

Received Event (Event Succeeded)

Date: 10/1/02  
Pages: 10  
Remote CSID:  
OCT-01-02 03:03PM FROM-

Time: 14 PM  
Sender:

T-977 P.002/010 F-805

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CARL W. CROSS and MYLENE C. CROSS,  
as parents and natural guardians of AARON  
COLBY CROSS, a minor,

Petitioners,

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

*Closed*  
Case No. 01-4878N

*WJK*

INTERVENOR, ST. JOSEPH'S HOSPITAL, INC. PETITION TO REOPEN  
ADMINISTRATIVE PROCEEDING, SET ASIDE FINAL ORDER, REQUEST FOR  
REHEARING, AND MOTION TO INTERVENE

Intervenor, ST. JOSEPH'S HOSPITAL, INC., ("Intervenor"), by and through their undersigned counsel, files this Petition to Reopen Administrative Proceedings, Set Aside Final Order, Request for Rehearing, and Motion to Intervene. As grounds therefore, it would show unto the court the following:

1. St. Joseph's Hospital, Inc. is the registered owner of the fictitious name St. Joseph's Women's Hospital.
2. St. Joseph's Hospital, Inc. is located at 3001 West Drive Martin Luther King Jr. Boulevard, Tampa, Florida 33607. St. Joseph's Women's Hospital is located 3030 West Drive Martin Luther King Jr. Boulevard, Tampa, Florida 33607.
3. On or about Thursday September, 19, 2002, the Risk Management Department at St. Joseph's Hospital, Inc. received a copy of the Administrative Law Judge's Final Order.
4. The Risk Management Department was extremely concerned because it had never received any prior communication or information regarding this claim before the above-referenced Final Order.

{TP074128;1}

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5. An investigation was conducted to determine if any prior information regarding this petition had been received.

6. The investigation included discussing the claim with Lorraine Lutton, the Chief Operating Officer of St. Joseph's Women's Hospital and Isaac Mallah, the President and Chief Executive Officer of St. Joseph's Hospital, Inc.

7. Attached hereto as Exhibit "A" is the Affidavit of Lorraine Lutton.

8. Attached hereto as Exhibit "B" is the Affidavit of Isaac Mallah.

9. Attached hereto as Exhibit "C" is correspondence from the Intervenor's counsel to the Department of Administrative Hearings ("DOAH") confirming that the initial letter to St. Joseph's Women's Hospital dated December 24, 2001 was not sent by certified mail. There appears to be no record in the DOAH proceeding indicating that St. Joseph's Women's Hospital received the Petition.

10. From reviewing an index of the pleadings in this case, it does not appear to counsel for St. Joseph's that additional information would have been or was sent to St. Joseph's regarding this claim subsequent to the initial letter of December 24, 2001.

11. It is the standard policy of St. Joseph's Hospital, Inc. to intervene in any NICA matter.

12. Based on the recent developments, undersigned counsel cannot advise his client, without reviewing the entire NICA file, which has been requested, to determine if it is appropriate to file an appeal in the matter as reflected in the Final Order of this Court. In an abundance of caution, without an alternative ruling extending the Final Order's effectiveness, an appeal will need to be filed.

13. In the alternative, Intervenors would request that this Court stay or abate, its Final Order dated September 6, 2002 no more than thirty (30) days, during which time, St. Joseph's

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Hospital, Inc. can evaluate this action and determine if it wishes to proceed forward with and reopen this claim to determine if additional evidence is needed.

14. The basis of this Motion is also important in that the Court's Final Order reflects on page 2, "[a]t hearing, Petitioners appeared through counsel, but offered no evidence. Respondent, given Petitioners' failure to offer proof, declined the opportunity to offer any evidence. The transcript of the hearing was not ordered, and the parties waived the opportunity to submit proposed final orders."

15. Undersigned counsel is specifically aware of several NICA proceedings wherein the Petitioner knew that seeking NICA benefits was a pre-condition to filing a Circuit Civil action. However, the Petitioner's counsel did not want to be in an administrative hearing in that the recovery under a Circuit Civil action is substantially greater. In addition, NICA may not either of have had time or the medical records to determine if the child qualified for benefits. If the Petitioner did not realistically seek NICA benefits, NICA had no burden of establishing that the child was NICA eligible.

WHEREFORE, the Intervenor, St. Joseph's Hospital, Inc., hereby requests this Court for an Order allowing its intervention for rehearing. In the alternative, it would request the Court to stay, abate and/or reopen the Final Order dated September 6, 2002 until St. Joseph's Hospital Inc. has an opportunity to review the file, the medical records contained therein and review any other additional information necessary to formulate its opinion as to whether additional evidence or evidence at all can be provided to the Administrative Law Judge determining the eligibility of the child for benefits under the Neurological Injury Compensation Act.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy has been provided by Certified Mail on this 1 day of October, 2002 to the following:

COPIES FURNISHED:

**Via Certified Mail**

Raymond J. Greene, Esquire  
9525 Blind Pass Road, No. 507  
Saint Petersburg, Florida 33706

Clifford A. Levitt, M.D.  
11212 North Dale Mabry Highway, Suite  
901  
Tampa, Florida 33618-3806

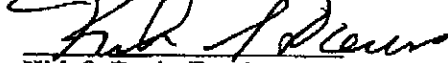
Kenney Shipley, Acting Executive Director  
Florida Birth-Related Neurological  
Injury Compensation Association  
1435 Piedmont Drive East, Suite 101  
Post Office Box 14567  
Tallahassee, Florida 32312

Ms. Charlene Willoughby  
Agency for Health Care Administration  
Consumer Services Unit  
Post Office Box 14000  
Tallahassee, Florida 32308

Donald H. Whittemore, Esquire  
Lawrence P. Ingram, Esquire  
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100 South Ashley Drive, Suite 1900  
Tampa, Florida 33602

Mark Casteel, General Counsel  
Department of Insurance  
The Capitol, Lower Level 26  
Tallahassee, Florida 32399-0300

AKERMAN SENTERFITT & EIDSON, P.A.



Kirk S. Davis, Esquire  
Florida Bar No.: 362220  
Post Office Box 3273  
Tampa, Florida 33601-3273  
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Fax: (813) 223-2837  
SPN No.: 278537  
*Attorney for St. Joseph's Hospital, Inc.*

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Date: 10/1/02

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T-977 P.008/010 F-805

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AARON COLBY CROSS, a minor, by  
his parents and natural guardians, CARL  
W. CROSS and MYLENE C. CROSS,

Petitioner,

Case No.: 01-4878N

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

AFFIDAVIT OF LORRAINE LUTTON

Before me personally appeared LORRAINE LUTTON after being first duly sworn,  
deposes and says the following:

1. I have personal knowledge of the facts contained therein.
2. I am the Chief Operating Officer at St. Joseph's Women's Hospital.
3. At St. Joseph's Women's Hospital, the normal procedure for processing any legal correspondence is for the correspondence to be sent directly from the mail room to administration of the hospital.
4. I have received copies of prior legal correspondence.
5. It is our standard process to refer any legal correspondence to Risk Management and respond in an appropriate manner.

{TP074080;1}  
TP021485;1



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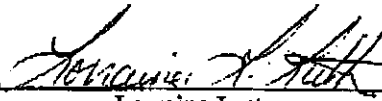
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T-977 P.007/010 F-905

- 6. The December 24, 2001 letter sent by DOAH, (see attached) was recently provided to me by our counsel. There is nothing to confirm that the petition for NICA claim was sent to St. Joseph's Women's Hospital by certified mail.
- 7. In this case, my investigation has revealed that St. Joseph's Women's Hospital did not receive a copy of the petition from DOAH.
- 8. We had no knowledge of the claim.

FURTHER AFFIANT SAYETH NOT

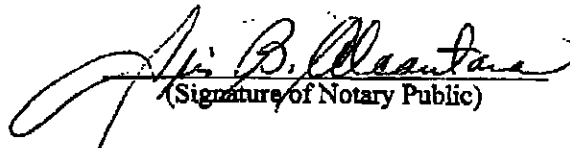
  
 Lorraine Lutton  
 Chief Operating Officer

Sworn to and Subscribed to before me by Lorraine Lutton, Chief Operating Officer, on 1st day of October, 2002, Lorraine Lutton who is personally known to me or \_\_\_\_\_ who produced -N/A- as identification.

(SEAL)



Iris B. Alcantara  
 Commission # DD125134  
 Expires July 6, 2006  
 Bonded Thru  
 Atlantic Bonding Co., Inc.

  
 (Signature of Notary Public)

Iris B. Alcantara  
 (Printed Name)

My Commission Expires:

{TP074080;1}  
TP021485;1

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Petitioner,

Case No.: 01-4878N

vs.

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INJURY COMPENSATION ASSOCIATION,

Respondent.

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

AFFIDAVIT OF ISAAC MALLAH

Before me personally appeared ISAAC MALLAH after being first duly sworn, deposes  
and says the following:

1. I have personal knowledge of the facts contained therein.
2. I am the President/Chief Executive Officer of St. Joseph's - Baptist Health Care.
3. It was brought to my attention, by Lorraine Lutton, the Chief Operating Officer at St. Joseph's Women's Hospital, that a NICA petition for a claim had been sent to St. Joseph's Women's Hospital by DOAH. St. Joseph's Women's Hospital was unable to locate a copy of the petition.
4. As part of my investigation into the matter, I verified that a copy was not in the possession of St. Joseph's - Baptist Health Care. I was unable to locate a copy.

{TP074061;1}  
TP021485;1



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- 5. The December 24, 2001 letter sent by DOAH, (see attached) was recently provided to me by our counsel. There is nothing to confirm that the petition was sent to St. Joseph's Women's Hospital by certified mail.
- 6. I had no prior knowledge of the claim.

FURTHER AFFLIANT SAYETH NOT

*Isaac Mallah*  
 Isaac Mallah  
 President/Chief Executive Officer

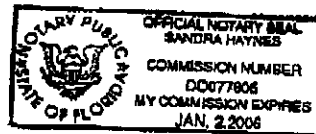
Sworn to and Subscribed to before me by Isaac Mallah, President/Chief Executive Officer, St. Joseph's - Baptist Health Care on 30 day of September, 2002, who is personally known to me or \_\_\_\_\_ who produced \_\_\_\_\_ as identification.

(SEAL)

*Sandra Haynes*  
 (Signature of Notary Public)

Sandra Haynes  
 (Printed Name)

My Commission Expires:



{TP074061;1}  
TP021485;1



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Jacksonville  
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301 South Bronough  
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Tallahassee, Florida 32301-1722  
Post Office Box 10555 mail  
Tallahassee, Florida 32302-2555  
www.akerman.com  
850 222 3471 tel 850 222 8628 fax

September 30, 2002

Ann M. Luchini  
Deputy Clerk Supervisor  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

Re: Cross Petition for NICA Compensation  
DOAH Case No.: 01-4878N

Dear Ms. Luchini:

I am writing this letter to confirm our telephone discussion regarding service of DOAH's letter dated December 24, 2001 in the above case. Per your records, DOAH served a certified copy of the letter and enclosed materials on the Florida Birth-Related Neurological Injury Compensation Association. However, DOAH served the St. Joseph's Women's Hospital with the letter and enclosures through regular U.S. mail.

Thank you for your assistance in gathering this information. If I have misunderstood your comments or you uncover any different facts and circumstances regarding service of the December 24, 2001 letter, please do not hesitate to contact me.

Sincerely,

  
JAMES BRUCE CULPEPPER

