

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSHUA WILMERING AND ASHLEY)
WILMERING, on behalf of and as)
parents and natural guardians)
of RILEY WILMERING, deceased,)
)
Petitioners,)
)
vs.) Case No. 11-3285N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
BAYFRONT MEDICAL CENTER, INC.,)
AND MARILYN W. FUDGE, 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 September 7, 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 Joshua Wilmering and Ashley Wilmering are the parents and legal guardians of Riley Wilmering (Riley), a deceased minor; that Riley was born a live infant on or about August 10, 2010, at Bayfront Medical Center, a "hospital" as defined by section 766.302(6), located in St. Petersburg, Florida; that Riley's birth weight exceeded 2,500 grams; and that Riley also died on August 10, 2010. The parties have further agreed that Marilyn Fudge, M.D., delivered obstetrical services at Riley'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). Finally, by their stipulation, the parties have agreed that Riley suffered a "birth-related neurological injury," as that term is defined by section 766.302(2).

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 September 7, 2011, is hereby approved, and the parties are directed to comply with the provisions thereof.

2. Petitioners, Joshua Wilmering and Ashley Wilmering, as the parents and legal guardians of Riley Wilmering, 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., all to be paid in lump sum.

3. Petitioners' attorney, Charles T. Moore, Esquire, is awarded an agreed attorney's fee of Eight thousand five hundred fifty dollars (\$8,550.00) and expenses of Four thousand one hundred eighty-eight hundred dollars and sixty-nine cents (\$4,188.69), totaling Twelve thousand seven hundred thirty-eight dollars and sixty-nine cents (\$12,738.69), in full, for services rendered in the filing of this claim, also to be paid in lump sum, forthwith.

4. Upon payment of the award of One hundred thousand dollars (\$100,000.00), a death benefit of Ten thousand dollars (\$10,000.00), and past benefits under section 766.31(1)(a), the claims of Petitioners (Claimants) shall be deemed fully satisfied and extinguished. No provision is made for the payment of future expenses, as Riley is deceased.

5. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, including but not limited to past expenses, should disputes arise, regarding the parties' compliance with the terms of this Final Order.

DONE AND ORDERED this 13th day of September, 2011, in
Tallahassee, Leon County, Florida.

Ella Jane P. Davis

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 13th day of September, 2011.

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 § 766.311, Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n 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.