

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUAN MELIAN AND XIOMARA GIL, on)
behalf of and as parents and)
natural guardians of MICHAEL DE)
JESUS MELIAN, a minor,)
)
Petitioners,)
)
vs.) Case No. 10-0967N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
LUIS CALDERA-NIEVES, M.D.,)
)
Intervenor.)
)
_____)

FINAL ORDER APPROVING 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 for consideration pursuant to Sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition of the parties, filed August 23, 2010, 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 Petitioners, Juan Melian and Xiomara Gil are the parents and natural guardians of Michael De Jesus Melian (Michael), a minor; that Michael was born a live infant on or about July 14, 2007, at Jackson Memorial Hospital, a "hospital," as defined by Section 766.302(6), Florida Statutes, located in Miami, Florida; and that Michael's birth weight exceeded 2,500 grams. The parties have further agreed that Luis Caldera-Nieves, M.D., delivered obstetrical services at Michael's birth, and at all times material hereto, was a "participating physician" 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 Michael 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 Stipulation and Joint Petition filed August 23, 2010, is hereby approved, and the parties are directed to comply with the provisions thereof.

2. Petitioners, Juan Melian and Xiomara Gil, as the parents and natural guardians of Michael De Jesus Melian, 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 periodic payments.

3. Upon payment of the award of One hundred thousand dollars (\$100,000.00), agreed attorney's fees and other expenses totaling Seven thousand, one hundred and fifty-nine dollars and forty-seven cents (\$7,159.47) to Petitioners' attorney, Jeffrey Davis, Esquire, and past expenses, the claims of Petitioners (claimants) shall be deemed fully satisfied and extinguished, except for Respondent's continuing obligation under the provisions of 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 dispute as to the interpretation of any provision of the parties' stipulation and to resolve any disputes, including but not limited to past expenses, should they arise, regarding the parties' compliance with the terms of such stipulation and this Final Order.

DONE AND ORDERED this 27th day of August, 2010, in
Tallahassee, Leon County, Florida.



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 27th day of August, 2010.

COPIES FURNISHED:
(Via Certified Mail)

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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.