

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MAURICIO GUGELMIN AND STELLA )  
GUGELMIN, on behalf of and as )  
parents and natural guardians )  
of GIULIANO GUGELMIN, a minor, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 99-2797N  
 )  
FLORIDA BIRTH-RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
SOUTH BROWARD HOSPITAL )  
DISTRICT, d/b/a MEMORIAL )  
HOSPITAL WEST, )  
 )  
Intervenor. )  
\_\_\_\_\_ )

AWARD AND FINAL ORDER

On September 26, 2000, a Final Order was entered in the above-styled case which resolved that the claim was compensable, and that the hospital, but not the participating physician, complied with the notice provisions of the Florida Birth-Related Neurological Injury Compensation Plan (Plan). Left to resolve was how much compensation was to be awarded pursuant to Section 766.31, Florida Statutes.

Following entry of the Final Order, an appeal was taken to the Fourth District Court of Appeal which, pertinent to this proceeding, affirmed the findings of compensability and notice. Gugelmin v. Division of Administrative Hearings, 815 So. 2d 764 (Fla. 4th DCA 2002).<sup>1</sup> Thereafter, at the parties' request, these proceedings were abated pending a resolution of certain issues pending in a civil action related to claims arising from the child's birth. There, the trial court determined that the Gugelmins could either accept Plan benefits or proceed in a civil suit, but they could not do both. Thereafter, under protest, the Gugelmins elected to accept Plan benefits, and they appealed to the Fourth District Court of Appeal. By opinion filed September 22, 2004, the trial court's judgment was affirmed in all respects. Gugelmin v. Florida Birth-Related Neurological Injury Compensation Association, 882 So. 2d 517 (Fla. 4th DCA 2004).

Following the court's opinion in Gugelmin II, a hearing was scheduled for January 20, 2005, to resolve how much compensation should be awarded. However, at the parties' request the hearing was cancelled and the parties were accorded an opportunity to resolve, between themselves, how much compensation should be awarded.

On January 26, 2005, the parties filed a Stipulation for Settlement of Parental Award, wherein they agreed that

Mauricio Gugelmin and Stella Gugelmin, as the parents of Giuliano Gugelmin, a deceased minor, receive a lump sum award of \$100,000.00. § 766.31(1)(b), Fla. Stat. The parties also filed a Stipulation for Settlement of Reasonable Expenses on January 26, 2005, wherein they agreed that Petitioners receive an award of \$11,500.00, as reasonable attorney's fees (\$10,000.00) and costs (\$1,500.00) incurred in the filing of the claim. § 766.31(1)(c), Fla. Stat. Finally, on August 26, 2005, the parties filed a Stipulation for Settlement of Reimbursement of Actual Expenses, wherein they agreed that Petitioners receive an award of \$398,363.78, as reimbursement for actual expenses incurred. § 766.31(1)(a), Fla. Stat.

After due consideration of the parties' stipulations, it is ORDERED that:

1. The parties' stipulations, filed January 26, 2005 and August 26, 2005, are approved, and the parties are directed to comply with the provisions thereof.

2. Mauricio Gugelmin and Stella Gugelmin, as the parents of Giuliano Gugelmin, a deceased minor, are awarded \$100,000.00, to be paid in lump sum. § 766.31(1)(b), Fla. Stat.

3. Petitioners are awarded \$11,500.00 as reasonable attorney's fees and costs incurred in the filing of the claim. § 766.31(1)(c), Fla. Stat.

4. Petitioners are awarded \$398,363.78, for expenses previously incurred. § 766.31(1)(a) and (2), Fla. Stat.

5. Jurisdiction is reserved to resolve any disputes, should they arise, regarding the parties' compliance with the terms of this Award and Final Order.

DONE AND ORDERED this 30th day of August, 2005, in Tallahassee, Leon County, Florida.



---

WILLIAM J. KENDRICK  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of August, 2005.

ENDNOTE

1/ Consistent with the District Court's Opinion and Mandate, an Amendment to Final Order was entered on June 27, 2002, to amend the Final Order to conform with the Court's Opinion.

COPIES FURNISHED:

(Via Certified Mail)

David W. Black, Esquire  
Frank, Weinberg & Black, P.L.  
7805 Southwest Sixth Court  
Plantation, Florida 33324  
(Certified Mail No. 7099 3400 0010 4399 2369)

George Bunnell, Esquire  
Bunnell, Woulfe, Kirschbaum, Keller  
McIntyre & Gregoire, P.A.  
100 Southeast Third Avenue  
One Financial Plaza, Suite 900  
Fort Lauderdale, Florida 33394  
(Certified Mail No. 7099 3400 0010 4399 2352)

Kenney Shipley, Executive Director  
Florida Birth Related Neurological  
Injury Compensation Association  
1435 Piedmont Drive, East, Suite 101  
Tallahassee, Florida 32308  
(Certified Mail No. 7099 3400 0010 4399 2345)

Ben J. Weaver, Esquire  
Weaver & Weaver, P.A.  
4735 Sunbeam Road  
Jacksonville, Florida 32257  
(Certified Mail No. 7099 3400 0010 4399 2338)

Eric N. Freling, M.D.  
3850 Hollywood Boulevard, Suite 301  
Hollywood, Florida 33021  
(Certified Mail No. 7099 3400 0010 4399 2321)

Memorial Hospital West  
Legal Department  
703 North Flamingo Road  
Pembroke Pines, Florida 33028  
(Certified Mail No. 7099 3400 0010 4399 2314)

Charlene Willoughby, Director  
Consumer Services Unit - Enforcement  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified Mail No. 7099 3400 0010 4399 2307)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Sections 120.68 and 766.311, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal. See Section 120.68(2), Florida Statutes, and Florida Birth-Related Neurological Injury Compensation Association v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992). The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.