

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICCY MARADIAGA AND CARLOS)
SORDIA, on behalf of and as)
parents and natural guardians)
of JEAN CARLOS SORDIA-)
MARADIAGA, a minor,)
)
Petitioners,)
)
vs.) Case No. 11-0640N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
LAKELAND REGIONAL MEDICAL)
CENTER, INC.,)
)
Intervenor.)
_____)

FINAL ORDER ON NOTICE

Pursuant to notice, a final hearing on the issue of notice was held in this case on August 29, 2012, in Lakeland, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Maria D. Tejedor, Esquire
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For Respondent: David W. Black, Esquire
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For Intervenor: Richard L. Allen, Jr., Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether notice was accorded the patient, as contemplated by section 766.316, Florida Statutes, or whether the failure to give notice was excused because the patient had an emergency medical condition, as defined in section 395.002(8)(b), Florida Statutes, or the giving of notice was not practicable.

PRELIMINARY STATEMENT

On November 24, 2010, Petitioners, Riccy Maradiaga and Carlos Sordia, on behalf of and as parents and natural guardians of Jean Carlos Sordia-Maradiaga (Jean Carlos), filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition) with DOAH. The check for the filing fee, which accompanied the Petition, was not signed and was returned to Petitioners. The filing fee was paid on February 3, 2011. Petitioners alleged that Jean Carlos suffers from cerebral palsy and notice was not provided.

The case was originally assigned to Administrative Law Judge Ella Jane P. Davis, but was later transferred to

Administrative Law Judge Susan B. Kirkland due to the retirement of Administrative Law Judge Davis.

The Petition provided that Karin Stanton, M.D., was the physician providing obstetric services at birth and that Jean Carlos was born at Lakeland Regional Medical Center (Lakeland Regional). DOAH served the Birth-Related Neurological Injury Compensation Association (Association) with a copy of the Petition on February 11, 2011. DOAH served Dr. Stanton and Lakeland Regional with copies of the Petition on February 14, 2011.

On February 25, 2011, Lakeland Regional filed a Petition for Leave to Intervene. An Order granting leave to intervene was entered on March 10, 2011.

The final hearing on the issues of compensability and notice was scheduled for October 17 and 18, 2011. On May 26, 2011, the Association filed a Motion for Summary Final Order, requesting that a final order be entered finding that Petitioners' claim is compensable under the Florida Birth-Related Neurological Injury Compensation Plan (NICA Plan). The issue of notice was not addressed in the motion. Petitioners moved for an extension of time to respond to the Association's Motion for Summary Final Order. An Order was entered on June 13, 2011, extending the time to respond to the Motion for Summary Final Order to July 15, 2011. Petitioners requested

another extension of time to respond to the Motion for Summary Final Order, and an Order was entered on July 12, 2011, granting all parties an extension of time to file a response to the Motion for Summary Final Order until August 12, 2011.

The response filed by Petitioners contended that Dr. Stanton was not a participating physician because Dr. Stanton was an employee of the federal government. Although Petitioners did not allege in their Petition that obstetrical services were provided by a midwife, Petitioners claimed that Corrine Audette, CNM, provided services and that she was not a participating physician because she was also a federal government employee. Petitioners also claim that notice was not provided pursuant to section 366.316 and requested a final hearing be held on the issue of notice. On September 6, 2011, Petitioners filed Petitioners' Memorandum of Law Regarding NICA Compensability.

On September 8, 2011, Respondent filed certifications for Dr. Stanton and Ms. Audette showing that they were participants in the NICA Plan at the time that Jean Carlos suffered his injuries.

On September 30, 2011, a Partial Summary Final Order was entered finding that Petitioners' claim was compensable, finding that Dr. Stanton and Ms. Audette were participants in the NICA Plan, and finding that obstetrical services were provided by a

participating physician at birth. Jurisdiction was reserved on the issues of notice and award.

On October 11, 2011, an Order was entered continuing the final hearing scheduled to commence on October 17, 2011. The Order further provided:

Petitioners' Motion misapprehends the nature of the hearing to be continued. "Compensability" has been finally determined by the Partial Summary Final Order entered on September 30, 2011.

* * *

If Petitioners now contend other persons or entities not named in the Petition were required to give notice on their own behalf, Petitioners should amend their Petition, and time will be required to serve those persons or entities.

On October 18, 2011, Petitioners filed Petitioners' Motion for Leave to Amend Petition, seeking to add Ms. Audette as a member of the medical staff who was directly involved in the labor of Ms. Maradiaga. By Order dated November 21, 2011, the motion was granted and it was clearly stated that the issue of compensability had been decided in the September 30, 2011, Partial Summary Final Order and that the only issue to be determined at the final hearing would be the issue of notice. DOAH served Ms. Audette with a copy of the Amended Petition on November 23, 2011.

On April 2, 2012, Petitioners filed Petitioners' Request for Judicial Notice of certified copy of an answer filed by the defendant in Riccy Maradiaga and Carlos G. Sordia, individually and on behalf of J.C.D.S, a minor v. United States of America, in the United States District Court, Middle District of Florida, Tampa Division, Case No. 8:10-cv-T-2673-TGW. On April 19, 2012, an Order was entered granting Petitioners' Request for Judicial Notice.

The final hearing was rescheduled for August 29, 2012. The sole issue to be determined by the final hearing was whether Ms. Maradiaga was provided notice pursuant to section 366.216.

On August 16, 2012, Lakeland Regional filed a Request for Judicial Notice, requesting that judicial notice be taken of the following: (1) an Order by the United States District Court Middle District of Florida, Tampa Division, filed on April 5, 2011, in Maradiaga v. United States of America, Case No. 8:10-cv-2673-T-26TGW, granting the Defendant's motion to dismiss Plaintiffs' complaint for lack of subject matter jurisdiction; (2) an opinion by the United States Court of Appeals for the Eleventh Circuit dated May 8, 2012, in Maradiaga v. United States of America, Case No.: 11-12474, affirming the District Court's order dismissing the complaint; and (3) a Mandate for Appellate Ruling dated July 8, 2012. Lakeland Regional's Request for Judicial Notice was granted at the final hearing.

At the final hearing, Joint Exhibits 13-19 were admitted in evidence. Joint Exhibits 20 and 21, the depositions of Angie Rogue and Deborah Newbern, respectively, were not admitted. Lakeland Regional called Angie Rogue and Deborah Newbern as its witnesses. Intervenor's Exhibits 1, 9, and 10 were admitted in evidence. Intervenor's Exhibit 2 is admitted in evidence. Intervenor's Exhibit 4 was not admitted in evidence.

At the final hearing, Respondent did not call any witnesses and did not have any exhibits admitted. Petitioners called Ms. Maradiaga and Mr. Sordia as their witnesses.

The two-volume Transcript of the final hearing was filed on October 5, 2012. The parties agreed to file their proposed final orders within 20 days of the filing of the Transcript. On October 12, 2012, Petitioners filed Petitioners' Unopposed Motion for Extension of Time to File Proposed Final Order. The motion was granted by Order dated October 12, 2012, and the time for filing proposed final orders was extended to November 5, 2012. Petitioners and Intervenor filed their proposed final orders on November 5, 2012. Respondent did not file a proposed final order.

FINDINGS OF FACT

1. Ms. Maradiaga was born in Honduras in 1992, where her primary language was Spanish. She moved to the United States in

2005 and attended school here for part of the eighth grade and the ninth and tenth grades. She was taught in English, but did not do well in school because Spanish was her primary language.

2. While in the tenth grade, Ms. Maradiaga became pregnant with Jean Carlos. Ms. Maradiaga went to the health department for prenatal care except for one visit in October 2008 when she went to Central Florida Health Care, Inc. Because she would be required to make monthly payments to Central Florida Health Care, Inc., she decided to remain with the health department for her prenatal care.

3. During her visit to Central Florida Health Care, Inc., on October 20, 2008, Ms. Maradiaga signed an acknowledgement form stating that she had been given information by Central Florida Health Care, Inc., that Dr. Stanton and Corrine Audette were participants in the Florida Birth-Related Neurological Compensation program and that she had received a copy of the pamphlet prepared by the Association (NICA pamphlet). The acknowledgement form was written in Spanish.

4. Ms. Maradiaga admits that she signed the acknowledgement form, but denies that she received the NICA pamphlet.

5. Medical Records from Central Florida Health Care, Inc. (Joint Exhibit 15, Bates stamp 69), state that Ms. Maradiaga was given a NICA brochure and the form was signed on October 20,

2008, which is the date that Ms. Maradiaga signed the acknowledgment form.

6. The greater weight of the evidence establishes that Dr. Stanton and Ms. Audette provided notice pursuant to section 766.316 on October 20, 2008, via the NICA pamphlet provided by Central Florida Health Care, Inc.

7. Ms. Maradiaga was advised at the health department that she would deliver her baby at Lakeland Regional. During her third month of pregnancy, Ms. Maradiaga was given a form by staff at the health department for pre-registration at the hospital. The form was to be sent to Lakeland Regional. Ms. Maradiaga filled out the form with information such as her name address and telephone number. According to Ms. Maradiaga, she mailed the form to Lakeland Regional during the fourth month of her pregnancy, sometime in August 2008.

8. There is no record that Lakeland Regional received the form. When a patient desires to pre-register for delivery at Lakeland Regional, the patient may receive a form from the patient's doctor or clinic. The form requests basic information such as name, address, and telephone number. The patient sends the form to Lakeland Regional. When the hospital receives the form, the information is entered into the computer and a patient account is created for the patient. The patient is assigned a patient medical record number. Future information concerning

the patient will be entered into the patient management computer system using the patient account number.

9. During the pre-registration process, the hospital will contact the patient after the patient account is established and provide information to the patient. Included with the information that is sent to the obstetric patient is the NICA pamphlet and the acknowledgment form.

10. Deborah Newbern is the assistant director of patient access services for Lakeland Regional. She oversees the operations of the patient access areas for all admitting, including pre-registration. Ms. Newbern searched the computer system using Ms. Maradiaga's name and the only account number that appeared for Ms. Maradiaga was the account established when she came to Lakeland Regional on December 27, 2008. If Ms. Maradiaga had been pre-registered, there would be an account number documenting the pre-registration. Ms. Newbern found none. Based on the records of Lakeland Regional, the greater weight of the evidence establishes that the first contact that Lakeland Regional had with Ms. Maradiaga was on December 27, 2008.

11. Petitioners argue that because Ms. Maradiaga's prenatal records from the health department and Central Florida Health Care, Inc., are found in Ms. Maradiaga's hospital records that a professional relationship was formed between Lakeland

Regional and Ms. Maradiaga either in August or October 2008 based on a notation in the health department records, which states:

Hospital	Date Sent	Staff Initials
<u>LRMC</u>	<u>8/14/08</u>	<u>(illegible)</u>
<u>LMRC</u>	<u>10/16/08</u>	<u>(illegible)</u>

There was no testimony concerning who made the notation, when the notation was made or when Lakeland Regional received the records.

12. The records from Central Florida Health Care, Inc., contain information dated as late as November 10, 2008. The records from Central Florida Health Care, Inc., state that Ms. Maradiaga had transferred from the health department and that partial records had been received and put in the file to be scanned. At the top of the records from Central Florida Health Care, Inc., is the notation: "PRINTED BY: zLinda LRMC z Hooper on 12/27/2008 at 5:59 PM." The notation leads to the inference that Lakeland Regional received Ms. Maradiaga's prenatal records from Central Florida Health Care, Inc., on December 27, 2008, shortly after Ms. Maradiaga arrived at the hospital.

13. The records from the health department contain entries made after October 16, 2008. For example, entries were made on the prenatal record from October 22, 2008, through December 24, 2008, and a notation was made on the clinical notes dated

November 19, 2008. (Joint Exhibit 15, Bate stamp 80-82).

Obviously, records made after October 16, 2008, could not have been sent on October 16, 2008. A note in the initial nursing assessment at Lakeland Regional states that the prenatal history has been reviewed and is current.

14. Taking the evidence as a whole, it cannot be concluded that Lakeland Regional had Ms. Maradiaga's prenatal records prior to her visit on December 27, 2008.

15. At approximately 4:40 p.m., on December 27, 2012, Ms. Maradiaga presented to the emergency room at Lakeland Regional complaining of abdominal pains. At the time she came to the emergency room, she had been experiencing contractions since 10:00 a.m. the same day, and the contractions had continued to become stronger and more frequent. She was in early active labor, having good strong contractions every five minutes.

16. She was transferred to the labor and delivery unit, where she was admitted as an inpatient by Angie Rogue, who is a patient access representative for Lakeland Regional. Ms. Rogue does not specifically recall Ms. Maradiaga; however, she follows a set routine for admitting obstetric patients.

17. The routine that she uses to admit in-patients is the same for every patient. The only difference that she would make would depend on the number of forms that she gives the patient

depending on whether the patient has private insurance, is on Medicaid or has no insurance.

18. After the patient is transferred to the labor and delivery unit, Ms. Rogue receives an in-patient order form, which lets her know that a patient needs to be admitted to the hospital as an in-patient. She inputs into the computer system that the patient is going to be admitted as an in-patient and prints out a patient summary form. She gathers other forms such as the HIPPA form, the NICA pamphlet, and the NICA acknowledgement form to take to the patient. She also prepares the ID armband, which is placed on the patient.

19. Ms. Rogue goes to see the patient in the labor and delivery unit, introduces herself and explains that she is there to admit them. She asks the patient her name and date of birth to make sure that the information on the armband is correct. She goes through the information on the patient summary form to make sure that it is also correct and gives the patient the HIPPA form to sign, the NICA pamphlet and the acknowledgment form for the patient to sign showing the patient received the NICA pamphlet.

20. If the patient is being transferred from the emergency room, the patient would receive the patient summary, the HIPPA form, and a welcome packet from staff in the emergency room. When a patient is given forms or signs forms, the hospital staff

person will note it on the patient notes in the computer system. Each staff member has a badge number, which is entered into the computer when patient notes are entered.

21. In the case of Ms. Maradiaga, the patient notes show that Ms. Maradiaga received a welcome packet, HIPPA information, and the patient summary. The patient notes indicate that Ms. Maradiaga's interaction with a hospital employee for these documents was with a staff member, whose badge number is 15070. The medical records contain a patient summary that is signed by Ms. Maradiaga, witnessed by someone other than Ms. Rogue, and dated December 27, 2008. On December 27, 2008, the emergency room staff did not provide obstetric patients with the NICA pamphlet or have the patients sign the acknowledgement form.

22. The patient notes show that the following entry made on December 27, 2008, by Ms. Rogue, whose badge number is 13763, in Ms. Maradiaga's patient account record:

13763: RCVD ORDER TO ADMIT AS INPT FOR
LABOR/SCNND, PT IS FROM ER, PT GIVEN NICA,
PT SIGNED NICA, PLACED ARM ON PT, PT IS
PENDING BIRTH

23. Ms. Maradiaga signed an acknowledgment form dated December 27, 2008, which stated:

I have been furnished information by
Lakeland Regional Medical Center prepared by
the Florida Birth-Related Neurological
Injury Compensation Association, and have
been advised that my doctor and all nurse
midwives associated with my doctor's

practice participate in the Florida Birth Related Neurological Injury Compensation program, wherein, certain limited compensation is available in the event certain neurological injury may occur during labor, delivery or resuscitation. For specifics on the program, I understand I can contact the Florida Birth-Related Neurological Injury Compensation Association (NICA), 1435 East Piedmont Dr., Suite 101, Tallahassee, Florida 32312, (904)488-8191. I further acknowledge that I have received a copy of the brochure prepared by NICA.

24. Ms. Rouge's signature appears at the bottom of the acknowledgement form as a witness with the date of December 27, 2008.

25. Ms. Maradiaga and Mr. Sordia claim that the only time that Ms. Rogue had any interaction with Ms. Maradiaga was on the morning after Jean Carlos was born, December 28, 2008. According to Ms. Maradiaga, the acknowledgment form had the date of December 27, 2008, entered when she signed it, and she advised Ms. Rogue that the date was incorrect, but Ms. Rogue told her that the date was okay. However, in her deposition, Ms. Maradiaga testified that she signed the acknowledgment form in the emergency room and then stated that she did not specifically recall signing the form because she had to sign a lot of forms just to enter the hospital and she was in a lot of pain. Both Ms. Maradiaga and Mr. Sordia deny that Ms. Maradiaga received a NICA pamphlet.

26. The data that is entered into the patient's computer records is dated on the date that the data is entered. If an amendment or change were necessary, the date that the amendment or change was made would also be entered into the computer records. In other words, an employee could not go into the computer system and change the date that the original entry was made. The date that was entered into the computer records as the date that Ms. Maradiaga received the NICA pamphlet and signed the acknowledgment form was December 27, 2008. Based on the computer records, the signed and dated acknowledgment form, and the credibility of the witnesses, the greater weight of the evidence establishes that Lakeland Regional provided the NICA pamphlet to Ms. Maradiaga and Ms. Maradiaga signed the acknowledgment form on December 27, 2008.

27. Petitioners have argued that Ms. Maradiaga did not have sufficient notice because she does not speak English and was not provided an interpreter. Mr. Sordia was with Ms. Maradiaga at the hospital on December 27, 2008, and he did translate for Ms. Maradiaga. The hospital records are replete with information that had to come from Ms. Maradiaga or from someone who was translating.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 766.301-766.316, Fla. Stat. (2012).

29. The only issue that was to be determined in the final hearing is whether notice was provided pursuant to section 766.316, which provides:

Each hospital with a participating physician on its staff and each participating physician, other than residents, assistant residents, and interns deemed to be participating physicians under s. 766.314(4)(c), under the Florida Birth-Related Neurological Injury Compensation Plan 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(8)(b) or when notice is not practicable.

30. Section 395.002(8)(b) defines "emergency medical condition" as follows:

(8) "Emergency medical condition" means:

* * *

(b) With respect to a pregnant woman:

1. That there is inadequate time to effect safe transfer to another hospital prior to delivery;
2. That a transfer may pose a threat to the health and safety of the patient or fetus;
- or
3. There is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

31. Section 766.309(1) (d) provides:

(1) The administrative law judge shall make the following determination based upon all available evidence:

* * *

(d) Whether if raised by the claimant or other party, the factual determinations regarding the notice requirements in s. 766.316 are satisfied. The administrative law judge has the exclusive jurisdiction to make these factual determinations.

32. Petitioner contends that no physician involved in the labor, delivery, or resuscitation in the immediate postdelivery period in the hospital gave pre-delivery notice and that any notice that may have been provided by the hospital was insufficient. Respondent did not take a position on the notice issue. Intervenor contends that the appropriate statutory notice was given. As the proponent of the proposition that appropriate notice was given, the burden on the issue of notice

is upon the Intervenor. Tabb v. Fla. Birth-Related Neurological Injury Comp. Ass'n. 880 So. 2d 1253, 1257 (Fla. 1st DCA 2004).

33. Section 766.305(1)(c) provides that the petition shall include "[t]he name and address of any physician providing obstetrical services and who was present at the birth and the name and address of the hospital at which the birth occurred." In their Petition, Petitioners named Karin Stanton, D.O., as the physician providing obstetric services who was present at the birth of Jean Carlos at Lakeland Regional. Petitioners later amended their Petition to include Corrine Audette, CNM, as a physician providing obstetrical services during labor and delivery. No other health care providers have been named in either the Petition or Amended Petition. Thus, DOAH did not serve any other health care providers with a copy of the Petition or Amended Petition, and the issue of notice in this proceeding relates only to whether notice was provided by Dr. Stanton, Ms. Audette, and Lakeland Regional.

34. The greater weight of the evidence established that Lakeland Regional provided notice as required by section 766.316 on December 27, 2008, when Ms. Maradiaga first presented to Lakeland Regional and first established a professional relationship with Lakeland Regional. Although Ms. Maradiaga may have mailed a pre-registration form to Lakeland Regional, the greater weight of the evidence established that Lakeland

Regional did not receive the form. Petitioners' contention that Lakeland Regional was negligent and lost the form is speculative.

35. Petitioners argue that the health department sent medical records to Lakeland Regional two different times and, as a result, a professional relationship should have been established either in August or October 2008. There was no evidence that Lakeland Regional received the medical records on the date that the health department's records show that the records were sent. Additionally, the records from the health department contain entries that occurred after October 2008, including entries in December 2008. Lakeland Regional could not have gotten the medical records with entries in December 2008 until December 2008. The medical records from Central Florida Health Care, Inc. were printed by Lakeland Regional shortly after Ms. Maradiaga arrived on December 27, 2008. The greater weight of the evidence established that Lakeland Regional received Ms. Maradiaga's prenatal records on December 27, 2008.

36. Even if Lakeland Regional had received Ms. Maradiaga's records prior to her first visit on December 27, 2008, Ms. Maradiaga was not pre-registered and was not a patient of the hospital prior to December 27, 2008. Thus, the presence of the prenatal records in Ms. Maradiaga's hospital records do not

establish a professional relationship between Ms. Maradiaga and Lakeland Regional prior to her first visit on December 27, 2008.

37. Ms. Maradiaga signed a form acknowledging receipt of the NICA pamphlet. Her signature on the acknowledgment form raises a rebuttable presumption that the notice requirements of section 766.316 have been met. § 766.316, Fla. Stat. The presumption has not been rebutted by Petitioners.

38. Petitioners contend that Lakeland Regional had Ms. Maradiaga sign an acknowledgment form on December 28, 2008, after she had delivered her baby and that Ms. Maradiaga did not receive a NICA pamphlet. The greater weight of the evidence does not support this contention.

39. Although Ms. Rogue does not independently remember registering Ms. Rivera on December 27, 2008, she follows her normal routine and practice when registering obstetrical patients, which includes giving the brochure to the patient and having the patient sign the acknowledgment form. "Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove the conduct of the organization on a particular occasion was in conformity with routine practice." § 90.406, Fla. Stat. (2012); see also Tabb, 880 So. 2d at 1259. The computer records of Lakeland Regional show that on December 27, 2008, Ms. Rogue admitted Ms. Maradiaga to the labor

and delivery unit, provided Ms. Maradiaga with a NICA pamphlet, and had Ms. Maradiaga sign the acknowledgment form.

40. It is found that the testimony of Ms. Maradiaga and Mr. Sordia that the acknowledgment form was misdated and that Ms. Maradiaga did not receive a NICA pamphlet is not credible.

41. Petitioners contend that the acknowledgment form is deficient because it did not identify Lakeland Regional as a participating hospital. This argument is without merit. Section 766.316 does not require that a hospital have the patient sign an acknowledgment form. It is up to the hospital to elect whether to use an acknowledgment form. Additionally, the notice is required to be given by a hospital if the hospital has a participating physician on its staff, not if the hospital participates in the NICA Plan. § 766.316, Fla. Stat.

42. Section 766.316 requires that "[e]ach hospital with a participating physician on its staff and each participating physician" shall provide notice. Unless the notice provided by the hospital indicates that the notice was also being given on behalf of a participating physician, the notice does not extend to the participating physicians. The participating physicians must give notice on their own. See Fla. Birth-Related Neurological Injury Comp. Ass'n v. Dep't of Admin. Hearings, 29 So. 3d 992, 994 (Fla. 2010).

43. The greater weight of the evidence established that Dr. Stanton and Ms. Audette gave notice required by section 766.316 to Ms. Maradiaga on October 20, 2008, and that Ms. Maradiaga received a NICA pamphlet on that date. Ms. Maradiaga admits signing the acknowledgement form, and the medical records from Central Florida Health Care, Inc. show that Ms. Maradiaga did receive a NICA pamphlet and signed the acknowledgement form. Ms. Maradiaga's testimony that she did not receive a NICA pamphlet on October 20, 2008, is not credible.

44. Based on the evidence presented, Ms. Maradiaga was having strong contractions every five minutes when she arrived at the emergency room on December 27, 2008. The contractions had started at 10:00 a.m. and continued to become stronger and more frequent. Based on the definition of emergency medical condition in section 395.002(8)(b)3, the evidence established there was an onset and persistence of uterine contractions when Ms. Maradiaga arrived at the emergency room on December 27, 2008. Therefore, Lakeland Regional did not have to give notice which it provided pursuant to section 766.316.

45. Petitioner raised several issues on the constitutionality of sections 766.30-766.316. The Administrative Law Judge does not have jurisdiction to rule on the constitutionality of statutes. See generally Fla. Hosp. v.

Agency for Healthcare Admin., 823 So. 2d 844, 849 (Fla. 1st DCA 2002).

CONCLUSION

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

ORDERED that Lakeland Regional, Dr. Stanton, and Ms. Audette provided notice as required by section 766.316.

It is further ORDERED that the parties are accorded 30 days from the date of this Order to resolve, subject to approval of the Administrative Law Judge, the amount and manner of payment of an award to Ms. Rivera; the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees and costs; and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall so advise the Administrative Law Judge, and a hearing will be scheduled to resolve such issues. Once resolved, an award will be made consistent with section 766.31.

DONE AND ORDERED this 3rd day of December, 2012, in
Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
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Filed with the Clerk of the
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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).