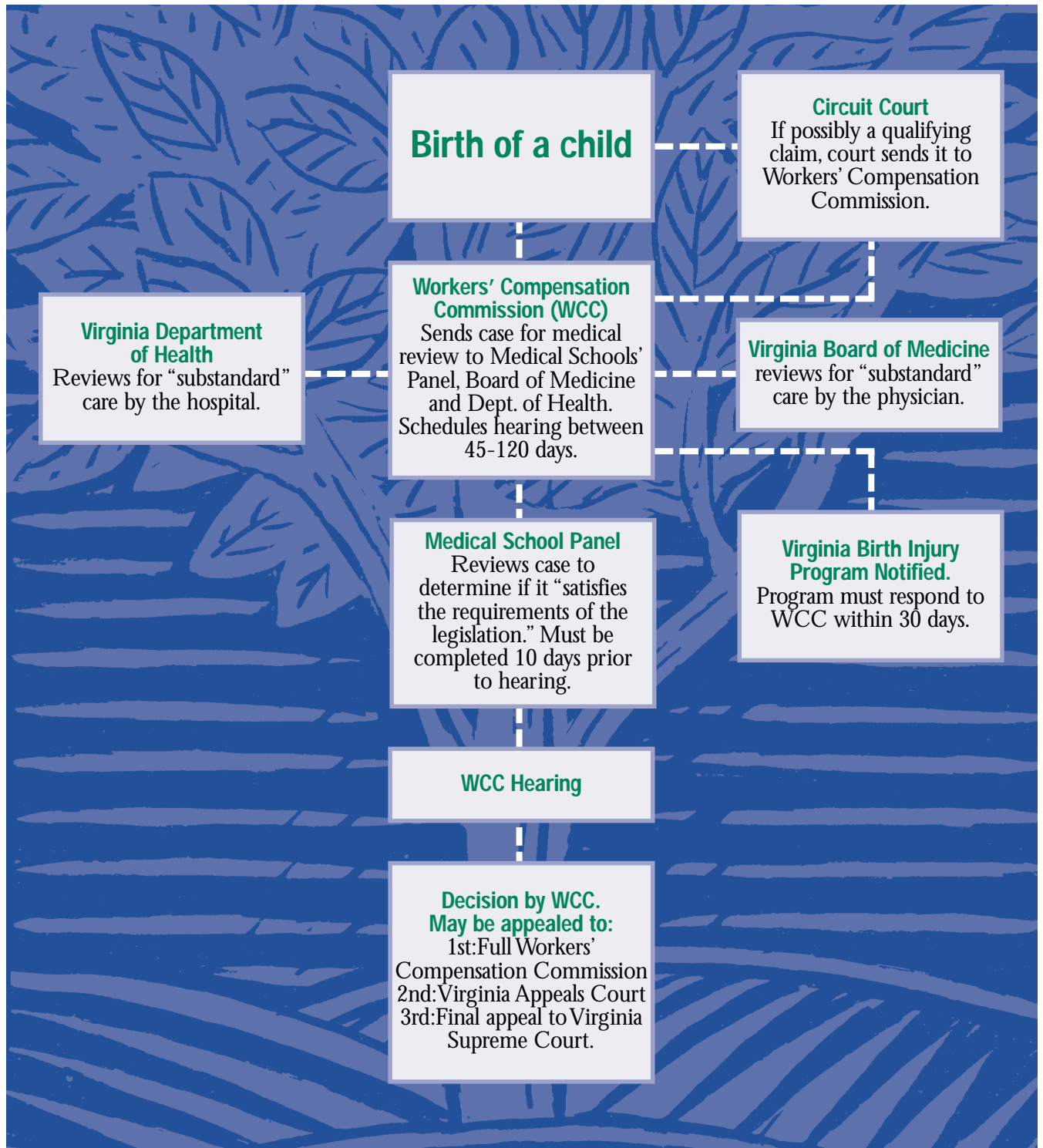
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A panel of medical experts from Virginia's medical schools advises the Workers' Compensation Commission on medical issues surrounding admission for each case. As a requirement of law, the Program also files an opinion. Because these opinions are required prior to the completion of the report by the Commission's experts, other qualified medical experts are utilized to meet the statutory requirement.

The Program clearly communicates to potential participants their option to utilize legal counsel in all proceedings. Once a child is admitted into the Program, there is no recourse through the torts system. Admittance into the program for a qualifying injury is not optional.

Current Status: Participation Growing

The Birth-Injury Program is now serving approximately 65 children. Several children are typically seeking entry into the Program at any given time. Once in the Program, a child's medically necessary needs are paid for life.

Benefits: Medically Necessary

Eligible expenses include the following items:

- Limited modifications to a home to allow handicapped accessibility, generally including a bedroom and bathroom
- A van equipped with a wheelchair lift; repair costs and an annual stipend to cover insurance
- All medically necessary medical treatments (after primary insurance)
- Medically necessary durable medical equipment such as hospital beds, wheelchairs, and customized seats (after primary insurance)
- Home nursing care, generally eight hours per day, provided according to physician specified needs
- Inpatient hospital care as necessary (after primary insurance)

- Ongoing therapy/physical rehab
- Dental care (after any other insurance coverage)
- Appropriate attorney's fees to enter the program
- Counseling for the family
- Compensation for lost earnings between the ages of 18 and 65

Financing: No State Funds Utilized

The Program is supported entirely through assessments and fees from physicians, hospitals, and liability insurers. No state funds are utilized. Currently, the Program Fund has more than \$80 million in assets. According to last year's actuarial studies, at current funding levels and participant growth rates, the Program may run short of needed funds between 2027 and 2032. This funding issue, currently under review by the Program, is highly dependent on several issues, including interest rates, participation, and caseload.

Physician and Hospital Participation: Key State Medical Centers Involved

Approximately two-thirds of Virginia's obstetricians and twenty-seven hospitals, including the University of Virginia, Carilion Roanoke Community Hospital, Fairfax Hospital, and Sentara Norfolk General Hospital, participate in the Program.

Board Members Serve Program

The Program's seven-member board is appointed by the Governor and serves voluntarily. The board helps oversee the Program and its reserve fund.

Web Site: Source of Information

Additional information, including the statute, program guidelines, and a complete listing of participating physicians and hospitals, is available at the web site at www.vabirthinjury.com.

'Stefan Is All Boy'

Kimberlee and Mark Ames' four and one-half-year-old son, Stefan, was accepted into the Virginia Birth Injury Program in June 2001. The Ames, Stefan and their nine-year-old son, Alex, live in Richmond, Virginia. Kimberlee graciously shared her family's story and experience with the Birth Injury Program.

Stefan is a high-energy child, always in a whirlwind of motion. "He could be sitting in a chair and he would be active," says Kimberlee.

"He's a hoot – he's got a great sense of humor. Everything his brother thinks is funny he thinks is funny, too, especially destruction. I was trying to kill a fly and he just thought that was so funny."

"Stefan has to be entertained all the time," notes Kimberlee. He plays with the computer touch screen and watches favorite television shows such as *The Bear in the Big Blue House*. Stefan enjoys reading, especially books about dinosaurs.

"He's always making improvement in something. He's so proud of himself. When we see little things that gives us hope – and we see little things all the time."

Following a morning nap, "he goes great guns until he wears himself out again," recovering with an afternoon nap.

"He loves being outside," engaging in outdoorsy activities like going for walks and swinging. Regarding rough-and-tumble boyish activities, Kimberlee observes, "If he could physically do that, he would. Stefan is all boy. You can see that stuff is in his head – he just can't do it."



Physical Coordination Is a Big Problem

Stefan has dystonia, an active form of cerebral palsy. “His biggest problem is coordination,” says Kimberlee. “His legs are spastic, with tight muscles. His trunk is hypotonic, which means it’s loose. Sometimes his arms are tight and sometimes they’re loose. It depends on what he’s doing or what he’s trying to do. Everything for him requires great energy because his muscles don’t move the way he wants them to. He’s thinking, ‘I want to move my arm here,’ but it doesn’t go where he wants it to go. He’s such a mixed bag that it’s impossible for the doctors to pin a diagnosis on him.”

Although he talks a little and vocalizes a lot, Stefan is considered nonverbal. “The harder he tries to do something, like talk, the harder it is for him to do it because he tightens up,” adds Kimberlee.

Regarding ways to develop his communicative skills, “You name it, we’re working with all of it. We know what he wants most of the time—when he’s upset, he sticks his lip out and pouts. But, he may never be able to speak where someone outside the family could understand him.

“We think he’s smart—he’s certainly much, much smarter than he’s given credit for because he can’t be tested. He’s very aware. He is also very frustrated—he wants to do things. It’s amazing how when he puts his mind to it he can do certain things.

“Since he was six months old we’ve had to spell in front of him anything that might be objectionable. Sometimes his brother gets a milkshake before he goes to bed at night. We can’t even partially spell that anymore. He knows what we’re talking about and gets mad because he wants one, too.

One of Stefan’s best buddies is his physical therapist’s “very big horse” named Skip, who shares with Stefan his favorite activity, hippotherapy. Riding the gentle giant in a variety

of positions stretches specific muscles. Kimberlee adds, “He also gets to just ride, go around barrels, grab toys off of things, and even stand on the horse.”



Quality of Life Issues

The combination of ongoing therapies, medical treatment, equipment, and in-home care that contributes to Stefan’s quality of life is costly. Kimberlee recalled the three and one-half years before Stefan was enrolled in the Program as an often frustrating and difficult ordeal: “Once we got in the Program, it was a big relief.

“It was a situation where his expenses were getting higher every year. The equipment alone

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REMINDER:

Send in healthcare information!
Families, please send in copies of your insurance cards and healthcare plans to Lynn Cuzzo, Insurance Manager.

REMINDER:

There is a message board for families on the Web. Family members are invited to sign into the message board at our Website at

www.vabirthinjury.com.

Families can share their experiences and information on such topics as the types of medication proving effective for their children, therapies they are trying, and ways to ease recovery time following surgery.

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is very pricey. He uses a custom-made walker, which supports his trunk so he can walk, because he loves to walk. He has a kid cart, which is a stroller-like wheelchair, and he's getting a power wheelchair, I hope, this summer, so he can get around on his own. And he has a floor sitter. That's his basic stuff at home. I also have a travel stroller for quick trips."

The greatest help has been the regular deliveries of Stefan's nutritional supplement, Peditasure, arranged and covered by the Program: "The Peditasure thing was the biggest nightmare. I spent hours looking for it at the best price."

Program Makes Renovations Possible

The Ames are now renovating their two-story home, purchased one-half year before Stefan was born. A ground floor bedroom and bathroom for Stefan will be covered by the Program. They are also adding a ramp to the driveway. "We did not have a way to get him out of the house without going up and down steps. His bedroom is upstairs. And he's so heavy now." Regarding this necessary renovation, Kimberlee adds, "There is no way we would have been able to do this if we had not gotten into the Program."

With her busy family life, including Stefan's constant care, Kimberlee observed, "I don't really get a break." She had a career as a computer consultant and plans to go back to it someday, but for now, "It just got to be too much." It is a great support that her husband's flexible schedule as an attorney allows him to frequently work from home.

"Our biggest challenge is going to be trying to get Stefan educated. Hopefully, we can get over this communication hurdle. But, he's always making improvement in something. He's so proud of himself. When we see little things that gives us hope – and we see little things all the time."

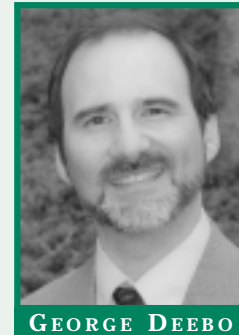


EXECUTIVE DIRECTOR'S LETTER

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Dear Friends,

After a few weeks as Executive Director here at the Birth-Injury Program, I can certainly empathize with everyone who calls in asking, "How does this work?," or "Who is responsible for that?". The reality is, this is a complicated Program, in part due to the mandated distribution of responsibilities among several entities. Among the many agencies involved are:



Virginia Worker's Compensation Commission – Hears and determines claims for entry into the Program

Virginia Attorney General's office – Represents the Commonwealth/Program

State Corporation Commission – Reviews Plan of Operation;

Sets assessment rate for liability insurers; enforces physicians assessments

Secretary of the Commonwealth, Governor's Office – Appoints board members

VCU Medical College of Virginia – provides medical review panels

University of Virginia Medical School – provides medical review panels

Board of Medicine – Reviews cases for substandard care by participating physicians

Virginia Department of Health – Reviews cases for substandard care by hospitals

Virginia Retirement System – Provides listing of Fund investment advisors

"The Program" – Administers the Program

For those of you with children in the Program, you well know that at one point or another you've interacted with many of the above entities. For those of us working at "The Program," we are daily striving to coordinate and track the roles of all of the groups to meet the legislative requirements and more importantly meet the needs of the Program participants.

With all of this in mind, we have focused this issue of Lifetimes on how the Virginia Birth-Related Neurological Injury Compensation Program actually functions. I hope the included information clarifies for you, at least to some degree, how it all works and who does what. And if after reading this issue you still have questions, please give us a call.

*George Deebo
Executive Director*

Program Fields Thousands of Calls During Spring

The Program recently handled thousands of additional phone calls due to final physician assessments. This temporary overload hindered the usual prompt responses to calls. Now that this assessment process is completed, the resultant reduction in the phone volume makes it easier to contact the staff. Of course, leaving a message will always result in a return call as soon as possible. We appreciate everyone's patience during this process and apologize for any inconvenience.

Reminder: Contacting the person who is directly responsible for an area of concern will generate the most efficient responses to requests. For information regarding the appropriate contact person, please consult the staff listing below.

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George Deebo

Executive Director
804-330-2471 X 307
gdeebo@mindspring.com

Sharon Payne

Assistant Executive Director
For information about legal cases, housing issues and general Program questions or issues.
804-330-2471 X 302
brif01@mindspring.com

Lynn Cuozzo

Insurance Administrator
For questions concerning durable medical equipment orders, benefit approvals, insurance related questions.
804-330-2471 X 303
brif02@mindspring.com

Dan Liberty

Accounting Manager
For questions regarding physician or hospital participation.
804-330-2471 X 304
brif03@mindspring.com

Terri Starr, RN

Case Manager
For medical questions regarding new participants, medical needs and for medical questions specific to your child's case with the Program.
804-330-2471 X 310
brif05@mindspring.com

Virginia Birth-Related Neurological Injury Compensation Program

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