

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DARCY BROOKSHIER AND SEAN)
BROOKSHIER, as parents and)
natural guardians of SERA)
BROOKSHIER, a deceased minor,)
)
Petitioners,)
)
vs.) Case No. 10-10913N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
SOUTH FLORIDA BAPTIST HOSPITAL)
AND CHUMPHOL MAHAPAURYA, M.D.,)
)
Intervenors.)
_____)

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 April 6, 2011, 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.

By the terms of their Stipulation, the parties have agreed that Petitioners, Darcy Brookshier and Sean Brookshier, are the natural parents of Sera Brookshier (Sera), a deceased minor; that Sera was born a live infant on July 18, 2010, at South Florida Baptist Hospital, a "hospital," as defined by section 766.302(6); and that Sera's birth weight was 3,780 grams, exceeding the statutory 2,500 grams. The parties have further agreed that Carol S. Thompson, CNM, delivered obstetrical services under the supervision of Chumphol Mahapaurya, M.D., and that at all times material hereto, Dr. Mahapaurya was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by section 766.302(7). Finally, by their stipulation, the parties have agreed that Sera suffered a "birth-related neurological injury," as that term is defined by section 766.302(2), and died on August 15, 2010.

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 of the parties, filed April 6, 2011, as clarified by a telephonic hearing and correspondence, is hereby approved, and the parties are directed to comply with the provisions of the Stipulation and Joint Petition as filed.

2. Petitioners, Darcy Brookshier and Sean Brookshier, as the parents of Sera Brookshier, a deceased minor, are awarded One hundred thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1., and a death benefit of Ten thousand dollars (\$10,000.00), pursuant to section 766.31(1)(b)2., to be paid in lump sum, at this time.

3. Upon payment of the award of One hundred thousand dollars (\$100,000.00), a death benefit of Ten thousand dollars (\$10,000.00), and attorney's fees and other expenses, the claims of Petitioners (claimants) shall be deemed fully satisfied and extinguished, except for the issues reserved in paragraph 12 of the parties' Stipulation and Joint Petition (a potential second parental award of \$100,000.00), including attorney's fees and costs the Petitioners may be entitled to as a result thereof.

4. No provision is made pursuant to section 766.31(2), for past unsubmitted benefits/expenses which have been waived. No provision is made to pay future benefits/expenses because the child, Sera, is deceased.

5. With regard to the issues reserved in paragraph 12 of the parties' Stipulation and Joint Petition (the potential of a second parental award of \$100,000.00) and with regard to any dispute regarding attorney's fees and other expenses of the claim, a hearing (or hearings, if the parties elect to address fees and expenses to date in advance of an appellate ruling in

Samples v. NICA (SC 10-1295)) will be scheduled by separate notice(s) of hearing(s) to address those issue(s). As for the date of the hearing(s), the parties shall, within 35 days of the date of this Order, advise the undersigned Administrative Law Judge, with specificity, of the matters remaining in dispute, of whether they intend to determine fees and costs to date or to reserve the issue of fees and costs to date until after the decision in Samples v. NICA (SC 10-1295), and several mutually agreeable dates for hearing if appropriate.

6. By the parties' express agreement, this case will be abated as to the issues reserved in paragraph 12 of the parties' Stipulation and Joint Petition and fees and expenses related thereto until after the decision in Samples v. NICA (SC 10-1295). The parties are charged with providing the undersigned with a copy of that appellate decision within 20 days of its rendition.

7. 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 should they arise, regarding the parties' compliance with the terms of such stipulation and this Final Order.

DONE AND ORDERED this 27th day of May, 2011, in
Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of May, 2011.

COPIES FURNISHED:

(Via Certified Mail)

Allison C. McMillen, Esquire
McMillen Law Firm
390 North Orange Avenue, Suite 140
Orlando, Florida 32801
(Certified Mail No. 7010 1670 0000 3097 1406)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(Certified Mail No. 7010 1670 0000 3097 1413)

David S. Nelson, Esquire
Barr, Murman & Tonell, P.A.
201 East Kennedy Boulevard, Suite 1700
Tampa, Florida 33602
(Certified Mail No. 7010 1670 0000 3097 1420)

Robert J. Grace, Jr., Esquire
Stiles, Taylor & Grace, P.A.
Post Office Box 460
Tampa, Florida 33601
(Certified Mail No. 7010 1670 0000 3097 1437)

Susan S. Thompson, CNM
1603 West Reynolds Street
Plant City, Florida 33563
(Certified Mail No. 7010 1670 0000 3097 1444)

Amy Rice, Acting Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7010 1670 0000 3097 1451)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7010 1670 0000 3097 1468)

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.