

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VALENCIA PEMBERTON AND ANTHONY)
SOMERSALL, ON BEHALF OF AND AS)
PARENTS AND NATURAL GUARDIANS)
OF TYRECE O. SOMERSALL, A)
MINOR,)
)
Petitioners,)
)
vs.) Case No. 07-3011N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
FLORIDA HEALTH SCIENCES CENTER,)
INC., d/b/a TAMPA GENERAL)
HOSPITAL AND BOARD OF TRUSTEES)
FOR THE UNIVERSITY OF SOUTH)
FLORIDA,)
)
Intervenor.)
)
_____)

FINAL ORDER APPROVING AMENDED STIPULATION AND JOINT PETITION
FOR COMPENSATION OF CLAIM ARISING OUT OF FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY PURSUANT TO CHAPTER 766, FLORIDA STATUTES

This cause came on to be heard pursuant to Sections 766.304 and 766.305(7), Florida Statutes, upon the Amended Stipulation and Joint Petition of the parties, filed June 12, 2008, for the entry of an order approving the resolution of a formal claim for compensation benefits heretofore filed in this cause in accordance with the provisions of Chapter 766, Florida Statutes,

and a resolution of the exclusive remedy otherwise available as outlined in Chapter 766, Florida Statutes.

By the terms of their stipulation, the parties have agreed that Valencia Pemberton and Anthony Somersall are the parents and legal guardians of Tyrece O. Somersall (Tyrece), a minor; that Tyrece was born a live infant on July 20, 2002, at Tampa General Hospital, a "hospital" as defined by Section 766.302(6), Florida Statutes, located in Tampa, Florida; and that Tyrece's birth weight exceeded 2,500 grams. The parties have further agreed that Karen L. Bruder, M.D., Odette C. Daley, M.D., Kristen Helm, M.D., and Jonathan H. Griner, M.D., delivered obstetrical services at Tyrece's birth, and at all times material hereto, were "participating physician[s]" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by Section 766.302(7), Florida Statutes. Finally, by their stipulation, the parties have agreed that Tyrece suffered a "birth-related neurological injury," as that term is defined by Section 766.302(2), Florida Statutes.

After due consideration of the interests of all parties, and being otherwise fully advised in the premises, it is

ORDERED that:

1. The Amended Stipulation and Joint Petition of the parties, filed June 12, 2008, is hereby approved, and the parties are directed to comply with the provisions thereof.

2. Petitioners, Valencia Pemberton and Anthony Somersall, as the parents and legal guardians of Tyrece O. Sommersall, a minor, are awarded One hundred thousand dollars (\$100,000.00), pursuant to Section 766.31(1)(b)1., Florida Statutes, to be paid in lump sum.

3. Upon payment of the award of One hundred thousand dollars (\$100,000.00), attorney's fees and other expenses of Ten thousand five hundred dollars (\$10,500.00), and past expenses, the claims of Petitioners (Claimants) shall be deemed fully satisfied and extinguished, except for Respondent's continuing obligation under Section 766.31(2), Florida Statutes, to pay future expenses as incurred.

4. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes should they arise, regarding the parties' compliance with the terms of this Final Order.

DONE AND ORDERED this 16th day of June, 2008, 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 16th day of June, 2008.

COPIES FURNISHED:
(Via Certified Mail)

Scott Borders, Esquire
Morgan and Morgan, P.A.
One Tampa Center
201 North Franklin Street, Seventh Floor
Tampa, Florida 33602
(Certified Mail No. 7005 1820 0002 9840 9148)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(Certified Mail No. 7005 1820 0002 9840 9155)

Edward J. Carbone, Esquire
Buchanan Ingersoll, P.A.
2500 Suntrust Financial Centre
401 East Jackson Street
Tampa, Florida 33602
(Certified Mail No. 7005 1820 0002 9840 9162)

David C. Banker, Esquire
220 South Franklin Street
Tampa, Florida 33602
(Certified Mail No. 7005 1820 0002 9840 9179)

Robert J. Grace, Jr., Esquire
Stiles, Taylor & Grace, P.A.
Post Office Box 460
Tampa, Florida 33606
(Certified Mail No. 7005 1820 0002 9840 9186)

Charlene Willoughby, Director
Consumer Services Unit - Enforcement
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7005 1820 0002 9840 9087)

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.