

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROCK POLLOCK, SR., AND SHAWNA	)	
M. POLLOCK, on behalf of and as	)	
parents and natural guardians	)	
of ROCK POLLOCK, JR., a minor,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 08-4224N
	)	
FLORIDA BIRTH-RELATED	)	
NEUROLOGICAL INJURY	)	
COMPENSATION ASSOCIATION,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
LAURA L. DANNER, CNM, GULF	)	
COAST OBSTETRICS & GYNECOLOGY,	)	
LTD, f/k/a CORCORAN, EASTERLING	)	
& DOYLE-VALLERY, LTD., AND	)	
SARASOTA COUNTY PUBLIC HOSPITAL	)	
DISTRICT,	)	
	)	
Intervenors.	)	
	)	

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FINAL ORDER

Upon due notice, this cause came on for final hearing before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings on September 13, 2010, by video teleconference, with sites in Tampa and Tallahassee, Florida.

#### APPEARANCES

For Petitioners: Rock Pollock, pro se  
1511 72nd Street, West  
Bradenton, Florida 34209

For Respondent: Robert J. Grace, Jr., Esquire  
Stiles, Taylor & Grace, P.A.  
Post Office Box 460  
Tampa, Florida 33601

For Intervenors Laura L. Danner, CNM, and  
Gulf Coast Obstetrics & Gynecology, Ltd,  
f/k/a Corcoran, Easterling & Doyle-Vallery, Ltd.:

Justine D. Adamski, Esquire  
La Cava & Jacobson  
Bank of America Plaza, Suite 2500  
101 East Kennedy Boulevard  
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For Intervenor Sarasota County Public Hospital District:

Carol Ann Kalish, Esquire  
Williams, Parker, Harrison  
Dietz & Getzen  
200 South Orange Avenue  
Sarasota, Florida 34236

#### STATEMENT OF THE ISSUE

Whether the injury claimed is a birth-related neurological injury and whether obstetrical services were delivered by a participating physician in the course of labor, delivery or resuscitation in the immediate postdelivery period in the hospital.<sup>1</sup>

#### PRELIMINARY STATEMENT

On August 25, 2008, Rock Pollock, Sr., and Shawna M. Pollock (parents), on behalf of Rock Pollock, Jr. (Rock, Jr.),

filed a petition (claim) with the Division of Administrative Hearings (DOAH) for the sole purpose of resolving whether Rock, Jr., qualifies for coverage under the Plan.<sup>2</sup> Named in the Petition as involved in Rock, Jr., 's birth were Laura L. Danner, CNM, of Gulf Coast Obstetrics & Gynecology, LTD, f/k/a Corcoran, Easterling & Doyle-Vallery, LTD, Dr. Evelyn Santiago, and Sarasota Memorial Hospital, Sarasota, Florida, "and the nurses thereof."

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (NICA) with a copy of the claim on August 25, 2008. Deanna Doyle-Vallery, M.D., was served on August 28, 2008. Laura L. Danner, CNM, and Evelyn Santiago, M.D., were each served on August 29, 2008. Sarasota Memorial Hospital was served on September 2, 2008. By Order entered September 15, 2008, Laura L. Danner, CNM, and Gulf Coast Obstetrics & Gynecology, LTD, f/k/a Corcoran, Easterling & Doyle-Vallery, LTD, were granted Intervenor status. By Order entered October 1, 2008, Sarasota County Public Hospital District (the hospital) was granted Intervenor status.

Following several extensions of time in which to do so, on March 5, 2009, NICA filed the Response to Petition required by Section 766.305(4), Florida Statutes, and moved to abate for further evaluation of Rock, Jr. Petitioners objected-to the

prayed-for abatement, and on April 17, 2009, the case was noticed for hearing on October 1-2, 2009.

By Order dated September 18, 2009, the final hearing was cancelled, in response to an Unopposed Motion for Continuance.

On October 19, 2009, Petitioners' counsel, Armando Lauritano, moved to withdraw due to "irreconcilable differences" between himself and Petitioners. On October 26, 2009, an Amended Motion to Allow Withdrawal of Counsel was filed. That Amended Motion was granted on November 13, 2009, following opportunity for Petitioners to object to withdrawal and to obtain new counsel.

On December 23, 2009, Respondent NICA filed an Amended Response to Petition for Benefits stating that:

7. Based upon the opinions of Dr. Willis and Dr. Fernandez, NICA has determined the instant claim is compensable as the injury does meet the definition of a "birth-related neurological injury" as defined in Section 766.302(2), Florida Statutes, which specifically requires that the injury to the brain or spinal cord be "caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate post delivery period. . . ." §766.302(2)

Orders entered December 29, 2009,<sup>3</sup> March 16, 2010,<sup>4</sup> and March 29, 2010,<sup>5</sup> provided ample opportunity for Petitioners to obtain new counsel, to determine all issues they wished to

litigate, and to accept or reject NICA's acceptance of compensability.

On June 2, 2010, NICA filed a Response to Order dated March 16, 2010, suggesting that since Petitioners had not yet made a decision on whether Petitioners wished to accept NICA benefits, "it is requested that a hearing be set . . . in order to adjudicate whether the child suffered a birth-related neurological injury."

Petitioners stated in a "Response to Respondent's Response to the Order dated June 2, 2010," filed June 14, 2010, that although they believed that Rock, Jr., had suffered a birth-related injury, "[t]he Petitioners have not made a decision whether or not to except [sic] NICA benefits . . . ."

Ultimately, Petitioners elected, during a June 16, 2010, telephonic case management conference, to proceed to hearing upon the statutory definition of "birth-related neurological injury" required for compensation. See § 766.302(2), Fla. Stat.<sup>6</sup>

Given that Respondent and Intervenors were of the view that the child had suffered a "birth-related neurological injury," and that the Administrative Law Judge had received the parties' advices concerning scheduling, a Notice of Hearing by Video Teleconference and an Order of Pre-Hearing Instructions were mailed on June 18, 2010. Left to resolve in a subsequent

proceeding were issues related to an award of benefits. See §§ 766.309(4) and 766.31, Fla. Stat.

Thereafter, discovery issues ensued, as reflected by DOAH's case file.

Respondent and Intervenor filed their Pre-Hearing Stipulation on August 30, 2010, and Petitioners filed a unilateral Pre-Hearing Stipulation on September 3, 2010.

At final hearing on September 13, 2010, Petitioners agreed to stipulate in accordance with Respondent's position that Rock, Jr., had sustained a birth-related neurological injury as defined in Section 766.302(2), Florida Statutes, and that Dr. Amy Martin, a physician participating in the Plan, had delivered obstetrical services during labor, delivery and resuscitation in the immediate postdelivery period in the hospital. Despite these stipulations, Respondent and Intervenor requested to present evidence on compensability, and were permitted to do so.

Respondent NICA's Exhibits 1, 2, 3, 6, 7, and 8<sup>7</sup> were admitted in evidence. Intervenor Danner's employment contract with Gulf Coast Obstetrics & Gynecology, Ltd., was marked as Gulf Coast Exhibit-1, but it was not admitted in evidence because it had not been disclosed at the parties' mandatory prehearing conference; was not listed on Respondent's and Intervenor's Joint Pre-Hearing Stipulation; and was not a

rebuttal or impeachment exhibit. Petitioners and Intervenor, Sarasota Memorial Hospital, offered no exhibits. No witnesses testified live at the final hearing.

By announcement at final hearing and by Order entered September 14, 2010, all parties were allowed ten days from the filing of the transcript of the final hearing in which to file their respective proposed final orders. The Transcript was filed on September 21, 2010. Respondent's proposed final order was timely filed within 10 days thereafter. Petitioners timely moved for an extension of time in which to file their proposed final order, which motion was unopposed. The Motion was granted by an Order entered October 5, 2010. Therefore, Petitioners' proposed final order, filed October 7, 2010, has also been considered in preparation of this Final Order.<sup>8</sup> Intervenor filed no proposals of their own and did not object to the proposals of any party.

#### FINDINGS OF FACT

1. Petitioners, Rock Pollock, Sr., and Shawna M. Pollock, are Rock Pollock, Jr.'s (Rock, Jr.'s), natural parents.

2. At all times material, Shawna M. Pollock was an obstetric patient of Intervenor, Deanna Doyle-Vallery, M.D., and Deanna Doyle-Vallery, M.D., was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by Section 766.302(7), Florida Statutes. (Plan)

3. At all times material, Amy Martin, M.D., also was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by Section 766.302(7), Florida Statutes, and she provided obstetrical services "in the course of labor, delivery and resuscitation in the immediate postdelivery period in a hospital," as related to this case.

4. Rock, Jr., was born on November 2, 2006.

5. At birth, Rock, Jr., weighed in excess of 2,500 grams.

6. Rock, Jr., was born at Sarasota Memorial Hospital.

7. Sarasota Memorial Hospital is a licensed Florida Hospital located in Sarasota, Florida.<sup>9</sup> It is owned and operated by Intervenor Sarasota County Public Hospital District.

8. 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 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." § 766.302(2), Fla. Stat. See also §§ 766.309 and 766.31, Fla. Stat.

9. On November 1, 2006, Rock, Jr., 's mother, Shawna M. Pollock, who was in the forty-second week of pregnancy (beyond term), was admitted to Sarasota Memorial Hospital. She had

received prenatal care from Dr. Doyle-Vallery and Corcoran, Easterling & Doyle-Vallery, LTD, a predecessor corporation to Gulf Coast Obstetrics and Gynecology, LTD, with which entity Drs. Doyle-Vallery and Martin were associated.

10. At 6:50 p.m., on November 1, 2006, Mrs. Pollock was examined, and her cervix was found to be two centimeters dilated and thick. Dr. Amy Martin ordered Cervadil and Pitocin and signed the obstetrical record. Sarasota Memorial Hospital's progress notes indicate that Mrs. Pollock had previously suffered two miscarriages, but that this pregnancy had been uneventful with ASA therapy.

11. At 8:00 a.m., on November 2, 2006, Rock, Jr., 's fetal heart rate was noted to be stable; contractions were occurring every 2-3 minutes; and Certified Nurse Midwife Laura Danner, made a progress note that the plan of care would be continued.

12. On November 2, 2006, both the Pitocin and Cervadil were administered. Entries were made on the progress notes by Certified Nurse Midwife Danner at 9:45 a.m., 10:30 a.m., and 12:05 p.m., that the fetal heart rate monitoring was stable; contractions were occurring every 2 to 3 or 2 to 4 minutes; and that, upon consultation with Dr. Amy Martin, the plan of care would be continued.

13. At 1:30 p.m., Certified Nurse Midwife Danner wrote in the progress notes that Mrs. Pollock had been instructed on how

and when to push and that Rock, Jr., 's fetal heart rate was still stable. At 2:00 p.m., the fetal heart rate continued to be stable, and Mrs. Pollock was in labor, pushing every 2-3 contractions, with Pitocin continuing to be administered. Contractions were occurring every 1-1/2 to 2-1/2 minutes. Once again, Nurse Danner noted a continuation of the plan of care.

14. Nurse Danner's progress notes indicate that at 2:30 p.m., there was a stable fetal heart rate with moderate to severe variables with recovery to baseline and contractions every 1-1/2 to 2-1/2 minutes. Mrs. Pollock had stopped pushing; had been in multiple positions; and was currently in the knee-chest position. A possible cesarean section was discussed with Mrs. Pollock in the event labor did not continue to progress. Also discussed was having Mrs. Pollock rest and not push for 30 minutes. The progress notes reflect that Dr. Martin and Nurse Danner consulted and agreed on a plan of care.

15. The progress notes reflect that at 3:00 p.m., November 2, 2006, Mrs. Pollock was complaining of abdominal pain. The fetal heart rate was stable, but there was decrease in the long term variability and severe variables. Contractions were occurring every 1-1/2 to 2-1/2 minutes. Nurse Danner palpated Mrs. Pollock's abdomen, and it was soft between contractions. Because of the non-reassuring fetal heart rate tracing, Nurse Danner again consulted with Dr. Martin, and the

decision was made to proceed with a cesarean section. The progress note at that time reflects that Dr. Martin was proceeding to the hospital, so it is assumed that the consultation at that time was by telephone. A note made immediately thereafter at 3:01 p.m., reflects the presence of a fetal bradycardia; that Mrs. Pollock was complaining of severe abdominal pain; and that Mrs. Pollock was being taken to the operating room for a cesarean section. At 3:05 p.m., Mrs. Pollock continued to complain of severe abdominal pain. When her abdomen was palpitated, it was described as "rigid." Rock, Jr., 's fetal heart rate was decreasing to 40 beats per minute and continuing to decrease to 20 beats per minute. Dr. Martin was again called and was en route to the hospital. Dr. Evelyn Santiago was present at the hospital, and she started a "stat" (immediate) cesarean section.

16. Dr. Santiago performed a primary low cervical transverse cesarean section, and Rock, Jr., was delivered at 3:12 p.m. Thick meconium-stained fluid was noted. Rock, Jr., was in a cephalic, vertex presentation. Upon inspection, Dr. Santiago noted a uterine rupture on the left aspect of the uterus.

17. At 3:24 p.m., Dr. Martin was present and began to assist Dr. Santiago and Certified Nurse Midwife Danner with the cesarean section; Dr. Martin became the primary surgeon for the

repair of the uterine incision and uterine rupture.

Dr. Martin's operative note states in part:

INDICATIONS: The patient is a G4, P1, who was admitted for induction for postdates and did well initially through labor induction. She made it to complete dilation and at that time had reactive fetal heart rate tracing. She began pushing and was noted to have moderate to severe variable decelerations with pushing effort. The patient pushed every other contraction for approximately 1 hour with continued moderate variable decelerations. At this point the patient was turned and allowed to rest for recovery of the infant. The patient with progress to +1 station. [sic] With further pushing the patient continued to have moderate to severe variable decelerations with no further descent and a cesarean section was called. At this point the patient was prepared to be taken to the operating room and she began complaining of severe left lower quadrant and left back pain. This was unable to be controlled with epidural. At this point in time the infant's heart rate dropped into the 60s and then continued down to the 40s. The patient was rushed back to the OR for emergent C-section at this point with fetal heart rate obtained in the OR in the 20s.

FINDINGS: Male infant in cephalic presentation. Meconium stained fluid. NICU present at delivery. Apgar's<sup>[10]</sup> 2, 3, and 3 with weight 8 pounds, 11 ounces. Of note uterus had a large lateral defect with extensive bleeding and area of uterine rupture. Normal ovaries bilaterally. Of note per Dr. Santiago upon entering the peritoneal cavity blood was noted in the abdominal cavity prior to making uterine incision.

18. Rock, Jr., was taken to the neonatal intensive care unit at Sarasota Memorial Hospital and evaluated by

Darlene Calhoun, D.O. Spontaneous respirations were noted with some being quite irregular. Dr. Calhoun's impression was:

1. Term male infant at 41 and 2/7 weeks.
2. Perinatal depression.
3. Rule out sepsis.
4. History of methylene tetrahydrofolate reductase deficiency in the mother and questionable factor V Leiden mutation.
5. Respiratory depression.
6. Rule out seizures.
7. Metabolic acidosis.
8. Evaluate for persistent pulmonary hypertension of the newborn.

19. On November 3, 2006, Rock, Jr., was transferred to All Children's Hospital, because of continued seizure activity.

Victor McKay, M.D., evaluated Rock, Jr., upon admission. He noted that Rock, Jr., required intubation, had Apgar scores of 2, 3, and 3, and had a cord pH of 6.8. In the Neonatal Intensive Care Unit (NICU), Rock, Jr., was placed on a ventilator, but quickly weaned off. Because of seizure-like activity, a video EEG was ordered, and Rock, Jr., was loaded with Phenobarbital. After evaluating Rock, Jr., Dr. McKay gave an assessment and plan of:

1. Term male infant.
2. Perinatal acidosis. The infant has severe perinatal acidosis with cord pH of 6.8. The acidosis was corrected after birth. The infant has remained on ventilator, is currently weaned down to low ventilator settings and still has CO<sub>2</sub> in the 20s. So, the infant will be extubated. The infant has shown no signs of pulmonary hypertension.

3. Neurologically, the infant will be placed on a 24-hour video electroencephalogram. Will continue the Phenobarbital. Obtain a neurology consult with CT scan of the infant. If the CT scan is normal, then the infant may need further imaging at 3-5 days of life.
4. Sepsis. Rule out sepsis. The infant will receive ampicillin and gentamicin pending culture results.
5. Fluid, electrolytes, nutrition. The infant is n.p.o on IV fluids at 60 mL/kg/day. Will follow electrolytes and make adjustments as needed.
6. Maternal methylenetetrahydrofolate reductase.<sup>[11]</sup> The infant will need further evaluation at a later time.

20. On November 6, 2006, an MRI with and without contrast was performed on Rock, Jr., 's brain. Radiologist James M.

Anderson, M.D., read the films. His findings were as follows:

FINDINGS:

Sagittal T1, axial diffusion FLAIR T2, coronal FLAIR, coronal T2, coronal 3D T1, axial and coronal postcontrast T1 weighted images were performed.

Cerebral and cerebellar volume appear to be normal. In general, the brain appears to be normally formed with no obvious anomalies. T1 weighted images show no migrational disorders. T2 and FLAIR images show no gross areas of hyperintensity.

The diffusion images, however, are concerning. There is abnormally restricted diffusion identified in the basal ganglia bilaterally, somewhat asymmetrically, worse on the left than on the right with some asymmetric areas of restricted diffusion extending into the left insula as well as the left occipital and temporal lobes.

These findings are suspicious for early infarct or ischemia.

21. Rock, Jr., was discharged from All Children's Hospital on December 12, 2006. The portions of the Discharge Summary for purposes of this case are:

DISCHARGE DIAGNOSES:

1. Low Apgar scores.
2. Hypoxic-ischemic encephalopathy.
3. Respiratory distress.
4. Acidosis.
5. Seizure-like behavior.
6. Neonatal encephalopathy.
7. Staphylococcus warneri bacteremia.
8. Severe dysphagia.

\* \* \*

HISTORY: . . . The estimated gestational age was 41-2/7 weeks. Maternal history included positive MTHFR/positive Leiden mutation determined through genetic counseling . . . The pregnancy was significant for uneventful. The mother took prenatal vitamins, antacids, and aspirin and delivery was significant for fetal bradycardia, low Apgar scoring, and a cord pH of 6.8. Delivery room resuscitation included tactile suctioning, bulb suctioning, deep suctioning, intubation for no respiratory effort. . . .

\* \* \*

CENTRAL NERVOUS SYSTEM: Phenobarbital was used for questionable seizure-like activity and HIE, and the baby initially had levels into the 40s. At the time of discharge, the December 11, 2006, level was 8.5. Cranial ultrasound was done at birth which was normal. A CT done on day 2 was normal. On November 6, 2006, day 4, an MRI was done showing subtle changes in the basal ganglia

on the left occipital temporal lobe with questionable early infarct or ischemia. The region of the pre and post central gyri also have some mild diffuse changes. Followup in 7 to 10 days is recommended. Neurology followed this baby throughout hospitalization. Continuous EEGs were done between November 3, 2006, and November 6, 2006, showing severe, diffuse encephalopathy, multiple cortical and stable areas, and potential for epileptogenicity. On November 9, 2006, there was some improvement in the EEG but there was still noted excessive sharps in the right temporal area. November 27, 2006, was also still abnormal with epileptiform discharger [sic] in the right temporal region, no seizures, but was improved from previously.

\* \* \*

GENETICS: There were no genetic problems or dysmorphology.

22. On September 10, 2007, when Rock, Jr., was ten months of age, he was evaluated by Dr. Tiffany Day at Shands Hospital at the University of Florida. He presented there for a video EEG and MRI with sedation, to evaluate seizure-like activity. A G-tube had been inserted because he had gastroesophageal reflux. Mr. and Mrs. Pollock described Rock, Jr., 's seizure activity as jerking movements that had started to become worse four months previously, shortly after Rock, Jr., 's immunizations. The seizures started to be short in duration, originally just on the left side, affecting the upper extremities bilaterally. Rock, Jr., had been taking Klonopin for the past two to three months, which seemed to significantly reduce the seizures.

Other medications included Keppra and Prevacid as well as Valium for hypertonicity. Dr. Day's assessment included the following comment: "This is a 10 month-old Caucasian male with a likely hypoxic eschemic [sic] event at birth as well as a history significant for what sounds like neonatal seizures and gastroesophageal reflux disease."

23. The MRI was performed on September 13, 2007, and the films were read by Ronald Quisling, M.D. His report states:

FINDINGS

Clinical indication: 10-month-old male with the history of intractable seizures. This study was performed to evaluate for underlying structural lesion, MTS or cortical dysplasia.

Comparison: None.

Exam. Noncontrast MR imaging was performed according to epilepsy protocol.

Findings:

The examination is abnormal with global cerebral atrophy with ventricular prominence. There is residual abnormal T2 signal in the posterior putamen and anterior thalamic areas as well as the periventricular regions mainly in the deep parietal area. There is mild to moderate global atrophy. Diffusion imaging demonstrates no residual water restriction. These findings are consistent with the sequela of previous hypoperfusion state. These lesions have not progressed into encephalomalacia cavities.

The paranasal sinuses and oto-mastoid air cells are normally developed and aerated without evidence of acute or chronic mucoperiosteal thickening of intrasinus fluid.

24. On November 1, 2007, one year after Rock, Jr., 's birth, Paul Carney, M.D., Chief of Pediatric Neurology at Shands, evaluated him. Dr. Carney noted that the EEG performed on September 13, 2007, showed abnormalities consistent with spike wave activity. Mr. and Mrs. Pollock reported at one year that Rock, Jr., was not sitting or walking but showing some signs of crawling. He was saying "mama" and "dada" and possibly one to two additional words but not forming sentences. He was not transferring objects. Dr. Carney stated his impression as:

Impression: Rock is a 1 year-old boy with a history of hypoxic ischemic injury, cerebral palsy, and developmental delay, mostly motoric and seizures which appear to be under good control at present. His examination is notable for diminished axial tone and slightly increased appendicular tone. Cognitively he appears to be doing quite well. Head circumference was within the normal range. He appears not to be having excessive head growth.

25. Donald C. Willis, M.D., testified at hearing by deposition. Dr. Willis is a Florida-licensed physician who is board-certified in obstetrics and in maternal-fetal medicine. Based on his evaluation of the medical records, Dr. Willis opined that Rock, Jr., 's hospital course was consistent with his having suffered a hypoxic brain injury at the time of labor and delivery. Specifically, he testified:

Q Doctor, are you familiar with the term "birth-related neurological injury" as it is

defined in Chapter 766 of the Florida Statutes?

A Yes.

Q Let me ask you this. Do you have an opinion within reasonable medical probability whether Rock Pollock suffered injury to the brain caused by oxygen deprivation which occurred during the course of labor and delivery or resuscitation in the immediate post-delivery period?

A Yes, I do. And my opinion is that this child did suffer oxygen deprivation during that time period which led to brain injury.

Q And I know we've taken you through a number of your opinions here, Doctor, but just once again in summary fashion gave us the basis for your opinion that Rock did suffer a birth-related neurological injury.

A Sure. Well, first of all, the fetal heart rate pattern was normal as labor began. Toward the end of labor, we started to get an abnormal fetal heart rate pattern, and then very quickly an abnormal fetal heart rate pattern turned into a terminal bradycardia, which is certainly a significant event probably related to the uterine rupture.

And then when the baby was born, it had low Apgar scores that continued out to ten minutes. The umbilical cord pH was well below seven, which is significant for acidosis, and then the hospital course for the baby was certainly consistent with hypoxic injury during labor and delivery.

And then the other thing that we haven't spoke [sic] about yet was that, you know, the EEG was abnormal by the second day of life, the brain tracing. The CT scan on the second day of life was normal, and that kind of indicates that there was no brain injury

prior to the onset of labor. By the fourth day of life, an MRI was done, and that was consistent with ischemia. And all of that then would be consistent with a hypoxic brain injury that occurred during labor and delivery that resulted in brain injury.

26. Dr. Willis noted that it takes several days after an hypoxic brain injury before there are abnormalities on a CT scan. The fact that the CT scan was normal on day two of life would imply that Rock, Jr.,'s brain injury had not predated the onset of labor. Dr. Willis reviewed the fetal monitoring strips and his opinion regarding his review was as follows:

Q All right. And I take it since the fetal monitoring strips were reactive when Ms. Pollock was first put on the monitor at the hospital, that that would also show that the fetus was well oxygenated at that point in time?

A That's correct. The fetal heart rate monitor did not show any signs of fetal distress at time of admission and through most of the period of labor.

Q And pretty much this baby met all of the ACOG<sup>[12]</sup> criteria for fetal hypoxic-asphyxia, I'm sorry?

A That's right. The hypoxic brain injury significant enough to cause cerebral palsy, yes.

Q And I take it that you are timing the injury in this case during the labor and delivery time period?

A Yes.

Q There's nothing to indicate that there was any problem with Rock Pollock, Jr., at any point in time in utero?

A No, not prior to the onset of labor or delivery. Not prior to the onset of labor, no.

Q Do you have the fetal monitoring strips there with you?

A I do.

Q Are you able to pinpoint for me a time on the strips when you believe the strips became abnormal?

A Yes. Let me get them out. Okay, I have the strips in front of me and the -- let's see how best to tell you where this starts. The time of the strip -- hold on one second -- the time of the strip that starts to look abnormal is listed as 11/2/06 at 1431, and that would be page 144 is how it's marked on my paper.

27. At NICA's request and expense, Raymond J. Fernandez, M.D., a Florida-licensed medical physician, board-certified in neurology and pediatrics, who is practicing in pediatric neurology, performed an independent medical examination of Rock, Jr., on November 11, 2008. However, Dr. Fernandez requested to see Rock, Jr., 's MRI films before rendering a final opinion on his condition. On March 4, 2009, Dr. Fernandez authored an addendum to his IME report of November 17, 2008, stating that he was not yet able to determine whether Rock, Jr., was substantially and permanently impaired cognitively, but noted that "there was clear-cut evidence at that time of

substantial physical (motor) impairment that will likely be permanent due to oxygen deprivation during labor and delivery."

28. On September 30, 2009, Dr. Fernandez again examined Rock, Jr. At that time, Rock, Jr., was about a month away from his third birthday. Dr. Fernandez's undated report stated that his impression, as of Rock, Jr.,'s September 30, 2009, visit was:

IMPRESSION: It is my suspicion that in addition to substantial and permanent motor impairment, Rock Pollock [Rock, Jr.] is also substantially and permanently mentally impaired due to oxygen deprivation during labor and delivery. Today he was actually less interactive and less attentive than when examined on November 17, 2008. I expected to see improvement and it is concerning with regard to development and mental or cognitive skills that this was not the case. Also, based on history there has been little improvement in speech as Rock is approaching age 3 years and this is also of concern.

Mental impairment at Rock's age is difficult to assess under the best of conditions and even more difficult because of Rock's severe motor disability, his limited attention span and his low frustration threshold, all I believe a reflection of his underlying brain injury. It was my intention to attempt to engage Rock for a longer period of time, but he became more irritable and I agreed with Mrs. Pollock that he reached his limit with regard to interaction. I had planned to try to determine if Rock is able to identify colors and pictures of common objects and animals utilizing only visual responses since he does not speak, but I was not able to do so. This would have provided some measure of his mental ability.

To summarize, it is my opinion that Rock Pollock [Rock, Jr.] is substantially and permanently impaired physically due to oxygen deprivation during labor and delivery. This is unquestionable and it was my opinion based on findings when initially examined on November 17, 2008. Furthermore, it is my opinion that Rock Pollock is also substantially impaired mentally due to oxygen deprivation during labor and delivery. I did not feel that I was able to express this opinion based on the initial examination but there has been only minimal improvement over the past 10-1/2 months and this is worrisome with regard to long-term outcome. While he probably will continue to improve and acquire new mental skills and development milestones it is my impression that substantial mental impairment due to oxygen deprivation during labor and delivery will be permanent.

29. By deposition, Dr. Fernandez was able to provide thorough and concise testimony regarding whether Rock, Jr., suffered a birth-related neurological injury.

Q Doctor, do you have an opinion within reasonable medical probability whether Rock suffered injury to the brain caused by oxygen deprivation which occurred during the course of labor and delivery or resuscitation [sic] immediate post-delivery period?

A Yes.

Q And Doctor, would you tell us what that opinion is.

A I think we have strong evidence that he did sustain brain injury due to lack of oxygen during labor and delivery.

Q Would you walk us through this strong evidence that you're referring to, Doctor, that points to this brain injury.

A Well, again, his fetal monitoring strip, that demonstrated that -- the changes in heart rate that were consistent with hypoxia. His condition at birth, his Apgar scores were 2, 3, and 3, which are very low, indicating neurological depression. His pH, I believe there was one pH, perhaps the earliest one, that was 6.8. Subsequent pHs were also very abnormal, indicating significant acid buildup, which is an indicator of lack of oxygen. He had seizures, again indicative of brain injury. He had an abnormal MRI that I did not mention earlier that showed changes within brain tissues that were consistent with or probably due to lack of oxygen. EEGs, again, that were abnormal for the same reason. And clinical findings were just -- clinical findings provided strong evidence for a brain injury.

Q Do you know, Doctor, whether -- shortly after birth whether Rock had any spontaneous respirations?

A I think that for a period of time, he did not, and that's why he required intubation in the delivery room.

Q Doctor, take us through your testimony about acidosis. Particularly, talk to us for a minute about base excess, and what's the metabolic process that's occurring at that time?

A Under conditions of low oxygen concentrations, the body kicks into metabolism that cannot utilize oxygen and, as a result of this, there is acid buildup mainly an indicator of lack of oxygen, but it, too, can cause further damage as acids build up.

Q And base excess, what does that measure?

A It's an indirect measure of pH. I mean, it does indicate that the pH is low or acidotic. And base excess, for example, the first one that I could find was minus 15. Correction. Minus 18.5, which is very abnormal, and again, an indicator of acid buildup.

Q And I see on your initial report, you've got P02 and then 332; pCO2 of 22. Tell us what that means and its significance.

A P02 is a measure of oxygen saturation in blood. And this is very high, this P02 of 332 that I have in my note. PC02 is a measurement of carbon dioxide in blood, and this one is very low. Those numbers can be corrected fairly quickly, just by giving a baby supplemental oxygen by face masks or via the endotracheal tube. So you can correct the oxygen very quickly, but you don't correct the damage that was already done at that point. The carbon dioxide, that one can be corrected very quickly as well by just ventilating the baby. But that doesn't mean that damage was not already done.

Q Okay. In your opinion, are these--the P02 and the PC02 readings, are they inconsistent with your opinion you just gave with regard to the brain injury?

A No, but, you know, again, they're not important indicators of brain injury because they're quickly corrected once the baby is resuscitated. The more important indicators of what happened are the pH, the bicarbonate, and the base excess.<sup>[13]</sup>

(NICA Exhibit 3, Dr. Fernandez's Deposition, pp. 7-10.)

30. In his testimony, Dr. Fernandez further acknowledged wanting to review Rock, Jr., 's MRI films before finalizing the first IME.

Q At that point, did you want to review anything further?

A Yes. I wanted to review his MRIs before finalizing that first independent medical examination.

Q Were you able to review these MRI films?

A I reviewed the films from--films that were done at Gainesville at University of Florida Shands Hospital. I was able to review those.

Q Does your chart indicate the findings?

A Yes.

Q And what were those findings?

A Well, in a note that I indicated on March 4, 2009, I stated that I was able to review the MRI performed at Shands on September 13, 2007. I didn't agree entirely with the report that was in the record from University of Florida, so some disagreement. In the report, it stated that there was evidence for global cerebral atrophy. I thought there was some evidence for atrophy but not global atrophy. It was more confined to the frontal regions. In addition, there was -- there were scattered abnormalities within the brain that were indicative of prior brain damage, and those were scattered.

31. With regard to forming his ultimate opinion on whether or not Rock, Jr., is permanently and substantially physically

impaired and permanently and substantially mentally impaired,

Dr. Fernandez explained:

Q All right. After the first examination of Rock and then in reviewing the MRI films, were you able to form an opinion within reasonable medical probability whether Rock suffered permanent and substantial physical impairment resulting from oxygen deprivation during labor and delivery?

A Well, I was convinced that he had suffered permanent -- substantial and permanent damage due to lack of oxygen during labor and delivery that clearly affected his motor system.

Q All right.

A I thought I needed a little more time to arrive at a specific opinion regarding cognitive or mental function. I thought he was a little too young to be sure, when I saw him the first time.

Q And did there come the opportunity where you were able to evaluate Rock once again?

A Yes.

Q When did that occur, Doctor?

A That was September 30, 2009.

Q And did you once again perform a physical examination?

A Yes. Well, once again, obtained some independent history from his parents.

Q All right. What was that history?

A Well, Rock was then two years, nine months old. Both his mother and father were with him. They told me that he was continuing to experience seizures, or

myoclonus, which is a type of seizure, and that he was still treated with antiepileptic drugs, but control was not complete. And Dr. Carney, who's a pediatric neurologist at University of Florida, was taking care of him for this and was making adjustments in medicine. He was also given a drug called baclofen that tends to relieve or reduce muscle spasticity, and this helped him, especially at night.

With regard to his development, it was stated that progress had been slow since the initial exam of November 17, 2008. His parents told me that he was able to roll over slowly but with difficulty. They stated that he was not able to sit or crawl but was able to push himself with his feet when lying on the floor.

Mr. Pollock felt that head control was improving. It was stated that there was little improvement in speech. Specifically, he was saying "Ma," M-A, for his mother and he was making a "TH" sound for father. And it was felt that he did this meaningfully, that he made those sounds meaning mother and father.

Mr. Pollock was working with Rock, trying to teach him things and trying to get a feel for what Rock understood. He was trying to teach him to look at a green card for a yes answer and red card for a no answer. Mr. Pollock thought that Rock sometimes answered questions correctly, but he admitted that he was not always certain that that was, in fact the case. He stated that, for example, if given too much time, that Rock looked at either card sort of randomly, and Mr. Pollock was not certain if responses were meaningful or correct.

Mr. and Mrs. Pollock were trying to teach Rock colors. They stated that his responses were inconsistent and it wasn't clear that he was able to learn colors. Both parents

felt that Rock expressed discomfort nonverbally. For example, when he soiled his diaper, he slapped his thigh, and that when he was hungry, he made lip-smacking movements to indicate hunger. And that was the extent of the history.

Q All right. And then on physical examination, what were your findings, Doctor?

A Well, Rock did not speak. The only sounds that he made were laughter when tickled. He cried when fussy and frustrated. He wasn't as visually attentive as I described him to be the first time I examined him. He appeared to be more anxious. He didn't maintain good eye contact. He tended to look down and away, did not turn when I called his name. I thought he was again less attentive and less interactive socially than in November of 2008.

I asked him to do basically the same thing that I did the year before -- to look at his mother, to look at his father -- and he just didn't do it. I then tried to use some toys to see how he would interact and if he would play meaningfully. I stated here that he pushed a yellow button, on request, on a toy that activated a whistle and a blinking light. He did that twice, then lost interest.

And he -- beyond that, he was very difficult to engage socially. I tried to get his attention verbally, unable to do so. I asked him to do some basic things, unable to do so except what I described -- what I mentioned here in my note. Motor findings had not changed very much. Very little improvement, if any.

Q Did you reach an impression, Doctor?

A Yes.

Q And what was that?

A Well, again, I thought that there was clear evidence for brain injury due to lack of oxygen during labor and delivery that was substantial and permanent motor impairment and also mental or cognitive impairment.

Q And with regard to the mental and cognitive impairment, why were you able to conclude at this point that, in fact, that was substantial and permanent?

A Well, to back it up to history again, there was very little improvement, if any. I think he was making two sounds to indicate two words, and he was approaching three years of age. And that was over a period of ten months, almost a year, so virtually no improvement in terms of speech. I could not document or convince myself that there was evidence for improvement in his receptive skills beyond what we talked about in November of 2008.

Q What are receptive skills, Doctor?

A Just what a person understands; not so much what a person says, but what a person understands. So I thought that was limited. And, again, very little improvement over a period of approximately ten months, which is always worrisome in terms of long-term outcome predictions regarding long-term outcome. You like to see people improve almost month by month, if not week by week, people that are going to do well following a brain injury, and that just didn't seem to be happening.<sup>[14]</sup>

Q The opinion you just gave, Doctor, with regard to Rock's permanent and substantial mental impairment resulting from oxygen deprivation during labor and delivery, is what given within reasonable medical probability?

A Yes.

(NICA Exhibit 3, Dr. Fernandez's Deposition, pp. 13-18.)

#### CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this cause. §§ 766.301-316, Fla. Stat.

33. 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. § 766.303(1), Fla. Stat.

34. The injured "infant, her or his personal representative, parents, dependents, and next of kin," may seek compensation under the Plan by filing a claim for compensation with DOAH within five years of the child's birth.

§§ 766.302(3), 766.303(2), 766.305(1), and 766.313, Fla. Stat.

The Florida Birth-Related Neurological Injury Compensation Association, 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." § 766.305(3), Fla. Stat.

35. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, it may award

compensation to the claimant(s), provided that the award is approved by the Administrative Law Judge to whom the claim has been assigned. § 766.305(6), Fla. Stat. If, on the other hand, NICA disputes the claim, as it has in the instant case, the dispute must be resolved by the assigned Administrative Law Judge in accordance with the provisions of Chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

36. In discharging this responsibility, the Administrative Law Judge must make the following determination based on 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. 766.302(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 the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth."

§ 766.31(1), Fla. Stat.

37. Pertinent to this case, "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.

38. As the claimants, Petitioners bear the burden of proof to demonstrate entitlement to compensation under the Plan. See § 766.309(1)(a), Fla. Stat.; see also Balino v. Dep't of Health and Rehabilitative Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("[T]he burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.").

39. Despite the parties' stipulations (see Preliminary Statement), Respondent sought to present evidence to support

those stipulations, and given that even where NICA determines a claim to be compensable, NICA's acceptance of a claim for compensation must be approved by the Administrative Law Judge, see Section 766.305(7), Florida Statutes, NICA's request to present its case was granted.

40. That said, the claim and acceptance, as well as the parties' stipulation that Rock, Jr., suffered a "birth-related neurological injury" as defined in Section 766.302(2), Florida Statutes, are clearly supported by the evidence. The opinions of Doctors Willis and Fernandez are clearly "expert." Moreover, they are logical, consistent with the record, not controverted by other competent medical opinion, and have not been shown to lack credibility. Accordingly, the weight of their evidence is persuasive. See Thomas v. Salvation Army, 562 So. 2d 746, 749 (Fla. 1st DCA 1990) ("In evaluating medical evidence, a judge of compensation claims may not reject uncontroverted medical condition is not readily observable, issues of causation are essentially medical questions, requiring expert medical evidence."); See, e.g., Vero Beach Care Ctr. v. Ricks, 476 So. 2d 262, 264 (Fla. 1st DCA 1985) ("[L]ay testimony is legally insufficient to support a finding of causation where the medical condition is not readily observable."); Ackley v. Gen. Parcel Serv., 646 So. 2d 242, 245 (Fla. 1st DCA 1991) ("The determination of the cause of a non-observable medical

condition, such as a psychiatric illness, is essentially a medical question."); Wausau Ins. Co. v. Tillman, 766 So. 2d 123, 124 (Fla. 1st DCA 2000) ("Because the medical conditions which the claimant alleged resulted from the workplace incident were not readily observable, he was obligated to present expert medical evidence establishing that causal connection.").

41. The parties' additional stipulation that Dr. Amy Martin delivered obstetrical services in the course of labor, delivery and resuscitation in the immediate postdelivery period in the hospital was also supported by the evidence. Dr. Martin authorized the use of Pitocin and Cervadil through a plan of care which was carried out by Certified Nurse Midwife Danner. The record shows numerous instances on November 2, 2006, when Certified Nurse Midwife Danner consulted with Dr. Martin, a participating physician, during Mrs. Pollock's labor, and further demonstrates that the decision to proceed with a cesarean section was made via consultation between Certified Nurse Midwife Danner and Dr. Martin. See Fluet v. Fla. Birth-Related Neurological Injury Comp. Ass'n, 788 So. 2d 1010 (Fla. 2d DCA 2001) "A physician who authorizes the use of Pitocin during the delivery of a child has 'delivered' obstetrical services, even if he or she is not present in the delivery room." Additionally, Dr. Martin directly participated with Dr. Santiago in the complex situation involving both a cesarean

section and delivery by Dr. Santiago and repair of Mrs. Pollock's ruptured uterus by Dr. Martin.

42. Consequently, given the provisions of Section 766.302(2), Florida Statutes, Rock, Jr., qualifies for coverage under the Plan. See also Humana of Fla., Inc. v. McKaughan, 652 So. 2d 852, 859 (Fla. 2d DCA 1995) ("[B]ecause the Plan . . . is a statutory substitute for common law rights and liabilities, it should be strictly construed to include only those subjects clearly embraced within its terms."), approved, Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997).

43. Where, as here, the Administrative Law Judge determines that "the injury alleged is a birth-related neurological injury . . . she [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." § 766.309(2), Fla. Stat. Such an order constitutes final agency action subject to appellate court review. § 766.311(1), Fla. Stat.

44. Compensability having been proven, any issue with regard to the type and amount of benefits which Petitioners are entitled to receive from NICA will be decided by a further hearing should the parties be unable to reach an agreement on such issue(s).<sup>15</sup>

### CONCLUSION

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

(1) The claim for compensability filed by Rock Pollock, Sr., and Shawna M. Pollock, on behalf of, and as parents and natural guardians of Rock Pollock, Jr., be and the same is hereby approved.

(2) The parties are accorded forty-five (45) days from the date of this Final Order to resolve, subject to approval by the Administrative Law Judge, the amount and manner of payment of an award to the parents and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall advise the undersigned and a hearing will be scheduled to resolve such issues. Once resolved, an award will be made consistent with Section 766.31, Florida Statutes.

DONE AND ORDERED this 21st day of October, 2010, in Tallahassee, Leon County, Florida.



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ELLA JANE P. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of October, 2010.

ENDNOTES

1/ See "Petition for Benefits Pursuant to Florida Statute 766.301 et seq.," filed August 25, 2008, and the June 18, 2010, Notice of Hearing by Video Teleconference.

2/ The claim/petition did not raise any issue of "notice" or lack thereof.

3/ The December 29, 2009, Order of Abatement, Providing for Future Filings stated, in pertinent part:

On October 19, 2009, Armando T. Lauritano, counsel of record for Petitioners, filed a Motion to Allow Withdrawal of Counsel. On October 26, 2009, an Amended Motion to Allow Withdrawal of Counsel was filed, presumably to ensure service of the Motion and Amended Motion upon Petitioners and to provide a service address for them in the event withdrawal were permitted.

Petitioners did not file a response in opposition to the Motion or Amended Motion to Allow Withdrawal of Counsel in the time provided by Florida Administrative Code Rules 28-106.103 and 28-106.204 (12 days from service by mail).

On November 2, 2009, an Order for Petitioners to Show Cause by November 12, 2009, why the Amended Motion should not be granted was entered. Petitioners did not timely file any response in opposition to the Order.

On November 13, 2009, an Order Permitting Withdrawal of Counsel and Providing for Future Filing Dates was entered. That Order (1) permitted withdrawal of Mr. Lauritano as attorney of record for Petitioners; (2) required that all papers be served upon Petitioners; (3) granted Petitioners until December 3, 2009, (20 days) in which to obtain new counsel; and (4) required the parties to confer and advise the

undersigned by December 21, 2009, as to particulars of when and how this cause should go to hearing.

On December 4, 2009, Petitioners filed a "Motion for Extension of Time and the Providing of Future Filing Dates." That Motion prayed for 90 days' additional time to secure counsel and, by implication, a protective order prohibiting the December 11, 2009, deposition of Dr. Raymond Fernandez. In any case, Respondent graciously cancelled Dr. Fernandez's deposition.

No other party has timely responded in opposition to Petitioners' pending Motion.

Upon consideration, it is ORDERED:

1. There has never been any prohibition upon Petitioners continuing to seek new counsel after December 3, 2009. However, absent any request by Petitioners for a specific time frame 20 days seemed an adequate period in which they might obtain counsel.

2. There being no response in opposition to Petitioners' pending motion for 90 days in which to secure counsel, that prayer is granted. Any counsel entering upon representation of Petitioners shall immediately file and serve a notice of appearance.

3. This case is hereby abated until March 4, 2010 (90 days from Petitioners' service of the pending motion). Discovery and all other case-related activities may resume on March 5, 2010.

4. However, Respondent NICA has, via its Amended Response to Petition for Benefits, filed December 23, 2009, accepted compensability and apparently stands ready to pay the statutory amounts. Therefore, on or before March 15, 2010, the parties shall show cause, in writing, filed with the Division of Administrative Hearings, why Petitioners' claim should not be determined to be compensable.

4/ The Order of March 16, 2010, provided, in pertinent part:

The abatement of this cause automatically terminated on March 5, 2010.

No party has shown cause, in writing, filed with the Division of Administrative Hearings, why Petitioners' claim should not be determined to be compensable, nor has any party commenced formal discovery.

However, it appearing that Petitioners still have not obtained legal counsel or, at least, no attorney has filed a notice of appearance on their behalf, it is

ORDERED that on or before March 31, 2010, the parties shall confer and advise the undersigned, in writing filed with the Division of Administrative Hearings, whether compensability has been agreed upon and whether any hearing is necessary.

5/ The March 29, 2010, Order extended the response date for the March 16, 2009, Order to June 1, 2010.

6/ Petitioners repeatedly declined to stipulate to the statutory definition of compensability, apparently upon their belief that to do so would adversely affect the amount and type of benefits/expenses available from NICA. See §§ 766.301-766.316, Fla. Stat.

7/ NICA Exhibit-1 is a composite exhibit of 1857 pages in notebook form of Shawna M. Pollock's and Rock Pollock Jr., 's medical records. NICA notice acknowledgment forms signed by Shawna M. Pollock appear at page 15 (for Sarasota Memorial Hospital) and at page 522 (for Drs. Easterling, Doyle-Vallery, Martin, and Jamison of Corcoran, Easterling, and Doyle-Vallery, Ltd.). NICA Exhibit-2 is the deposition of Donald C. Willis, M.D. NICA Exhibit-3 is the deposition of Raymond Fernandez, M.D. NICA Exhibit-6 is the NICA Certificate of Participation for Deanna Doyle-Vallery, M.D. NICA Exhibit-7 is the NICA Certificate of Participation for Amy Martin, M.D. NICA Exhibit-8 is the Affidavit of NICA records custodian, Tim Daughtry, with the attached payment histories for Dr. Doyle-Vallery and Dr. Martin.

8/ As a result, the date for entry of this Final Order is extended.

9/ An Order entered September 8, 2010, took "official recognition" that Sarasota Memorial Hospital is a licensed Florida hospital.

10/ An Apgar score is a numerical expression of the condition of a newborn infant and reflects the sum points gained on assessment of heart rate, respiratory effort, muscle tone, reflex irritability, and color, with each category being assigned a score ranging from the lowest score of zero to a maximum of two. Dorland's Illustrated Medical Dictionary, 28th Edition 1994.

11/ Mrs. Pollock had a history of familial thrombosis, a gene mutation, and a potential blood-clotting problem, but no genetic problems were found with the child. See Finding of Fact 21.

12/ American Congress of Obstetrics and Gynecology.

13/ Dr. Fernandez retained his right to read and sign his deposition testimony. On September 8, 2010, he executed an "Errata Sheet" stating that his answers on page 10, line 14 should have been "no," explaining that he must have misunderstood the question.

14/ See endnote 13. Dr. Fernandez's Errata Sheet specified that on page 17, line 25, the word "interdictions" should be "predictions."

15/ The several types of awards and expenses (frequently referred to as "benefits") to which Petitioners may be entitled are set out at Section 766.31, Florida Statutes.

The law provides that any order awarding expenses "shall require immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred." See § 766.31(2), Fla. Stat.

At a benefits/expenses hearing, Petitioners bear the burden of proving the amounts of the expenses sought in each category, but it is not unusual for the parties to negotiate an agreement to all, or some, past expenses so as to limit the issues at a subsequent hearing to those matters that are actually in dispute. Frequently, such agreements eliminate the need for a hearing on the issue of expenses altogether. To this end, claimants often submit to NICA a complete list (with copies of invoices and names and addresses of providers) of all known past expenses under Section 766.31(1)(a) and authorization of release of any and all medical records, insurance program records and such other records as would enable NICA to quickly assess what may be owed.

It is noted that the parental award of \$100,000 may be paid, in the discretion of the Administrative Law Judge, in a lump sum, but that there are advantages also to periodic payments of that amount. Presumably, the parties will want to discuss this. It is also noted that many of Petitioners' concerns in this cause have revolved around how the "expenses" are to be calculated, including but not limited to how Mrs. Pollock's time devoted to Rock, Jr.'s, care would be categorized and/or what would be the appropriate hourly rate therefor, because Mrs. Pollock is, reputedly, a registered nurse.

The parties are here provided sufficient time in which to enter into negotiations and/or to elect to proceed to hearing on all or some of the expenses/benefits.

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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.