

Vermont Education Health Initiative (VEHI)

Board of Director's Meeting Minutes

December 20, 2018

Present: Frances Brock, Elizabeth Fitzgerald, Joel Cook, Martha Gagner, Tracy Wrend, Peggy Maxfield, Mark Hage, Laura Soares and Bobby-Jo Salls.

Michael Pieciak, DFR Commissioner (until 4:40 pm) and Anna Van Fleet, DFR Rate & Form Manager (Until 5:30 pm).

Members of the Public: Nicole Mace VSBA, Robert Letovsky, Don Tinney VT-NEA,

The meeting was called to order at 4:07 p.m. and introductions were made.

Public Comment:

Nicole Mace notified the Board that Elizabeth Fitzgerald resigned as a member of the VEHI Board effective December 21st, 2018. VSBA appointed Robert Letovsky to the VEHI Board effective December 21st, 2018. VSBA was taping the meeting as its membership has an interest in the work of the VEHI Board.

Review of the Agenda

Tracy Wrend spoke to the open meeting law requirement that agenda items be added only at the start of the meeting. She suggested that for this meeting, the Board come back to this item after the comments from DFR Commissioner Michael Pieciak. There were no objections to this suggestion.

When the Board returned to this item, Joel Cook made a motion (see attached written motion) that the motions he submitted to VEHI on November 1, 2018 be considered formally introduced and that they each be considered as they become relevant in the course of this meeting. After discussion and assurance from the chair that the issues Joel raised in his memo would be considered by the Board, Joel withdrew the motion.

Joel Cook made a motion to amend the agenda to change the order and wording of several agenda items (see attached written motion). After discussion, Joel withdrew the motion. No changes were made to the agenda.

Comments from DFR Commissioner Michael Pieciak

The Commissioner provided a handout to the Board; it has been attached to the minutes. The Commissioner thanked the Board members for serving and emphasized the importance of the Board's oversight role.

a. Primer on the Department of Financial Regulation

DFR looks at insurance companies and I-90-1 programs in terms of solvency, rates & forms, and compliance with law. As a consumer protection department, DFR ensures consumers are treated fairly, pricing is appropriate, and the company/program can make good on its coverage commitments (solvency).

b. The Department's regulatory oversight of VEHI

DFR has regulated VEHI since June of 2013 and has a good working relationship. In addition to rates and forms review, DFR examines organizations at least every 5 years. DFR completed FY 16 examination of VEHI last year. There were no findings, but several recommendations in a letter to management.

With the change to the configuration of the VEHI Board mandated by Act 11, the Commissioner wanted to meet with the Board to be sure they understood DFR's role. Until I-90-1 rules are updated, which is in process, Act 11 is the operative statute. Once the rules are final, DFR will review for compliance with Act 11 any changes to VEHI's organizational documents. Emily Brown is the DFR point person for the rule-making process, which does take some time to complete.

c. Primer on corporate governance responsibilities for Board Members

Once appointed or elected, Board members have duties of care, loyalty and obedience to the organization they serve. A fiduciary duty is owed to the members of VEHI – both the member school districts the subscribers/dependents covered by VEHI programs.

The duty of care is the duty to have sufficient information to make an informed decision. It can, at times, be appropriate to delegate this duty to an advisor or legal counsel. No other duty can be delegated.

The duty of loyalty includes avoiding or mitigating any conflict of interest – including not benefiting financially by service on the Board, not using the information learned in the course of Board service for personal benefit and protecting the confidentiality of sensitive or private information. It is best practice to be transparent, disclose any conflict or appearance of conflict, and work with the Chair to manage potential conflicts.

The duty of obedience is to follow law, the organization's mission, best practices for a Board etc. This includes having difficult conversations and finding resolution, with outside facilitation if needed.

The Commissioner again thanked the Board members, current and future, and wished them the best of luck.

Discuss Board Decision Making Process

Tracy recognized with the new Board configuration comes the possibility of a deadlock. Given this dynamic, and the addition of new members to the Board, she emphasized the importance of discussing how the Board will reach decisions prior to taking up other issues on the agenda.

Joel Cook made a motion, seconded by Fran Brock, to amend the Bylaws Article III Section 8, Manner of Acting, to read: “The act of majorities of the Vermont School Boards Association’s appointees and of the Vermont-National Education Association’s appointees present at a meeting at which a quorum is present shall be the act of the directors.”

Elizabeth Fitzgerald stressed the goal of reaching consensus whenever possible and provided two VSBA handouts on consensus (attached).

Elizabeth made a friendly amendment to Joel’s motion to further amend the Bylaws Article III Section 7, Quorum, to read “A quorum for the transaction of business at any meeting of the VEHI Board shall consist of at least two Board members appointed by the Vermont School Boards Association and at least two Board members appointed by the Vermont-National Education Association. If less than two Board members representing either party are present at any given meeting, those members in attendance will adjourn the meeting immediately without further notice and without taking up any business.” The motion was seconded by Martha Gagner and accepted by Joel and Fran as a friendly amendment.

The motion passed amending Article II Sections 7 and 8 of the Bylaws. The Bylaw amendments will be submitted to DFR for approval once all amendments related to Act 11 are complete.

Approve Minutes of the September 10th and October 19, Meetings

Martha Gagner made a motion, seconded by Elizabeth Fitzgerald, to approve the meeting minutes of September 10th and October 19, 2018. Joel Cook requested the October minutes be amended to better reflect the purpose of the VT-NEA document. That document is a series of proposals to acknowledge in VEHI’s structure and conduct the equal role of each delegation. The motion passed to approve the minutes with the amendment to the October minutes as requested.

Complete Conflict of Interest Statements

Joel Cook made a motion, seconded by Peggy Maxfield, to delay completion of the Conflict of Interest statements by Board members until the Board has completed a full review of the Conflict of Interest Policy and thoroughly discussed the implications of such policy. The motion did not pass. Joel, Peggy and Fran asked that the minutes reflect they are each declining to complete the Statements until a thorough assessment of the Policy is conducted.

Joel made a motion, seconded by Fran Brock, that the Board establish a committee consisting of one or more members of the Board and one or more members of staff for the purpose of studying the Policy and Bylaws Section III Section 16, Conflict of Interest, and bringing forth changes for consideration by the full Board at a future meeting. The motion did not pass. Tracy recommended the full Board continue to discuss these issues at a future meeting.

Election of Board Officers and Appointment of Corporate Officers

Tabled until the next meeting.

Review Current Monthly Financial Statements

The Board was provided the October and November monthly financial statements. As of November 30th, the dental program is showing a loss of \$193,939 as planned. The health program is showing a loss of \$7,645,503 million. This is currently greater than the planned use of reserves, but given the seasonality of the health plans, BCBSVT's actuary does not feel it is necessary to adjust the overall health program projections for the fiscal year at this time.

It was brought to the Board's attention that VSBIT returned a total of \$36,279 to VEHI from the FY 18 Service Contract fee when the year-end true-up was completed. VSBIT is committed to not making a profit from the Service Agreement with VEHI.

Identify the Work of the Board for the Upcoming Year and Update the Annual Work Plan

Tabled until the next meeting. Because this was her last meeting as a Board member, Elizabeth provided a list of items (attached) she recommends the Board consider at the next meeting when they update the work plan.

Management Updates

Mark Hage, Laura Soares and Bobby-Jo Salls informed the Board of a collaborative initiative underway with BCBSVT to reduce costs, improve quality and increase transparency for VEHI and our members/subscribers. The first step in this initiative will be to engage an outside entity to analyze VEHI and BCBSVT claims data to identify potentially avoidable complications and potentially avoidable services. This data will be shared with the Board, as well as potential strategies to address opportunities identified by the data analysis.

The dental rates were approved by DFR as filed. DFR's health rate review is nearing completion.

Management is looking at moving to a national pharmacy formulary and changing to an exclusive specialty drug formulary as of January 1, 2020. BCBSVT's exchange business and other clients are now using the national formulary and will be changing to an exclusive the specialty formulary in 2019. Staff will bring a proposal to the Board at a future meeting, including the estimated savings and a plan to minimize any disruption for subscribers/dependents.

Bobby-Jo Salls and Mark Hage provided an update on the steps DataPath is continuing to take to ensure all HRA and FSA funds are released to subscribers as soon as possible. There continue to be problems identifying all applicable claims due to the Future Planning situation, as well as additional challenges for the districts which merged July 1, 2018. Peggy mentioned the issues her district is having with Health Equity. Bobby-Jo acknowledged the Brattleboro area had a unique issue in early 2018 that caused delays. If there are still issues, it is important she be provided specific information, so she can assist in getting these issues addressed.

Discuss/Set Board Meeting Schedule and Agenda Planning Process

Peggy Maxfield distributed a suggestion on a process for developing future agendas (attached), to be discussed at a future meeting. Until a process is established, Tracy and Peggy will work together to develop the agenda, with support from management.

The next meeting was scheduled for Wednesday January 9, 2019 from 2 pm to 6 pm at the VSBIT offices.

The Board and management thanked Elizabeth Fitzgerald for her four years of service on the VEHI Board.

Adjournment

The meeting adjourned at 7:06 p.m.

Respectfully submitted by: Laura Soares

**DFR
and
Intermunicipal Insurance
Associations**

VEHI Board Meeting
December 20th, 2018

Department of Financial Regulation

- Four Divisions:
 - Insurance
 - Securities
 - Captive Insurance
 - Banking
- Regulatory oversight of VEHI within Insurance Division

Intermunicipal Insurance Associations

- DFR regulates Intermunicipal Insurance Associations
 - Title 24 V.S.A, Chapter 121, Subchapter 6
 - Association requires approval of DFR Commissioner
 - Requires adoption of rules
 - Regulation I-90-01
- VEHI: As of June 2013 formed and regulated as an Intermunicipal Insurance Association

DFR's Regulatory Role

- Approval and oversight of VEHI:
 - Operational and Financial Plan
 - By-laws
 - Member Agreement – Medical Program
 - Benefits and Coverages (Forms)
 - Premiums (Rates)
 - Dental Program

Act 11 (2018)

- Modified composition of board members for Health Benefit Associations
 - “three members appointed by the organization representing the majority of the public school boards in this State, who shall not be employees of the organization; and”
 - “three members appointed by the labor organization representing the greatest number of public school employees in the State, who shall not be employees of the organization.” - Title 24 V.S.A. § 4947

Regulatory Response to Act 11

- Amend I-90-01 and VEHI by-laws and member agreement
 - Members can no longer elect board members
 - Now appointed by school board and NEA
- Board members still owe fiduciary duty to VEHI and its members.
 - I-90-01 Section 6 : “Member’s Supervisory Board shall act as fiduciaries to the Members.”

Board Duties

- Serve as governing authority of the Association (VEHI)
 - Fix contributions
 - Maintain fund balance
 - Levy member assessments
 - Distribute surplus funds
 - Administration in the event of insolvency or termination
 - All other operational duties as outlined in governing documents
- Act as fiduciaries to the Members
 - Fiduciary duty. A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law (e.g. trustee, guardian). [Black's Law Dictionary, Sixth Edition, p. 625]

Board Duties

- Act as fiduciaries to the Members
 - Duty of Care
 - Duty of Loyalty
 - Duty of Obedience

**DFR
and
Intermunicipal Insurance
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Questions?

MEMORANDUM

TO: VEHI Board of Directors

FROM: Joel D. Cook, Member, Board of Directors

DATE: December 20, 2018

SUBJECT: Motion to Introduce Motions Submitted on November 1

Motion

I move that the motions I submitted to VEHI on November 1, 2018 be considered formally introduced and that they each be considered as it becomes relevant in the course of this meeting.

Explanation:

On October 19, Peggy Maxfield, Fran Brock, and I introduced a statement for VEHI members in which we stated our primary aim as restoring equality of representation here between school board and employee representatives, flowing from Act 11's provision mandating it.

At our October 19 meeting, Peggy, Fran, and I listed the topics of proposals we would be introducing.

On November 1, under the subject heading "Next meeting agenda items to be amended or added, I submitted those proposals, addressed to this full Board, to Tracy Wrend and Laura Soares, still anticipating a business meeting earlier than today's. I assumed, because I asked specifically that all those proposals be "incorporated in the agenda for our next meeting," that they would appear directly in today's meeting agenda.

But, none of them appears directly in the agenda at all. I was told by Laura that motions must be made at meetings, and the only reference to those proposals is labeled "document provided by Joel Cook" and placed within a parenthesis to Item 10 on the proposed agenda. I simply want to make sure the board has them all formally before it.

MEMORANDUM

TO: VEHI Board of Directors

FROM: Joel D. Cook, Member, Board of Directors

DATE: December 20, 2018

SUBJECT: Motions regarding amending the agenda of today's meeting

The Board of Directors has several motions before it that address how the Board functions – its processes – and relate directly to several items on the agenda proposed for this meeting. The proposed agenda, however, makes no direct reference to them. The one indirect reference to them is made in the context of an agenda item relating, not to Board processes, but to the substantive work of the organization. It is only logical to consider changes in a process before engaging in the process.

Therefore, I move that the agenda for the December 20, 2018 meeting presented by the President and Chair be amended to ensure that items are taken up in logical and proper sequence, as follows:

- Item 5: "Discuss Board Decision Making Process." Include in Item 5 consideration of the motion I submitted on November 1, 2018 ("A" in the document I submitted that day) regarding the very question how this Board will make decisions.
- Item 7: "Complete Conflict of Interest Statements." Defer action on Item 7 until after consideration of the motions I submitted on November 1 ("E" in the document and as discussed in the memorandum accompanying it entitled "Assessment of and Motions to amend VEHI Conflict of Interest Policy), since they involve consideration of what actually constitutes a conflict of interest and to whom the policy applies.
- Item 8: "Election of Board and Corporate Officers." Amend Item 8 so that it reads "Selection Process" for board and corporate offices, to ensure that the motions I submitted on November 1 ("B" and "C" in the document) regarding these elections and appointments are considered at the time the Board considers who its and the corporation's officers will be.

Reaching Consensus

By Susan Edsall

The decision-making process used by many teams to make full use of available resources is consensus. With consensus, each team member should be able to accept the team decision on the basis of logic and reason. In consensus, all parties to the discussion have the opportunity to state their ideas and opinions and to feel that they have been heard.

Although consensus is commonly used to mean complete or unanimous agreement, its precise meaning is "general agreement." Consensus is reached when all members of a group are willing to accept a decision, even when a decision may not necessarily be an individual's first choice. The group has reached consensus when all group members consider the approach workable and in the best interest of the group.

Consensus has been reached when all members of a group can agree on a single solution and say:

- I believe that you understand my point of view
- I believe that I understand your point of view
- Whether or not I prefer this decision, I will support it because it was reached openly and fairly

To determine if the group has reached consensus ask:

- Does everyone accept this decision?
- Is there any opposition to this decision?
- Can everyone live with this decision?

The objective is to bring viewpoints, especially conflicting ones, to the surface so that they can be discussed openly.

Consensus is more about listening than about talking. Group members who have differing viewpoints need to be listened to in order to understand why you might not agree with them. Consensus cannot be reached without understanding and exploring the divergent opinions of all group members.

Guidelines Teams Can Use in Achieving Consensus

By Susan Edsall

1. **Use a discussion leader to ensure all points of view are heard.**
2. **Avoid arguing for your own position.** Present it as lucidly and logically as possible, but listen to the other members' reactions and consider them carefully before you press your point.
3. **Inquire of others.** See that you understand what they are saying. Ask for information, clarification and explanation.
4. **Look for points of similarity.** Most groups have more agreement than they realize.
5. **Do not assume that someone must win and someone must lose.** When discussion reaches a stalemate, examine the interests behind people's positions. Look for the next alternative for all parties.
6. **When there are differences, look for good points in both positions.** See if the two positions (or more) can be combined to take advantage of all. A new position might include ideas of each and might yield totally new ideas.
7. **Do not change your mind simply to avoid conflict.** When agreement seems to come too quickly and easily, be suspicious. Explore the reasons and be sure everyone accepts the solution for basically similar or complementary reasons. Yield only to positions that have objective and logically sound foundations.
8. **Differences of opinion are natural and expected.** Seek them out and try to involve everyone in the decision process. Disagreements can help the group's decision because with a range of information and opinions, there is a greater chance that the group will hit upon more adequate solutions.

2019 VEHI Work Plan Proposals

1. Review and Potentially Revise Mission
2. Seek outside facilitation to assist the Board in building relationships and trust as well as seek each individuals perspectives, hopes and goals related to VEHI
3. Review the current organizational history, documents and structure
4. Understand duties and obligations of governing Board of a Heath/Dental Pool (look to other health pools across the country)
5. Surface from all parties (VSBA, VT-NEA, VSBIT, Board and Management positions) what works well now, where there may be challenges, what the opportunities for improvement are etc.
6. Clearly define roles and delegation of authority within organization
7. Identify top properties for organization short-term (1-2 years) and long-term (3-6 years)
8. Adopt a Health Program Net Position Policy as recommended by DFR

Protocol for Building Future VEHI Board Agendas

Dec. 20, 2018

It is essential to effective and proper governance that VEHI Board members be primarily responsible for setting meeting agendas, with input from staff.

Therefore, I move that the following agenda-drafting protocol be adopted by the Board:

1. At the end of each Board meeting, staff will ask Board members if there are items or topics they want included on the agenda for the next meeting. (Items from any meeting that were not addressed or that require further discussion or action will be added to the agenda for the next meeting or a subsequent meeting as agreed by the Board.)
2. Additionally, up to two weeks before a scheduled meeting, Board members may submit agenda items to Laura Soares, Mark Hage and Bobby-Jo Salls to be included on the agenda of that meeting. Staff will send an e-mail reminder to Board members of the normal date by which to submit agenda items.
3. Two weeks before a scheduled Board meeting, items the staff would like to see included on the agenda for that meeting will be sent to Board members.
4. There may be times that issues will arise within two weeks of a meeting that should be added to the agenda despite being "late." Either staff or Board members may bring issues like that to the attention of the Board as soon as practicable and request they be added to the agenda at the time the agenda is formally adopted.
5. If a particular issue arises after an agenda for a specific meeting has been e-mailed to the Board, and either a member of the Board or staff feels it should be addressed immediately, it may be added to the agenda in question at the start of the meeting.
6. Agendas and documents pertinent to meetings will be sent to Board members one week prior to the meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Peggy Mayfield". The signature is written in a cursive, flowing style.