

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

APRIL KNILL AND JEFFERY KNILL, )  
Individually and as Parents, )  
Natural Guardians and Personal )  
Representatives of the Estate )  
of DELANEY KNILL, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 12-1853N  
 )  
FLORIDA BIRTH-RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
ADRIENNE GEORGE, M.D., AZALEA )  
WOMEN'S HEALTHCARE, P.A., AND )  
TALLAHASSEE MEMORIAL )  
HEALTHCARE, INC., )  
 )  
Intervenors. )  
\_\_\_\_\_ )

SUMMARY FINAL ORDER ON COMPENSABILITY

This cause came on for consideration upon Petitioners' Motion for Summary Final Order filed on November 16, 2012, by April Knill and Jeffery Knill, individually and as parents, natural guardians, and personal representatives of the estate of Delaney Knill (Delaney), deceased.

STATEMENT OF THE CASE

On May 17, 2012, Petitioners, filed a Petition for Benefits Pursuant to Section 766.301 et seq., Florida Statutes (Petition) with the Division of Administrative Hearings (DOAH) for determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Adrienne George, M.D., Azalea Women's Health Care as the physician providing obstetrical services at the birth of Delaney at Tallahassee Memorial Hospital (TMH).

DOAH provided the Florida Birth-Related Neurological Injury Compensation Association (NICA) and Dr. George with copies of the Petition on May 23, 2012. TMH was provided a copy of the Petition by DOAH on May 24, 2012.

On July 6, 2012, Dr. George and Azalea Women's Healthcare, P.A. (Azalea), filed a petition for leave to intervene, which was granted by Order dated July 20, 2012. On November 1, 2012, Tallahassee Memorial Healthcare, Inc. (TMH), filed an unopposed petition to intervene, which was granted by Order dated November 5, 2012.

On October 29, 2012, Petitioners filed Petitioners' Motion for Summary Final Order. Petitioners filed Petitioners' Amended Motion for Summary Final Order on November 16, 2012. NICA and Intervenors filed responses, objecting to the language in paragraph 6e. of the amended motion. The amended motion was

heard by telephonic conference call on December 17, 2012.

Petitioners withdrew the language in paragraph 6e. All parties are in agreement that Delaney suffered a birth-related neurological injury which resulted in her death.

#### FINDINGS OF FACT

1. Delaney Knill was born on April 10, 2009, at TMH in Tallahassee, Florida. She weighed 3,744 grams at birth.

2. Delaney was delivered by Cesarean section by Dr. George. April Knill was diagnosed with uterine rupture, which resulted in a loss of oxygen to Delaney's brain during labor, delivery, and continuing into the immediate post delivery period. The oxygen deprivation was severe, resulting in brain death. Delaney was pronounced dead on April 14, 2009.

3. At the time of Delaney's birth, Dr. George was employed by Azalea and was a participating physician as that term is defined in section 766.302. Dr. George and Azalea provided notice required by section 766.316 on August 28, 2008. TMH provided notice as required by section 766.316 on April 1, 2009.

#### CONCLUSIONS OF LAW

4. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

5. The Plan was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for

birth-related neurological injury claims" relating to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

6. The injured infant, her or his personal representative, parents, dependents, and next of kin may seek compensation under the Plan by filing a claim for compensation with DOAH.

§§ 766.302(3), 766.303(2), and 766.305(1), Fla. Stat. NICA, which administers the Plan, has "45 days from the date of service of a complete claim . . . in which to file a response to the petition and to submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." § 766.305(4), Fla. Stat.

7. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, it may award compensation to the claimant, provided that the award is approved by the administrative law judge to whom the claim has been assigned. § 766.305(7), Fla. Stat.

8. In discharging this responsibility, the Administrative Law Judge must make the following determination based upon the available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically

impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital.

§ 766.309(1), Fla. Stat. An award may be sustained only if the administrative law judge concludes that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." § 766.31(1), Fla. Stat.

9. The term "birth-related neurological injury" is defined in section 766.302(2) as follows:

"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired.

10. The evidence, which is not refuted, established that Delaney sustained a birth-related neurological injury, which

resulted in her death. Petitioners' claim is compensable under the Plan.

#### CONCLUSION

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

ORDERED that the injuries sustained by Delaney Knill are compensable under the NICA Plan.

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 Petitioners; 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.

It is further ORDERED that in the event Petitioners file an election of remedies declining or rejecting NICA benefits, this case will be dismissed and DOAH's file will be closed.

DONE AND ORDERED this 20th day of December, 2012, in  
Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
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Filed with the Clerk of the  
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this 20th day of December, 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).