

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOMARIE PEREZ AND JOSE G.)
COLON, on behalf of and as)
parents and natural guardians)
of JOSIANNY M. COLON, a minor,)
)
Petitioners,)
)
vs.) Case No. 11-3002N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
ORLANDO HEALTH, INC., d/b/a)
WINNIE PALMER HOSPITAL FOR)
WOMEN & BABIES, RICARDO JAVIER)
LOPEZ, M.D., AND PHYSICIAN)
ASSOCIATES,)
)
Intervenors.)
_____)

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon the Stipulation for Entry of Final Summary Order [sic] filed January 13, 2012.

By their stipulation, the parties, through their respective counsel, have agreed that Josianny M. Colon's situation does not meet the definition of a "birth-related neurological injury," as defined at section 766.302(2), Florida Statutes.

In support of their stipulation, the parties have incorporated the July 28, 2011, letter of Donald C. Willis, M.D., and the September 20, 2011, and November 14, 2011, letters of Raymond J. Fernandez, M.D., which were attached to Respondent NICA's Response to Petition, filed November 15, 2011, pursuant to section 766.305(4). Even though none of the letters are under oath or accompanied by an affidavit, and none are couched in terms of "reasonable medical probability," the parties mutually submit that the undersigned may rely upon the letters as if admitted in evidence by stipulation.

It being the opinion of an obstetrician (Dr. Willis), who has reviewed the medical records, and of a pediatric neurologist (Dr. Fernandez), who has reviewed the medical records and who also has personally examined Josianny, that Josianny's problems and situation do not meet the definition of a "birth-related neurological injury" as set out at section 766.302(2), in that she has not suffered loss of oxygen or mechanical trauma to her brain or spinal cord during the statutory period and does not suffer substantial motor (physical) impairment, it is

ORDERED that this cause is dismissed with prejudice because it is unrefuted that the injury, if any, to Josianny M. Colon does not constitute a "birth-related neurological injury" as defined by section 766.302(2).

DONE AND ORDERED this 24th day of January, 2012, 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 24th day of January, 2012.

COPIES FURNISHED:

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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).