

Vermont Education Health Initiative (VEHI)

Board of Director's Meeting Minutes

April 29, 2019

Present: Frances Brock, Robert Letovsky, Joel Cook, Peggy Maxfield, Tracy Wrend (until 5:05), Laura Soares, Mark Hage and Bobby-Jo Salls. Martha Gagner (arrived 4:20)

Members of the Public: Elizabeth Fitzgerald (until 4:00) and Nicole Mace (arrived at 3:40)

The meeting was called to order at 2:00 p.m., Chair Joel Cook.

Public Comment: None

Review and Adoption of Agenda

Tracy Wrend moved, seconded by Robert Letovsky, to reword item #5 to "Respond to an allegation of a violation of Open Meeting Law." The motion failed with Joel, Fran and Peggy voting against the motion.

Tracy moved, seconded by Robert, to reorder the agenda so that items 12 a, c (but not its sub-parts), e and f be moved to item 6 on the agenda to be sure that there is time to address these action items. The motion failed 3-2, with Peggy and Joel voting against.

Approval of March 6, 2019 Meeting Minutes

Tracy made a motion, seconded by Peggy Maxfield, to approve the meeting minutes of March 6, 2019 as presented. Motion passed 5-0.

Act on March 6th Protest of Elizabeth Fitzgerald

After setting context, Joel turned to Robert Letovsky, who circulated and read a resolution that was developed by Joel and Robert with advice of Rob Halpert, legal counsel. Robert made a motion, seconded by Fran Brock, that the entire resolution be adopted

WHEREAS The Board of Directors met on April 29, 2019 to consider the March 6 complaint by Elizabeth Fitzgerald regarding a short break taken by several Board members during the January 30 meeting. The purpose of the break was to help the Board reach an amicable decision regarding a motion under discussion. The complaint alleges the break violated the requirements of the Open Meeting Law (OML).

WHEREAS Ms. Fitzgerald agreed that, despite the more limited time frame within which a public body normally has to consider a complaint such as hers (see 1 V.S.A. Sec. 314(b)(2)), the Board could delay its consideration until April 29.

WHEREAS The January 30 meeting was only the second since the Board was reconstituted in October, 2018. While there had been a suggestion that it undertake training about the OML, none had occurred as of January 30.

WHEREAS Those participating in the break were not aware doing so might be in violation of the OML. The chair at the time did not participate in the break and opined that, as stated in the draft minutes of the meeting, “best practice of a Board is to talk items through together,” but neither she nor anyone else present suggested a break might actually be inconsistent with the OML.

WHEREAS The break served its intended purpose. The Board was able to reach an amicable decision on the matter under consideration.

WHEREAS Ms. Fitzgerald submitted her complaint at the next Board meeting, on March 6.

WHEREAS While no one intended, as the OML states (at 1 V.S.A. Sec. 314) to “knowingly and intentionally participate in the wrongful exclusion” of a member of the public from its meeting, the Board acknowledges in retrospect that the break during its January 30 meeting was not consistent with the OML’s essential requirement (at 1 V.S.A. Sec. 312(a)) that “All meetings of a public body are declared to be open to the public at all times...”

As a result, the Board:

NOW, THEREFORE, the Board

Recognizes its obligation to operate within the provisions of the OML.

Will not engage in similar breaks.

Will follow through on its commitment to have representatives of the Secretary of State’s Office attend a meeting for an in-depth discussion of the provisions of the OML to help ensure the Board fully complies with it.

Tracy made a motion to amend, seconded by Robert, to delete several sections, as indicated below:

WHEREAS The Board of Directors met on April 29, 2019 to consider the March 6 complaint by Elizabeth Fitzgerald regarding a short break taken by several Board members during the January 30 meeting. ~~The purpose of the break was to help the Board reach an amicable decision regarding a motion under discussion.~~ The complaint alleges the break violated the requirements of the Open Meeting Law (OML).

WHEREAS Ms. Fitzgerald agreed that, despite the more limited time frame within which a public body normally has to consider a complaint such as hers (see 1 V.S.A. Sec. 314(b)(2)), the Board could delay its consideration until April 29.

~~WHEREAS The January 30 meeting was only the second since the Board was reconstituted in October, 2018. While there had been a suggestion that it undertake training about the OML, none had occurred as of January 30.~~

~~WHEREAS Those participating in the break were not aware doing so might be in violation of the OML. The chair at the time did not participate in the break and opined that, as stated in the draft minutes of the meeting, “best practice of a Board is to talk items through together,” but neither she nor anyone else present suggested a break might actually be inconsistent with the OML.~~

~~WHEREAS The break served its intended purpose. The Board was able to reach an amicable decision on the matter under consideration.~~

WHEREAS Ms. Fitzgerald submitted her complaint at the next Board meeting, on March 6.

WHEREAS While ~~no one intended~~, as the OML states (at 1 V.S.A. Sec. 314) to “knowingly and intentionally participate in the wrongful exclusion” of a member of the public from its meeting, the Board acknowledges in retrospect that the break during its January 30 meeting was not consistent with the OML’s essential requirement (at 1 V.S.A. Sec. 312(a)) that “All meetings of a public body are declared to be open to the public at all times...”

As a result, the Board:

NOW, THEREFORE, **the Board**

Recognizes its obligation to operate within the provisions of the OML.

Will not engage in similar breaks.

Will follow through on its commitment to have representatives of the Secretary of State’s Office attend a meeting for an in-depth discussion of the provisions of the OML to help ensure the Board fully complies with it.

The motion to amend failed 2-3 with Joel, Peggy and Fran voting against.

Before voting on the main motion, Tracy asked to speak on the record. She indicated that while she did not agree with the full content of the resolution, as indicated in her motion to amend, she will vote in favor in order to recognize the open meeting law violation, support the Board’s commitments in the resolution and in order to move forward. The motion passed 5-0.

Joel asked if Elizabeth Fitzgerald had any comment. Elizabeth indicated she did. Fran objected to allowing Elizabeth to comment. Joel recognized Elizabeth, who thanked the Board for monitoring itself on this issue.

Act on Conflict of Interest Amendments

Joel made a motion, seconded by Peggy, to modify the Conflict of Interest Policy's definition of "conflict of interest" to be consistent with the definition in the Bylaws. After discussion, the motion was tabled until the May meeting.

Tracy moved, and Robert seconded, that Laura Soares contact Rob Halpert to review the Bylaws and Policy to provide options on addressing the different definitions, and for Laura to contact the Vermont Ethics Commission about the process for engaging them. The motion failed with Joel, Fran and Peggy voting against.

Fran made a motion, seconded by Peggy, that the chair and vice-chair contact Rob Halpert for a legal opinion on the COI issue ahead of the May meeting. The motion failed with Tracy voting against it.

Fran made a motion, seconded by Peggy, for Laura, Joel and Robert jointly to get a legal opinion from Robert Halpert on the options to resolve the different COI definitions and implications of those options for consideration by the Board, and inquire about his availability to attend the May meeting of the Board. The motion passed 5-0.

Legislative Testimony Report and Consideration of Action Regarding S.41

Joel asked Bobby-Jo Salls and Mark Hage what questions the House Health Care Committee had at their testimony on the bill. Bobby-Jo indicated they wanted to know if the bill would address the issues employees have been experiencing with TPAs and they were unable to affirm that it would. Mark Hage added that the Chair inquired as to the position of the VEHI board and seemed surprised the Board had not taken a position.

The Board agreed not to take a position on S.41 at this time, given members of the Board were not familiar with the differences in the version that passed the Senate and the version under consideration in the House. Tracy requested the Board discuss VEHI's role with TPAs in the future.

Fran made motion, seconded by Robert, to discuss at a future meeting whether and how to take positions on future legislation related to VEHI, including ensuring appropriate time to do so. The motion passed 5-0.

The Meaning of "Success" – Brief Discussion of what we want VEHI to Accomplish

Each Board member was asked to share their vision of success. The Board discussed this being a part of the retreat.

Identify the Work of the Board for 2019 and Update the Annual Work Plan

Fran made a motion, seconded by Robert, to table this item. The motion passed 5-0.

VSBIT and VT-NEA FY 19 Service Agreement Renewal Discussion:

- a. Evaluations:** VSBIT and VT-NEA provided their evaluations ahead of the meeting. These were reviewed and discussed. Tracy moved that portions of the VT-NEA evaluation reflect satisfactory performance, but that employee education was unsatisfactory and in addition asked that the Board be attentive to current Bylaws and Conflict of Interest Policy and that while these are in place the Board members appointed by the VT-NEA abide by them and do not vote on the VT-NEA Service Agreement. Tracy withdrew the motion before a second was made.
- b. Next Steps:** The item was tabled.

Agenda Development

The Agenda protocol was reviewed and no suggestions were made for revision.

Management Action and Discussion Items:

a. Act on Pharmacy Formulary Changes for January 1, 2020

Tracy made a motion, seconded by Peggy, to adopt the ESI national preferred formulary and specialty Accredo formulary for actives and VSTRS with the ESI network effective 1/1/2020 as recommended by management. The motion passed 6-0.

b. Act on potential participation in cross-state examination of prescription costs

Joel Cook made a motion, seconded by Peggy, to require management to take specific actions to advance this project. The motion was withdrawn, and management will provide an update at the June meeting.

c. Act on Engagement of FY 19 Audit Firm

Tracy made a motion, seconded by Martha Gagner, to engage Sullivan and Powers for the FY 19 audit. The motion passed 6-0. The remaining items were not discussed.

- i. Industry Standard for Retaining/Changing Auditors**
- ii. Discuss FY 18 Audit Report**
- iii. Discuss potential meeting with Lead Auditor ahead of FY 19 Audit**

d. Quarterly Financials March 31, 2019

There was no discussion on this item.

e. Act on Health Program Net Position Policy

There was a motion by Tracy, seconded by Martha, to adopt the Policy as presented. The motion passed 6-0.

f. Act on Extension Request for Temporary Position to Resolve TPA issues:

A motion was made by Fran, seconded by Robert, to grant the extension request made by management. The motion passed 5-0.

g. Other Management Updates: Bobby-Jo and Mark Hage passed out an update on the Opportunity Report from Altarum that was just completed.

Discuss upcoming agenda items and schedule the August Health Rate – Setting Meeting (August 19th – 30th timeframe)

This will be an action item on the next agenda.

Adjournment

There being no further business, the meeting adjourned at 5:11 p.m.

Respectfully submitted by: Laura Soares

Re-submitted to VEHI Board for discussion and action at April 29, 2019 meeting

(Original submission of March 6, 2019)

As a member of the public, who was present at the January 30 meeting of the VEHI Board of Directors, I want to formally protest the actions by Joel Cook, Peggy Maxfield, Fran Brock and Mark Hage when they exited a public meeting under false pretenses to conduct discussions out of earshot of the public about a motion that was formally in front of the Board.

When Mr. Cook requested a 10-minute break "so that I can talk this through with a few people," he clearly implied that he wished to have a private discussion with only VT-NEA representatives outside the meeting room. Chairperson Wrend challenged the propriety of having such a discussion away from other board members and the public and asked Mr. Cook, "you're not comfortable talking it through with us... the whole Board?" Mr. Cook responded, "I don't want to answer that. I made a request" No sooner had Ms. Wrend begun her response acknowledging the request, Mr. Cook stood, interrupted her, and started to leave the room while she was attempting to share her concerns that such discussions absent the full board and not in public were improper.

Mr. Cook was joined by Mr. Hage, Ms. Brock, and shortly after by Ms. Maxfield in leaving the Boardroom They then had a private discussion in a separate room about the motion before the board.

Mr. Hage and all VT-NEA representatives returned to the meeting room together about eight minutes later, at which time Ms. Maxfield made a friendly amendment to the motion on the floor.

The conduct by VT-NEA representatives and staff was in violation of the letter and spirit of open meeting laws. All discussion about motions formally before the board should be discussed in public with the full Board present, not in a private caucus away from the public.

These members of the VEHI Board, not only violated open meeting law, but the VEHI Board's own Code of Ethics Policy (specifically Duty of Loyalty and Duty of Obedience) and Conflict of Interest Policy- Implementation (1) (5) and (6).

Today, I am asking the VEHI Board to take a formal vote 1) sanctioning the activity mentioned above, and 2) to go on record that all Board meeting discussions, excluding those warned agenda items covered by executive session, will take place in public.

I am expecting a motion and a vote from the board at this time.

Respectfully submitted,

Elizabeth Fitzgerald

VEHI Board Agenda Protocol 2019

As a general principle, the Annual Board Work Plan is the foundation from which agendas are developed. In setting the agenda, the Chair and Vice-Chair, together, will begin with the Annual Work Plan, and take into account any requests by individual Board members or staff, as well as circumstances which arise that require Board attention in a timely fashion.

1. On each Board agenda there will be an item to allow members of the Board and staff to suggest matters for future agendas.
2. Items from any meeting that were not fully addressed and require further discussion and/or action will be added to the agenda of a future meeting as agreed by the Board.
3. Additionally, up to two weeks before a scheduled meeting, Board members may submit suggestions for agenda items to both the Chair and Vice-Chair. Staff will arrange for an e-mail reminder to be sent to Board members of the date by which to submit potential agenda items.
4. At least two weeks before a scheduled Board meeting, staff will provide the Chair and Vice-Chair a draft agenda based on the Annual Work Plan and any additional items the staff would like to see addressed.
5. After the two week timeframe, any other items that arise which Board or staff feel should be addressed at the next meeting should be brought to the chair and vice-chair's attention and considered by the full Board as a revision to the agenda at the start of the next meeting.
6. Agendas and documents pertinent to meetings will typically be provided to Board members one week prior to the meeting.

Adopted January 30, 2019