OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA GILCREAST, as parent and natural guardian of KARA GILCREAST, a minor,

Petitioner,

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION,

Respondent,

and

BAYFRONT MEDICAL CENTER,

Intervenor.

Case No. 01-1214N

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by Administrative Law Judge William J. Kendrick, held a final hearing in the above-styled case on November 13, 2001, in St. Petersburg, Florida.

APPEARANCES

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For Respondent: B. Forest Hamilton, Esquire
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STATEMENT OF THE ISSUES

1. Whether obstetrical services were delivered by a participating physician in the course of labor and delivery.

2. If so, whether notice was accorded the patient as contemplated by Section 766.316, Florida Statutes.[1]

PRELIMINARY STATEMENT

By Prehearing Stipulation, filed November 7, 2001, the parties expressed their respective position on the pending issues, as follows:

> a. It is Petitioners' position that obstetrical services were not delivered by a participating physician and notice was not give[n] under Florida Statute 766.316.
>
> b. It is Respondent's position that obstetrical services were delivered by a participating physician. Respondent is mute on the issue of notice.
>
> c. It is Intervenor's position that obstetrical services were delivered by a participating physician and notice was given under Florida Statute 766.316.

The parties also stipulated to the following facts:

> a. Petitioner, Lisa Gilcreast, is the parent and natural guardian of Kara Gilcreast, a minor.

b. Kara Gilcreast was born a live infant on May 28, 2000, at Bayfront Medical Center, a hospital located in Pinellas County, Florida.

c. Kara Gilcreast's birth weight was in excess of 2,500 grams.

d. Kara Gilcreast suffered a "birth-related neurological injury" as that term is defined by Section 766.302(2), Florida Statutes.

At hearing, Petitioner Lisa Gilcreast testified on her own behalf and called John Sipiora, as a witness. Petitioner's Exhibit 1 (the medical records filed with the Division of Administrative Hearings (DOAH) on March 30, 2001), Exhibit 2 (the deposition of Cynthia Cole) and Exhibit 3 (the deposition of Isabella Smith) were received into evidence. Respondent called no witnesses; however, Respondent's Exhibit 1 (a report of neurological evaluation prepared by Michael Duchowny, M.D., dated July 31, 2001) was received into evidence. Intervenor called Karen Ramier, M.D. and Cynthia McNulty, as witnesses, and Intervenor's Exhibit 1 (the deposition of Cynthia McNulty), Exhibit 2 (the deposition of Christina McDaniel), Exhibit 3 (the deposition of Robert Thornton), Exhibit 4 (the deposition of Lisa Gilcreast), Exhibit 5 (the affidavit of Cynthia McNulty), Exhibit 6 (a Women's & Children's Health Center New OB Orientation form) and Exhibit 7 (the Women's & Children's Health Center records for Lisa Gilcreast) were received into evidence.[2] Finally, Joint Exhibit 1 (the deposition of Kristina McLean,

M.D.), Exhibit 2 (the deposition of Karen Raimer, M.D.), and Exhibit 3 (the deposition of Donna Felsman) were received into evidence.

The transcript of the hearing was filed December 3, 2001, and the parties were initially accorded until December 13, 2001, to file proposed final orders; however, at Intervenor's request the time for filing was subsequently extended to December 27, 2001. Petitioner and Intervenor elected to file such proposals and they have been duly considered.

FINDINGS OF FACT

Fundamental findings

1. Petitioner, Lisa Gilcreast, is the mother and natural guardian of Kara Gilcreast, a minor. Kara was born a live infant on May 28, 2000, at Bayfront Medical Center, Inc. (Bayfront Medical Center), a hospital located in St. Petersburg, Pinellas County, Florida, and her birth weight exceeded 2,500 grams.

Coverage under the Plan

2. A claim is compensable under the Plan when it can be shown, more likely than not, that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." Section 766.31(1), Florida Statutes. See also Section 766.309(1), Florida Statutes. Here, the parties have stipulated, and the proof is otherwise compelling, that Kara sustained a "birth-

related neurological injury," as that term is defined by Section 766.302(2), Florida Statutes. What remains in dispute is whether obstetrical services were rendered by a "participating physician" at birth.

The "participating physician" issue

3. Section 766.302(7), Florida Statutes, defines the term "participating physician," as used in the Plan, to mean:

> . . . a physician licensed in Florida to practice medicine who practices obstetrics or performs obstetrical services either full time or part time and who had paid or was exempted from payment at the time of the injury the assessment required for participation in the birth-related neurological injury compensation plan for the year in which the injury occurred . . . .

And, Section 766.314(4)(c), Florida Statutes, describes the circumstances under which a resident physician, assistant resident physician, or intern may be deemed a participating physician without payment of the assessment otherwise required for participation in the Plan, as follows:

> . . . if the physician is either a resident physician, assistant resident physician, or intern in an approved postgraduate training program, as defined by the Board of Medicine or the Board of Osteopathic Medicine by rule, and is supervised by a physician who is participating in the plan, such resident physician, assistant resident physician, or intern is deemed to be a participating physician without the payment of the assessment . . . . Supervision shall require that the supervising physician will be easily available and have a prearranged plan of

> treatment for specified patient problems which the supervised . . . physician may carry out in the absence of any complicating features . . . . (Emphasis added)

4. Pertinent to this case, the proof demonstrates that the physicians providing obstetrical services during the course of Kara's birth were resident physicians[3] in Bayfront Medical Center's postgraduate residency program in obstetrics and gynecology.[4] The proof further demonstrates that during that time, Dr. Karen Raimer, a participating physician in the Florida Birth-Related Neurological Injury Compensation Plan (Plan), was the supervising physician, and that she was in the hospital and easily available (by beeper or overhead page through the hospital operator) to consult with or assist the residents if they requested. However, Dr. Raimer was never called by the residents, and she did not provide any obstetrical services during the course of Ms. Gilcreast's labor or Kara's birth.[5]

5. As heretofore noted, "supervision," as defined by Section 766.314(4)(c), Florida Statutes, "require[s] that the supervising physician will be easily available and have a prearranged plan of treatment for specified patient problems which the supervised . . . physician may carry out in the absence of any complicating features." Here, while the supervising physician was easily available, there was no compelling proof that "the supervising physician . . . [had] a prearranged plan

for treatment of specified patient problems which the supervised . . . physician . . . [could] carry out in the absence of any complicating features" (the prearranged plan for treatment). Consequently, the resident physicians and intern who provided obstetrical services during Kara's birth were not exempt from payment of the assessment required for participation in the Plan, and were not "participating physician[s]," as that term is defined by the Plan.

6. In reaching such conclusion, Dr. Raimer's testimony regarding the residency program at Bayfront Medical Center, as well as her perceptions on the existence of a prearranged plan of treatment, has been considered. In this regard, it is noted that Dr. Raimer's role as supervising physician, or attending physician as it was known in the residency program, was to be available if the residents had any questions or concerns regarding patient care, and if her assistance was not requested, as it was not in this case, she did not involve herself in the labor and delivery. Under such circumstances, as is the practice in the residency program, the residents are left to manage the patient's care, with the more senior resident supervising the more junior. As for resident supervision in this case, Dr. Raimer offered the following observations:

> Q: And so [w]as . . . [Dr. Marler] the person for the shift on Sunday, May 28, 2000,

> who was responsible for the supervision of the other residents?
>
> A. . . . [A]s far as I remember, Dr. Marler was the chief resident on that day, the fourth-year.
>
> Q. Is there any resident that's higher than the chief resident?
>
> A. No.
>
> Q. So if he's there -
>
> A. Then he was responsible.
>
> * * *
>
> Q. So he was responsible to supervise the senior residents, the third-year residents, the second-year residents, and the first-year residents; is that correct?
>
> A. That's correct.
>
> Q. And you relied upon him to do that?
>
> A. Yes.

[Joint Exhibit 2, pages 50 and 51]

As for a preexisting plan of treatment, Dr. Raimer offered the following observations:

> Q. Now, in May 2000, did you have any prearranged plan of treatment for specified patient problems which the resident may carry out in the absence of any complicating features?
>
> A. All of the residents in their training as they go through the four years, it's a cumulative knowledge base and experience base that develops. And by the time that they get through their fourth year and about to graduate and get to that point, if they are a

> fourth-year, we feel that they are competent in knowing how to manage cases that have complicating features, and if not, they can call their attending physician.
>
> * * *
>
> . . . [Again], residents during their training are expected to learn how to manage patients throughout their four years of experience. And, again, by the time they get to their fourth year, they are expected to know how to manage patients on an obstetrical unit and manage complicating features. If there is any concern or any question, they are to call their attending physician.

[Joint Exhibit 2, pages 47 and 48]

7. From Dr. Raimer's testimony, it is apparent that, unless requested to do so, the supervising physician does not participate in the preparation of a plan of treatment. Rather, it is customary, as was done in the instant case, for the chief resident to develop the plan. Therefore, as heretofore noted, the resident physicians and intern who provided obstetrical services during Kara's birth were not exempt from payment of the assessment required for participation in the Plan, and were not "participating physician[s]," as that term is defined by the Plan.

<u>The notice issue</u>

8. Pertinent to the notice issue, the proof demonstrates that Ms. Gilcreast received her prenatal care at Bayfront Women's & Children's Health Center (the Clinic), an outpatient facility

established by Bayfront Medical Center to provide obstetrical services to lower income families in mid-Pinellas County, and located at 7995 66th Street, North, Pinellas Park, Florida. Staffing at the facility included faculty of, and residents participating in, Bayfront Medical Center's postgraduate residency program in obstetrics and gynecology, as well as two perinatologists and three nurse midwives, all of whom were employed by Bayfront Medical Center.[6]

9. Notably, at her first visit to the Clinic, Ms. Gilcreast (age 18, with her first pregnancy) met with Cynthia McNulty, a patient representative, for a new patient orientation. During that orientation, which lasted from 45 minutes to 1 hour, Ms. McNulty addressed a number of matters with Ms. Gilcreast, including financial matters (Florida Medicaid), Healthy Start (for which Ms. Gilcreast filled out an application), W.I.C. (a nutritional counseling program and monthly food check program), the prenatal care plan she could expect at the clinic, and who to contact in case of emergency. Ms. McNulty also provided Ms. Gilcreast with an American Baby Basket packet (which contained parenting and educational materials, as well as samples of baby products), magazines for parenting and breast feeding, and scheduled her next appointment. Finally, at some point during the orientation, Ms. McNulty showed Ms. Gilcreast a brochure titled "Peace of Mind for an Unexpected Problem."[7] That

brochure, prepared by NICA,[8] contains a concise explanation of the patient's rights and limitations under the Plan; however, Ms. McNulty described the brochure as a

> . . . $100,000 . . . insurance policy, that . . . [if] the baby was neurologically injured . . . the parents would collect $100,000, and any further questions they could call the association, . . . [at] the number . . . on the back, or talk to the physicians.

[Transcript, pages 68 and 69.] Copies of all the papers they discussed, including the NICA brochure, were placed in the American Baby Basket packet, a clear plastic bag, by Ms. McNulty and given to Ms. Gilcreast. Subsequently, Ms. Gilcreast discarded many of the materials she received during the orientation, and there is no proof of record that would lead one to conclude that she read the NICA brochure or was otherwise informed of its actual contents.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 766.301, et seq., Florida Statutes.

11. The Florida Birth-Related Neurological Injury Compensation Plan (the "Plan") was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" relating to

births occurring on or after January 1, 1989. Section 766.303(1), Florida Statutes.

12. The injured "infant, his personal representative, parents, dependents, and next of kin" may seek compensation under the Plan by filing a claim for compensation with the Division of Administrative Hearings. Sections 766.302(3), 766.303(2), 766.305(1), and 766.313, Florida Statutes. The Florida Birth-Related Neurological Injury Compensation Association (NICA), which administers the Plan, has "45 days from the date of service of a complete claim . . . in which to file a response to the petition and to submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." Section 766.305(3), Florida Statutes.

13. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, as it has in the instant case, it may award compensation to the claimant, provided that the award is approved by the administrative law judge to whom the claim has been assigned. Section 766.305(6), Florida Statutes.

14. In discharging this responsibility, the administrative law judge must make the following determination based upon the available evidence:

> (a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the

> administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).
>
> (b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.

Section 766.309(1), Florida Statutes. An award may be sustained only if the administrative law judge concludes that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." Section 766.31(1), Florida Statutes.

15. Pertinent to this case, Section 766.302(7), Florida Statutes, defines the term "participating physician," as used in the Plan, to mean:

> . . . a physician licensed in Florida to practice medicine who practices obstetrics or performs obstetrical services either full time or part time and who had paid or was exempted from payment at the time of the injury the assessment required for participation in the birth-related neurological injury compensation plan for the year in which the injury occurred . . . .

And, Section 766.314(4)(c), Florida Statutes, describes the circumstances under which a resident physician, assistant resident physician, or intern may be deemed a participating physician without payment of the assessment otherwise required for participation in the Plan, as follows:

> . . . if the physician is either a resident physician, assistant resident physician, or intern in an approved postgraduate training program, as defined by the Board of Medicine or the Board of Osteopathic Medicine by rule, and is supervised by a physician who is participating in the plan, such resident physician, assistant resident physician, or intern is deemed to be a participating physician without the payment of the assessment . . . . Supervision shall require that the supervising physician will be easily available and have a prearranged plan of treatment for specified patient problems which the supervised . . . physician may carry out in the absence of any complicating features . . . .

16. The language chosen by the legislature to define the narrow circumstances under which a resident or intern will be deemed a participating physician, as well as its mandate as to what supervision shall require, are clear and unequivocal. Consequently, it must be resolved that where, as here, the supervising physician did not have a prearranged plan of treatment for specified patient problems which the supervised physician could carry out, that the resident or intern was not supervised and, therefore, was not exempt from payment of the assessment required for participation in the Plan. A.R. Douglas,

Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931) ("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.") Accord, Holly v. Auld, 450 So. 2d 217 (Fla. 1984). Consequently, obstetrical services were not delivered by a participating physician at birth, and the claim does not qualify for coverage under the Plan.

17. Pertinent to the issue of notice, Section 766.316, Florida Statutes, provides as follows:

> Each hospital with a participating physician on its staff and each participating physician, and other than residents, assistant residents, and interns deemed to be participating physicians under s. 766.314(4)(c), under the Florida Birth-Related Neurological Injury Compensation Plan shall provide notice to the obstetrical patients as to the limited no-fault alternative for birth-related neurological injuries. Such notice shall be provided on forms furnished by the association and shall include a clear and concise explanation of a patient's rights and limitations under the plan. The hospital or the participating physician may elect to have the patient sign a form acknowledging receipt of the notice form. Signature of the patient acknowledging receipt of the notice form raises a rebuttable presumption that the notice requirements of this section have been met. Notice need not be given to a patient when the patient has an emergency medical condition as defined in s. 395.002(9)(b) or when notice is not practicable.[9]

18. In Galen of Florida, Inc. v. Braniff, 696 So. 2d 308, 309 (Fla. 1997), the Florida Supreme Court described the legislative intent and purpose of the notice requirement as follows:

> . . . the only logical reading of the statute is that before an obstetrical patient's remedy is limited by the NICA plan, the patient must be given pre-delivery notice of the health care provider's participation in the plan. Section 766.316 requires that obstetrical patients be given notice "as to the limited no-fault alternative for birth-related neurological injuries." That notice must "include a clear and concise explanation of a patient's rights and limitations under the plan." Section 766.316. This language makes clear that the purpose of the notice is to give an obstetrical patient an opportunity to make an informed choice between using a health care provider participating in the NICA plan or using a provider who is not a participant and thereby preserving her civil remedies. Turner v. Hubrich, 656 So. 2d 970, 971 (Fla. 5th DCA 1995). In order to effectuate this purpose a NICA participant must give a patient notice of the "no-fault alternative for birth-related neurological injuries" a reasonable time prior to delivery, when practicable.

Consequently, the court concluded:

> . . . as a condition precedent to invoking the Florida Birth-Related Neurological Injury Compensation Plan as a patient's exclusive remedy, health care providers must, when practicable, give their obstetrical patients notice of their participation in the plan a reasonable time prior to delivery.

19. Here, the proof demonstrated that, during Ms. Gilcreast's initial visit to the clinic, Ms. McNulty, at the direction of the hospital, gave Ms. Gilcreast a copy of the brochure titled "Peace of Mind for An Unexpected Problem." However, the proof also demonstrated that the explanation Ms. McNulty gave of the brochure was misleading and not an accurate characterization of its contents. Consequently, since there is no proof of record to demonstrate that Ms. Gilcreast ever read the brochure or was otherwise informed of its actual contents, it must be resolved that Ms. Gilcreast was not accorded an opportunity to make an informal choice between using a health care provider participating in the NICA plan or using a provider who was not a participant and thereby preserving her civil remedies.

20. Where, as here, the administrative law judge determines that " . . . obstetrical services were not delivered by a participating physician at birth . . . he [is required to] enter an order [to such effect] and . . . cause a copy of such order to be sent immediately to the parties by registered or certified mail." Section 766.309(2), Florida Statutes. Such an order constitutes final agency action subject to appellate court review. Section 766.311(1), Florida Statutes.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the petition for compensation filed by Lisa Gilcreast, as parent and natural guardian of Kara Gilcreast, a minor, be and the same is hereby denied with prejudice.

DONE AND ORDERED this 5th day of February, 2002, in Tallahassee, Leon County, Florida.

____

WILLIAM J. KENDRICK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of February, 2002.

ENDNOTES

1/ Presumably, Petitioner has placed notice at issue to avoid the exclusiveness of remedy provisions of the Florida Birth-Related Neurological Injury Compensation Plan in the event the claim is found to be compensable. See Braniff v. Galen of Florida, Inc., 669 So. 2d 1051, 1053 (Fla. 1st DCA 1995)("The presence or absence of notice will neither advance or defeat the claim of an eligible NICA claimant who has decided to invoke the NICA remedy . . . . Notice is only relevant to the defendants' assertion of NICA exclusivity where the individual to invoke a civil remedy.", and O'Leary v. Florida Birth-Related Neurological Injury Compensation Plan, 747 So. 2d 624, 627 (Fla. 5th DCA

2000))("We recognize that lack of notice does not affect a claimant's ability to obtain compensation from the Plan.")

2/ At hearing, Petitioner's counsel entered an objection to that portion of the deposition of Cynthia McNulty identified as page 40, line 6 to page 41, line 17 (Intervenor's Exhibit 1), the admission of the photographs attached as an exhibit to the deposition of Christina McDaniel (Intervenor's Exhibit 2) and the admission of the photographs attached to Petitioner's deposition (Intervenor's Exhibit 4). Upon consideration, the objections are overruled and the documents are received into evidence.

3/ The residents were David Marler, M.D., a fourth-year resident, Linda Tijerino, M.D., a second-year resident, and Karen McLean, M.D., a first-year resident (intern). Dr. McLean, assisted by Dr. Marler, delivered Kara.

4/ The OB/GYN residency program is a four-year postgraduate training program approved by the Board of Medicine or the Board of Osteopathic Medicine. Of the 12 residents in the program, three are in their first year (and are referred to as interns), three are in their second year, three are in their third year, and three are in their fourth year.

5/ Dr. Raimer never reviewed the patient records, never spoke with the residents or intern, never checked on Ms. Gilcreast, and was otherwise unaware of Ms. Gilcreast's condition or treatment. Indeed, Dr. Raimer was not even aware Ms. Gilcreast was in the hospital.

6/ Under the terms of a Management Agreement, effective August 31, 1993, and amended effective July 17, 1997, Bayfront Medical Center and Community Health Centers of Pinellas County, Inc. (CHC), a non-profit corporation, outlined the manner in which the facility would be operated. As structured, Bayfront Medical Center operated the obstetrical and gynecological (OB/GYN) component of the facility and CHC operated the pediatric component. CHC also agreed to provide clinical support staff, as well as administrative and support services for the OB/GYN clinic in exchange for a management fee and reimbursement for various labor and other expenses allocable to the OB/GYN clinic.

While Bayfront Medical Center elected to staff the facility, apart from the physicians and midwives, with CHC personnel, it is improbable that any patient, including Petitioner, was not aware that the OB/GYN clinic was operated by Bayfront Medical Center. Notably, the signage at the front of the facility, as well as on

the premises, identified the clinic as Bayfront Women's & Children's Health Center; photographs of the twelve resident physicians, identified as Bayfront Medical Center OB/GYN Residents, were prominently displayed on the premises; and each patient, including Petitioner, knew that delivery would occur at Bayfront Medical Center.

7/ Ms. McNulty was employed by CHC, and was one of a number of support staff at the Clinic, under the Management Agreement between Bayfront Medical Center and CHC. Based on her employment with CHC, Petitioner suggests she could not give notice on behalf of Bayfront Medical Center. That suggestion is rejected. Indeed, Ms. McNulty distributed the brochures at the express directions of Donna Kozlowski, then director of Bayfront Family Health Center, a department of Bayfront Medical Center responsible for management of the various residency programs at the hospital, as well as the oversight of Bayfront Women's & Children's Health Center.

8/ While apparently not disputed during the course of this proceeding, Petitioner questions (in her proposed final order) whether the brochure was furnished by NICA. Here, given the proof, it is reasonable to infer that the brochure was furnished by NICA to the hospital for distribution. Petitioner also points out that the brochure was an older edition, and incorrectly identified the area code (904 instead of 850) for NICA's telephone, incorrectly identified NICA's executive director (Lynn Dickinson instead of Lynn Larson, her current married name) and incorrectly identified the state agency (the Division of Worker's Compensation of the Department of Labor instead of the Division of Administrative Hearings) where claims should be filed. However, there was no showing that, notwithstanding such discrepancies, anyone would experience any differently contacting NICA. Moreover, such discrepancies do not relate to or adversely affect the brochure's explanation of a patient's rights and limitations under the Plan.

9/ Here, by agreement reached by counsel at a hearing held October 15, 2001, the transcript of which was filed November 13, 2001, as well as the parties' Prehearing Stipulation, wherein Intervenor stated its position on the notice issue to be that "notice was given under Florida Statute 766.316," Intervenor agreed that its position was that notice was given and not that the giving of notice was excused because the patient had a medical emergency. Notwithstanding, at hearing, Intervenor proposed to offer such proof as an alternative way to satisfy the notice requirements of the Plan should it be resolved that the

hospital otherwise failed to give notice. Respondent objected to such proof, given counsel's understanding of the parties' agreement, and that objection was sustained. Now, in its proposed final order, Intervenor proposes that a finding be made, based on the medical records, that the giving of notice was excused because Ms. Gilcreast had an "emergency medical condition as defined in s. 395.002(9)(b)," since there was evidence of labor when she presented to Bayfront Medical Center for delivery. This I decline to do because the issue was foreclosed. Moreover, by foreclosing that issue, proof regarding the related issue of whether a failure to give notice should be excused when the hospital had the opportunity to give notice a reasonable time prior to the patient's presentation for delivery was also not considered.

COPIES FURNISHED:
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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.