

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTIANA BUFFINGTON AND )  
JOSHUA BUFFINGTON, individually )  
and as parents and next friends )  
of MIKAYLA BUFFINGTON, a minor, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 11-5077N  
 )  
FLORIDA BIRTH-RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
PAMELA CARBIENER, M.D., )  
 )  
Intervenor. )  
\_\_\_\_\_ )

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AWARD

This cause came on for consideration pursuant to sections 766.304 and 766.305(7), Florida Statutes, upon Petitioners', Respondent's, and Intervenor's Stipulation and Joint Petition for Compensation of Claim Arising out of Florida Birth-Related Neurological Injury pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition), filed with the Division of Administrative Hearings on April 3, 2012, for the entry of an order approving the resolution of a claim for compensation benefits filed in accordance with the provisions of chapter 766

and a resolution of the exclusive remedy otherwise available as outlined in chapter 766.

By the terms of their stipulation, Petitioners, Respondent, and Intervenor (the Parties) have agreed that Christiana Buffington and Joshua Buffington are the parents and legal guardians of Mikayla Buffington (Mikayla), a minor; that Mikayla was born a live infant on or about April 21, 2011, in Volusia County, Florida, at Halifax Medical Center; and that Mikayla's birth weight exceeded 2,500 grams. The Parties have further agreed that Pamela Carbiener, M.D., rendered obstetrical services at Mikalya's delivery and was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan (Plan), as defined by section 766.302(7). The Parties have agreed that Mikayla suffered a "birth-related neurological injury," as that term is defined by section 766.302(2).

On April 12, 2012, a telephonic conference call was held with the Parties, and the Parties further stipulated that Halifax Medical Center is a hospital as defined by section 766.302(6). The Parties agreed to the correction of the following three scrivener's errors. In paragraph 13, the Stipulation refers to the issue reserved in paragraph 12; the correct reference is paragraph 11. In paragraph 12(b), the Stipulation refers to paragraph 20; the correct reference is

paragraph 19. In paragraph 13(b), the Stipulation refers to paragraph 23; the correct reference is paragraph 22.

After due consideration of the interests of the Parties, and being otherwise fully advised in the premises, it is

ORDERED:

1. The Stipulation and Joint Petition filed on April 3, 2012, is hereby approved, and the Parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Christiana Buffington and Joshua Buffington, as the parents and legal guardians of Mikayla Buffington, a minor, are awarded one hundred thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1, to be in a lump sum; payment of benefits up to and including the effective date of the Stipulation pursuant to section 766.31(1)(a), subject to the provisions of paragraph 19 of the Stipulation and Joint Petition; and payment of future expenses as incurred.

3. Respondent shall pay reasonable expenses to McMillan Law Firm, P.A., incurred in connection with the filing of Petitioners' claim in the instant case, including reasonable attorney's fees, to be agreed upon by the parties at the resolution of this claim. At that time, if the Parties cannot reach an agreement as to the reasonable expenses to be paid, the

Parties shall request a hearing before the Administrative Law Judge to resolve such issue.

4. Petitioners disagree with Respondent on the issue of whether section 766.31(1)(b)1 entitles two parents to a single parental award not to exceed \$100,000.00 in the aggregate, and, if so whether that statute is constitutional. Those issues are currently before the Florida Supreme Court in Samples v. Florida Birth-Related Neurological Injury Compensation Association, (SC 10-1295). The instant case is abated with regard to this issue only until a decision is reached in Samples.

5. Upon the payment of the award of \$100,000.00, attorney's fees and other expenses incurred in connection with the filing of this claim, and past benefit/expenses, the claims of Petitioners shall be deemed fully satisfied and extinguished, except for issue reserved in paragraph 11 of the Stipulation and Joint Petition, including attorney's fees and costs Petitioners may be entitled to as a result thereof, and Respondent's continuing obligation under section 766.31(2) to pay future expenses as incurred.

6. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, should they arise, regarding the Parties' compliance with the terms of this Order.

DONE AND ORDERED this 13th day of April, 2012, in  
Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
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 13th day of April, 2012.

COPIES FURNISHED:

(Via Certified Mail)

Allison C. McMillen, Esquire  
McMillen Law Firm  
608 East Central Boulevard  
Orlando, Florida 32801  
(Certified Mail No. 7011 1570 0001 1540 5956)

Todd M. Cranshaw, Esquire  
Cranshaw Brown  
481 North U.S. Highway one  
Ormond Beach, Florida 32174  
(Certified Mail No. 7011 1570 0001 1540 5963)

Kenney Shipley, Executive Director  
Florida Birth Related Neurological  
Injury Compensation Association  
2360 Christopher Place, Suite 1  
Tallahassee, Florida 32308  
(Certified Mail No. 7011 1570 0001 1540 5970)

Halifax Medical Center  
303 North Clyde Morris Boulevard  
Daytona Beach, Florida 32114  
(Certified Mail No. 7011 1570 0001 1540 5987)

Amie Rice, Investigation Manager  
Consumer Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified Mail No. 7011 1570 0001 1540 5994)

Elizabeth Dudek, Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(Certified Mail No. 7011 1570 0001 1540 6007)

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).