STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NICODEMO MACRI AND JONI M. MACRI, individually, and as parents, natural guardians and Personal Representatives of the Estate of JENA MACRI, deceased,	)	
Petitioners,	)	
vs.	)	Case No. 03-3587N
FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION,	)	
Respondent,	)	
and	)	
RACHEL DEPART, CNM; DAVID O'BRYAN, M.D.; and CLEMENTS AND ASHMORE, P.A., d/b/a NORTH FLORIDA WOMEN'S CARE,	)	
Intervenors.	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by Administrative Law Judge William J. Kendrick, held a hearing in the above-styled case on February 3, 2004, in Tallahassee, Florida.

APPEARANCES

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For Respondent: Ronald A. Labasky, Esquire
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STATEMENT OF THE ISSUES

1. Whether Jena Macri (Jena), a deceased minor, qualifies for coverage under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

2. If so, whether Petitioners are entitled to an award of Plan benefits, given the arbitration award they recovered against Tallahassee Memorial Hospital for damages associated with Jena's death.

3. Whether the notice provisions of the Plan were satisfied.

PRELIMINARY STATEMENT

On October 1, 2003, Nicodemo Macri and Joni M. Macri, individually, and as parents, natural guardians and Personal Representatives of the Estate of Jena Macri, deceased, filed a petition (claim) with the Division of Administrative Hearings (DOAH) for compensation under the Florida Birth-Related Neurological Injury Compensation Plan. The impetus for filing the claim was stated in the petition to be, as follows:

PRIOR PROCEEDING

> 7. A Presuit Notice of Intent to Initiate Medical Malpractice Action was filed on July 8, 2002, naming Dr. O'Bryan and TMH. Subsequent notice was sent to Rachel Depart, CNM on August 20, 2002. TMH admitted fault and same was submitted to Medical Arbitration, Case Number: 02-4743MA. A copy of the Arbitration Award is attached . . . . Thus Petitioners have successfully pursued a tort claim arising out of Jena Macri's death and have recovered. They are not eligible to seek NICA benefits.
>
> 8. Suit was filed for wrongful death against O'Bryan and Depart[.] A Motion to Stay was granted[.] Clearly Claimants are not entitled to NICA benefits or the respondents to NICA exclusivity. However, the Defendants O'Bryan and Depart have insisted on this tribunal making these determinations.

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (NICA) with a copy of the claim on October 2, 2003, and on November 25, 2003, NICA filed its response to the petition and agreed Jena suffered a compensable

injury; however, because Petitioners had previously recovered an arbitration award, NICA averred an award was not appropriate. In the meantime, Rachel Depart, C.N.M.; David O'Bryan, M.D.; and Clements and Ashmore, P.A., d/b/a North Florida Women's Care, were accorded leave to intervene.

At the hearing held on February 3, 2004, Respondent called Donald C. Willis, M.D., a physician board-certified in obstetrics and gynecology, and maternal-fetal medicine, as a witness. Petitioners' Exhibits 1A-G and 2, as well as Respondent's Exhibit 1, were received into evidence. No other witnesses were called, and no further exhibits were offered.

The transcript of the hearing was filed February 11, 2004, and the parties were accorded 15 days from that date to file proposed orders or memoranda. The parties elected to file such proposals or memoranda and they have been duly considered.

FINDINGS OF FACT

Findings related to compensability

1. Nicodemo Macri and Joni M. Macri are the natural parents of Jena Macri, a deceased minor, and the Personal Representatives of their deceased daughter's estate. Jena was born a live infant on March 6, 2001, at Tallahassee Memorial Healthcare, Inc., d/b/a Tallahassee Memorial Hospital, a hospital located in Tallahassee, Florida, and her birth weight exceeded 2,500 grams.

2. The physician providing obstetrical services at Jena's birth was David O'Bryan, M.D., who was, at all times material hereto, a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by Section 766.302(7), Florida Statutes (2000).[1] Rachel Depart, C.N.M., also provided obstetrical services at Jena's birth.[2]

3. Pertinent to this case, coverage is afforded by the Plan for infants who suffer a "birth-related neurological injury," defined as an "injury to the brain . . . caused by oxygen deprivation . . . occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired." § 766.302(2), Fla. Stat. See also §§ 766.309 and 766.31, Fla. Stat.

4. Here, the parties have stipulated, and the proof is otherwise compelling, that Jena suffered a severe brain injury caused by oxygen deprivation occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in the hospital, which rendered her permanently and substantially mentally and physically impaired, and which, following removal from life support, led inevitably to her death on March 7, 2001. Consequently, the proof demonstrates that Jena suffered a "birth-related neurological injury" and, since obstetrical services were provided by a "participating

physician" at birth, the claim is covered by the Plan. §§ 766.309(1) and 766.31(1), Fla. Stat.

Findings related to the arbitration award

5. In response to Petitioners' Notice of Intent to File a Medical Malpractice action for the wrongful death of Jena, Tallahassee Memorial Hospital agreed to admit liability and to arbitrate the claim pursuant to Section 766.207, Florida Statutes.

6. Arbitration was held on June 23, 2003, in Tallahassee, Florida, and on July 1, 2003, the arbitration award was signed by the chief arbitrator. As entered, the arbitration award provided:

AWARD

> At the conclusion of the arbitration hearing, the following award was agreed to by all arbitrators:
>
> 1. Claimants Nicodemo Macri and Joni Macri, jointly, are awarded economic damages of $18,944.61 for medical expenses ($12,397.65), funeral expenses ($5,515.00), and costs of probate ($1,031.96) associated with the birth and death of their child, Jena Macri. Section 766.207(7)(a), Florida Statutes.
>
> 2. The claim of Nicodemo Macri for loss of earnings is denied.
>
> 3. Claimants Nicodemo Macri and Joni Macri, jointly, are awarded economic damages of $13,360.00, which represents the present value for loss of services of their child, Jena Macri. Section 766.207(7)(a), Florida

Statutes. Provided appropriate security is posted, such sum is to be paid in six equal installments, over a six-year period, with the first installment due within 20 days from the date of this award and an equal sum each year thereafter. Absent appropriate security, such award shall be paid in lump sum. Sections 766.202(8), 766.207(7)(c), and 766.211, Florida Statutes.

4. Claimant Nicodemo Macri is awarded noneconomic damages of $125,000.00 and Claimant Joni Macri is awarded noneconomic damages of $125,000.00. Section 766.207(7)(b), Florida Statutes.

5. Claimants Nicodemo Macri and Joni Macri, as Personal Representatives of the Estate of Jena Macri, deceased, are awarded economic damages of $1,188,022.00, which represents 80 percent of the present value of lost earning capacity for Jena Macri, deceased. Section 766.207(7)(a), Florida Statutes. Provided appropriate security is posted, such sum is to be paid in six equal installments, over a six-year period, with the first installment due within 20 days from the date of this award and an equal sum each year thereafter. Absent appropriate security, such award shall be paid in lump sum[]. Sections 766.202(8), 766.207(7)(c), and 766.211, Florida Statutes.

6. Defendant shall pay Claimants' the sum of $165,968.64,[1] which represents the Claimants' reasonable attorney's fees ($150,000.00) and costs ($15,968.64).[2] Section 766.207(7)(f), Florida Statutes.

In addition to the foregoing, the Defendant shall pay each arbitrator, other than the administrative law judge, a fee of $1,600.00, ($200.00 an hour, for 8 hours), and the cost of the court reporter.[3] Section 766.207(7)(g), Florida Statutes.

DONE AND ENTERED this 1st day of July, 2003,
in Tallahassee, Leon County, Florida.
(Endnotes omitted)[3]

7. Regarding the status of that award, the parties have stipulated that "[p]ortions of the award against Tallahassee Memorial have been paid but the award is subject to an appeal currently pending in Florida's First District Court of Appeal."

Findings related to notice

8. While the claim qualifies for coverage under the Plan, Petitioners have responded to the health care providers' claim of Plan immunity by averring that the health care providers failed to give notice as required by the Plan. Consequently, it is necessary to resolve whether the health care providers gave the required notice. O'Leary v. Florida Birth-Related Neurological Injury Compensation Association, 757 So. 2d 624, 627 (Fla. 5th DCA 2000)("All questions of compensability, including those which arise regarding the adequacy of notice, are properly decided in the administrative forum.") Accord University of Miami v. M.A., 793 So. 2d 999 (Fla. 3d DCA 2000). But see All Children's Hospital, Inc. v. Department of Administrative Hearings, 863 So. 2d 450 (Fla. 2d DCA 2004) (certifying conflict); Florida Health Sciences Center, Inc. v. Division of Administrative Hearings, 29 Fla. L. Weekly D216 (Fla. 2d DCA Dec. 17, 2003)(same); and Florida Birth-Related

Neurological Injury Compensation Association v. Ferguson, 29 Fla. L. Weekly D226a (Fla. 2d DCA Jan. 14, 2004)(same).

9. Pertinent to this case, during the time of Mrs. Macri's prenatal care at Clements and Ashmore, P.A., d/b/a North Florida Women's Care, the practice with which Dr. O'Bryan was associated, as well as at the time of Jena's birth, Section 766.316, Florida Statutes, prescribed the notice provisions of the Plan, as follows:

> Each hospital with a participating physician on its staff and each participating physician . . . 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.

10. Here, the parties have stipulated that Mrs. Macri was provided notice that David O'Bryan, M.D., was a participant in the Florida Birth-Related Neurological Injury Compensation Plan, but that neither Mr. Macri nor Mrs. Macri was provided predelivery notice by Tallahassee Memorial Hospital. The

parties have further stipulated that the hospital's failure to give notice was not due to an emergency medical condition or because the giving of notice was not practicable. Consequently, it has been established that, with regard to the participating physician, the notice provisions of the Plan were satisfied, but with regard to the hospital they were not.

CONCLUSIONS OF LAW

Jurisdiction

11. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. § 766.301, et seq., Fla. Stat.

Compensability

12. In resolving whether a claim is covered by the Plan, 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 postdelivery 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 postdelivery period in a hospital.

§ 766.309(1), Fla. Stat. 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 the birth." § 766.31(1), Fla. Stat.

13. "Birth-related neurological injury" is defined by Section 766.302(2), Florida Statutes, to mean:

> . . . injury to the brain or spinal cord of a live infant weighing at least 2,500 grams at birth caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality.

14. Here, it has been established that Dr. O'Bryan, a physician who provided obstetrical services at Jena's birth, was a "participating physician," and that Jena suffered a "birth-related" neurological injury. Consequently, the claim is covered by the Plan, and the administrative law judge is required to make an award of compensation unless, as alleged by

NICA, Petitioners are barred from pursuing an award because they recovered an arbitration award against the hospital for the wrongful death of Jena. §§ 766.304, 766.309, and 766.31, Fla. Stat.

The statutory bar to recovery (§ 766.304, Fla. Stat.)

15. The Florida Birth-Related Neurological Injury Compensation Plan was enacted by the Legislature to address "a perceived medical malpractice . . . crisis affecting obstetricians and to assure the continued availability of essential obstetrical services." Humana of Florida, Inc. v. McKaughan, 652 So. 2d 852, 855 (Fla. 2d DCA 1995); § 766.301(1), Fla. Stat. As enacted, the Plan "establishes an administrative system that provides compensation on a no-fault basis for an infant who suffers a narrowly defined birth-related neurological injury." Humana of Florida, Inc. v. McKaughan, 652 So. 2d at 855; § 766.301(2), Fla. Stat.

16. The Plan is a substitute, a "limited no-fault alternative," for common law rights and liabilities. § 766.316, Fla. Stat. See also § 766.303(2), Fla. Stat.; Florida Birth-Related Neurological Injury Compensation Association v. McKaughan, 668 So. 2d 974 (Fla. 1996). Regarding the exclusiveness of the remedy afforded by the Plan, Subsection 766.303(2), provides:

> (2) The rights and remedies granted by this plan on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representatives, parents, dependents, and next of kin, at common law or otherwise, against any person or entity directly involved with the labor, delivery, or immediate postdelivery resuscitation during which such injury occurs, arising out of or related to a medical malpractice claim with respect to such injury; except that a civil action shall not be foreclosed where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property, provided that such suit is filed prior to and in lieu of payment of an award under ss. 766.301-766.316. Such suit shall be filed before the award of the division becomes conclusive and binding as provided for in s. 766.311.

17. Effective July 1, 1998, the Legislature adopted Chapter 98-113, Laws of Florida, which amended Sections 766.301 and 766.304, Florida Statutes.[4] Pertinent to this case, the amendments (underlined) to Sections 766.301 and 766.304, Florida Statutes, were, as follows:

> 766.301 Legislative findings and intent.--
>
> (1) The Legislature makes the following findings:
>
> * * *
>
> (d) The costs of birth-related neurological injury claims are particularly high and warrant the establishment of a limited system of compensation irrespective of fault. <u>The issue of whether such claims are covered by this act must be determined exclusively in an administrative proceeding.</u>

* * *

> 766.304 Administrative law judge to determine claims.--The administrative law judge shall hear and determine all claims filed pursuant to ss. 766.301-766.316 and shall exercise the full power and authority granted to her or him in chapter 120, as necessary, to carry out the purposes of such sections. The administrative law judge has exclusive jurisdiction to determine whether a claim filed under this act is compensable. No civil action may be brought until the determinations under s. 766.309 have been made by the administrative law judge. If the administrative law judge determines that the claimant is entitled to compensation from the association, no civil action may be brought or continued in violation of the exclusiveness of remedy provisions of s. 766.303 . . . . An action may not be brought under ss. 766.301-766.316 if the claimant recovers or final judgment is entered . . . .[5]

Ch. 98-113, § 1, at 524, Laws of Fla.

18. By the amendments to Sections 766.301 and 766.304, Florida Statutes, the Legislature reacted "adversely to the result reached in McKaughan," wherein the Supreme Court concluded that an administrative law judge did not have exclusive jurisdiction to determine whether a new-born infant suffered a "birth-related neurological injury," and mandated that coverage be resolved exclusively in the administrative forum. O'Leary v. Florida Birth-Related Neurological Injury Compensation Association, 757 So. 2d 624, 627 (Fla. 5th DCA 2000). Additionally, by amending Section 766.304, Florida

Statutes, to provide that "[a]n action may not be brought under ss. 766.301-766.316 if the claimant recovers or final judgment is entered," the Legislature evidenced its intent to adopt an election of remedies clause to avoid future claims such as those pursued in Gilbert v. Florida Birth-Related Neurological Injury Compensation Association, 724 So. 2d 688 (Fla. 2d DCA 1999), wherein the court resolved that a claimant could receive the proceeds of a settlement with the defendants in a civil suit and still pursue a claim for benefits under the Plan. Romine v. Florida Birth-Related Neurological Injury Compensation Association, 842 So. 2d 148, 152 (Fla. 5th DCA 2003). In all, by the amendments to the Plan, the Legislature evidenced its intention that "[t]he administrative law judge has exclusive jurisdiction to determine whether a claim . . . is compensable," that "[n]o civil action may be brought . . . [or continued, if Plan exclusivity is raised as a defense] until the determinations under s. 766.309 have been resolved by the administrative law judge," and that if a claimant persists and "recovers or final judgment is entered," as in this case, she or he may not pursue an award under the Plan.

19. Here, Petitioners do not dispute that, having received an arbitration award against Tallahassee Memorial Hospital for damages associated with Jena's death, they have "recovered," as that word is commonly understood, and are not entitled to Plan

benefits. See Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."); Abramson v. Florida Psychological Association, 634 So. 2d 610, 612 (Fla. 1994)("Administrative agencies have the authority to interpret the laws which they administer, but such interpretation cannot be contrary to clear legislative intent.") Rather, Petitioners contend that, given the manner in which the Legislature phrased the election of remedies clause contained in Section 766.304, Florida Statutes (2000), ("An action may not be brought under ss. 766.301-766.316 if the claimant recovers or final judgment is entered."), the Division of Administrative Hearings is without jurisdiction to resolve whether the claim would otherwise qualify for coverage under the Plan. Here, Petitioners' contention must be rejected.

20. If Plan immunity is a viable defense to a civil suit when, as here, a claimant recovers from less than all health care providers, it is necessary, given DOAH's exclusive jurisdiction over the matter, for the administrative law judge to address the issue of coverage, even though an award would be inappropriate. Consequently, the 1998 amendments to Sections 766.301 and 766.304, Florida Statutes, which mandated that

coverage be resolved exclusively in the administrative forum, and which adopted an election of remedies clause, must be read in pari materia, and harmonized, to give effect to the Legislature's intention. Forsythe v. Longboat Key Beach Erosion Control District, 604 So. 2d 452, 455 (Fla. 1992)("It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole . . . Where possible, courts must give effect to all statutory provisions and construe related statutory provisions in harmony with one another."); Florida Jai Alai, Inc. v. Lake Howell Water & Reclamation District, 274 So. 2d 522, 524 (Fla. 1973)("[A] statute should be construed and applied so as to give effect to the evident legislative intent, even if it varies form the literal meaning of the statute . . . Legislative intent should be gathered from consideration of the statute as a whole rather than from any one part thereof."); Weitzel v. State of Florida, 306 So. 2d 188, 192 (Fla. 1st DCA 1975)("It is fundamental that words, phrases, clauses, sentences and paragraphs of a statute may not be construed in isolation, but that on the contrary a statute must be construed in its entirety.")

21. Alternatively, if coverage is considered, which it has been, Petitioners have requested that the following question be addressed:

> Under Section 766.309(1)(c), the order should address the question of whether a payment will be due at the damages phase of the claim. A Circuit Judge ruling upon the exclusivity issue should know whether an alternative recovery is possible under the law. It is NICA's position that the final judgment and tort recovery precludes an award of compensation. If Petitioners are not entitled to compensation, the claim is by definition not compensable. This should be clearly stated so that those ruling upon exclusivity will know there is no alternative recovery available with respect to the negligence of the physician (and possibly the midwife) that caused the death of Petitioners' daughter.

(Petitioners' Post Hearing Memorandum, at p. 2) In contrast, Intervenors request a ruling that they are entitled to Plan immunity in the civil action.

22. Here, the claim is a compensable (covered) injury. However, Petitioners, because of the arbitration award they recovered against Tallahassee Memorial Hospital for damages associated with Jena's death, are not entitled to an award of Plan benefits. As for Intervenors' claim for Plan immunity in the civil action, that is not a matter within the jurisdiction of the Division of Administrative Hearings to resolve. See Gugelmin v. Division of Administrative Hearings, 815 So. 2d 764 (Fla. 4th DCA 2002); Bayfront Medical Center, Inc. v. Division of Administrative Hearings, 841 So. 2d 626 (Fla. 2d DCA 2003); All Children's Hospital, Inc. v. Department of Administrative Hearings, supra; Florida Health Sciences Center, Inc. v.

Division of Administrative Hearings, supra; Florida Birth-Related Neurological Injury Compensation Association v. Ferguson, supra.

Constitutional issues

23. As for the constitutional issues raised by Petitioners, the Division of Administrative Hearings has no jurisdiction to address them. Florida Hospital v. Agency for Health Care Administration, 823 So. 2d 844, 849 (Fla. 1st DCA 2002)("Administrative agencies lack the power to consider or determine constitutional issues.")

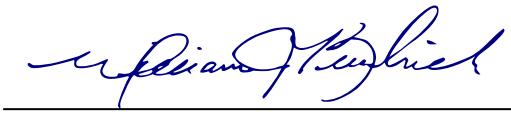
CONCLUSION

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

ORDERED that the claim for compensation filed by Nicodemo Macri and Joni M. Macri, individually, and as parents, natural guardians, and Personal Representatives of the Estate of Jena Macri, deceased, qualifies for coverage under the Plan; however, given Petitioners' recovery from Tallahassee Memorial Hospital, they may not pursue or recover an award of benefits.

It is further ORDERED that with regard to the participating physician, the notice provisions of the Plan were satisfied, but with regard to the hospital they were not.

DONE AND ORDERED this 5th day of March, 2004, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2004.

ENDNOTES

1/ All citations are to Florida Statutes (2000) unless otherwise indicated.

2/ At the time, C.N.M. Depart had not paid the assessment required for a certified nurse midwife to participate in the Plan. § 766.314(4)(c), Fla. Stat.

3/ Endnote 1 noted that "[t]he parties stipulated to the amount awarded as attorney's fees and costs, and that stipulation was approved by the arbitrators during a telephone conference on July 1, 2003." Endnote 3 noted that "[t]he parties stipulated to the rate of compensation for the arbitrators."

4/ As for the effective date of the amendments, Chapter 98-113, Section 6, Laws of Florida, provided that "[t]he amendments to sections 766.301 and 766.304, Florida Statutes, shall take effect July 1, 1998, and shall apply only to claims filed on or after that date and to that extent shall apply retroactively regardless of date of birth." However, in Romine v. Florida Birth-Related Neurological Injury Compensation Association, 842 So. 2d 148 (Fla. 5th DCA 2003), the court resolved that retroactive application of the amendment to a child born prior

to its effective date, to preclude a NICA claim when the claimant made a civil recovery (through settlement of a civil suit), was not constitutionally permissible. Here, the child was born March 6, 2001, and the claim was filed October 1, 2003. Consequently, the amendments apply to this case.

5/ In 2003, the Legislature amended the election of remedies clause to read, as follows:

> . . . An award ~~action~~ may not be made or paid ~~brought~~ under ss. 766.301-766.316 if the claimant recovers under a settlement or a final judgment is entered in a civil action . . . .

Ch. 2003-416, § 75, Laws of Fla. However, the Legislature expressly provided that "the changes to chapter 766, Florida Statutes, shall apply only to any medical incident for which a notice of intent to initiate litigation is mailed on or after the effective date of this act." Ch. 2003-416, § 86, Laws of Fla. Here, Petitioners' notice of intent to initiate litigation was mailed well prior to the September 15, 2003, effective date of the act. Consequently, the provisions of Section 766.304, Florida Statutes, as it existed prior to the 2003 amendments apply in this case.

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 the original of a notice of appeal with the Agency Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal. See Section 766.311, 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.