

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TYLER DYAL, individually and as  
parent of OLIVER BENDER, a  
minor,

Petitioner,

vs.

Case No. 12-1534N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

ORANGE PARK MEDICAL CENTER,  
INC., ERIC EDELENBOS, D.O., AND  
NORTH FLORIDA OB/GYN,

Intervenors.

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PARTIAL SUMMARY FINAL ORDER ON NOTICE

This cause came on for consideration upon a Motion for Partial Summary Judgment and Incorporated Memorandum of Law filed by Intervenors, Eric Edelenbos, D.O., and North Florida OB/GYN filed on October 1, 2013. The motion is being treated as a motion for partial summary final order.

STATEMENT OF THE CASE

On May 15, 2012, Petitioner, Tyler Dyal, individually and as parent of Oliver Bender (Oliver), a minor, filed a Petition for Determination of Compensability Pursuant to Florida Statute

Section 766.301-766.316 (Petition) with the Division of Administrative Hearings (DOAH) for a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Eric Edelenbos, D.O., as the physician who provided obstetric services for the birth of Oliver. The Petition stated that Oliver was born at Orange Park Medical Center in Orange Park, Florida.

DOAH served NICA with a copy of the Petition on June 1, 2012. DOAH served Orange Park Medical Center with a copy of the Petition on June 4, 2012. DOAH served a copy of the Petition on Dr. Edelenbos on June 4, 2012.

On February 1, 2013, Orange Park Medical Center filed a petition to intervene, which was granted by Order dated February 11, 2013. On March 25, 2013, Dr. Edelenbos and North Florida OB/GYN filed a petition to intervene, which was granted by Order dated April 2, 2013.

In her Petition, Petitioner alleges that timely notice of participation in the Plan was not met. On October 1, 2013, Intervenors, Edelenbos and North Florida OB/GYN filed a motion for partial summary final order, requesting that a summary final order be entered finding that Dr. Edelenbos and North Florida OB/GYN provided notice as required by section 766.316, Florida Statutes. The motion was served by electronic mail on

September 30, 2013. A response to the motion was due to be filed on October 7, 2013, but no response was filed.

On October 17, 2013, an Order to Show Cause was entered requiring Petitioner to show cause in writing on or before October 28, 2013, why the motion should not be granted. As of the date of this Partial Summary Final Order on Notice, Petitioner has not filed a response to the Order to Show Cause.

FINDINGS OF FACT

1. Tyler Dyal is the mother of Oliver Bender, who was born on September 26, 2011, at Orange Park Medical Center. Ms. Dyal was 15 years old when she became pregnant with Oliver. When she was six months' pregnant, she began regular appointments with her gynecologist.

2. On August 5, 2011, Ms. Dyal signed the following form:

NORTH FLORIDA OBSTETRICAL & GYNECOLOGICAL  
ASSOCIATES, P.A.

ORANGE PARK DIVISION

NOTICE TO OBSTETRIC PATIENT

I have been furnished information in the form of a Brochure prepared by Florida Birth Related Neurological Injury Compensation Association (NICA), pursuant to Section 766.316, Florida Statutes, by North Florida Obstetrical & Gynecology Associates, P.A., Orange Park Division which includes R. Roland Powers, D.O., Richard A. McCauley, M.D., A. Ted Shah, M.D., Eric J. Edelenbos, D.O., and Sharonn Jones, C.N.M., A.R.N.P., Michelle Conkling, C.N.M., A.R.N.P.

I have been advised that all the above physicians or certified nurse midwives who will join their practice, and other physicians covering for North Florida Obstetrical and Gynecology Associates, P.A. patients on evenings, weekends, and holidays, all participate in that program.

The program provides certain limited compensation is available in the event certain types of qualifying neurological injuries may occur during labor, delivery, or resuscitation in a hospital. For specifics on the program, I understand I can contact the Florida Birth-Related Neurological Injury Compensation Association, P.O. Box 14567, Tallahassee, Florida 32317-4567, 1-800-398-2129.

I further acknowledge that I have received a copy of the Brochure prepared by NICA entitled "Peace of Mind for an Unexpected Problem."

3. On August 5, 2011, when Ms. Dyal signed the form, entitled, "Notice to Obstetric Patient," she was 16 years of age. Her mother was present when Ms. Dyal signed the form.

4. At her deposition, Ms. Dyal was asked the following question and gave the following answer:

Q. Did you get a brochure called "Peace of Mind for an Unexpected Problem" when you signed these forms?

A. Not that I am sure of.

#### CONCLUSIONS OF LAW

5. 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).

6. 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.

7. 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.

8. Ms. Dyal's signature on the Notice to Obstetric Patient raises a rebuttable presumption that notice requirements for Dr. Edelenbos and his employer, North Florida OB/GYN, as set forth in section 766.316 have been met. Based on Ms. Dyal's deposition testimony, she is not certain whether she received the brochure. Her testimony is not sufficient to rebut the presumption that the notice requirements of section 766.316 have been met.

9. Although Petitioner did not file a response to the motion at issue, Intervenors Edelenbos and North Florida OB/GYN, advised in their motion that Petitioner took the position that Ms. Dyal could not consent to the acknowledgment of the notice because she was a minor at the time she signed the acknowledgment.

10. Section 743.065 provides that an unwed pregnant minor may consent to the performance of services related to her pregnancy by a clinic or licensed physician and that such consent is valid and binding as if she had achieved her majority. Therefore, Ms. Dyal's signature on the acknowledgment form is binding. Allgood v. Fla. Birth-Related Neurological Injury Comp. Ass'n, Case No. 08-4814 (Fla. DOAH June 11, 2010).

11. The undisputed evidence establishes that Dr. Edelenbos and North Florida OB/GYN provided notice pursuant to section 766.316.

CONCLUSION

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

That Dr. Edelenbos and North Florida OB/GYN provided notice as required by section 766.316.

Jurisdiction is retained to determine whether statutory notice was provided by Orange Park Medical Center and whether Oliver Bender sustained permanent and substantial mental and physical impairments.

DONE AND ORDERED this 13th day of November, 2013, in Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of November, 2013.

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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).