

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IRENE RODRIGUEZ, on behalf of
and as parent and natural
guardian of ELIJAH THEARD, a
minor,

Petitioner,

vs.

Case No. 13-0184N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

BILL DUKE, M.D.; BRENDA HARRIS-
WATSON, M.D.; MANUEL M. FIESTA,
M.D.; AND UNITED SURGICAL
ASSISTANTS,

Intervenors.

_____ /

FINAL ORDER ON NOTICE

Pursuant to notice, a final hearing on the issue of notice was held in this case on November 22, 2013, in Lakeland, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Carlos R. Diez-Arguelles, Esquire
Desiree E. Bannasch, Esquire
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For Respondent: Leanne B. Wagner, Esquire
Frank, Weinberg, and Black, P.A.
7805 Southwest 6th Court
Plantation, Florida 33324

For Intervenors Bill Duke, M.D., and Brenda Harris-Watson,
M.D.:

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Wicker, Smith, O'Hara, McCoy & Ford, P.A.
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Orlando, Florida 32801

For Intervenors Manuel M. Fiesta, M.D., and United Surgical
Assistants:

Marcel Manuel Flemming, Esquire
Butler, Pappas, Weihmuller, Katz,
& Craig, LLP
80 Southwest 8th Street, Suite 3300
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STATEMENT OF THE ISSUES

The issues in this case are whether Bill Duke, M.D.;
Brenda Harris-Watson; and Lakeland Regional Medical Center
provided notice as required by section 766.316, Florida Statutes,
and whether Manuel M. Fiesta, M.D., and United Surgical
Assistants were required to provide notice pursuant to section
766.316.

PRELIMINARY STATEMENT

On January 8, 2013, Petitioner, Irene Rodriguez, on behalf
of and as parent and natural guardian of Elijah Thread (Elijah),
a minor, filed a Petition Under Protest Pursuant to Florida
Statute Section 766.301 et seq. (Petition) with DOAH.

The Petition provided that Bill Duke, M.D.; Brenda Harris-Watson, M.D.; and Manuel Fiesta, M.D., were the physicians providing obstetric services at the birth of Elijah, who was born at Lakeland Regional Medical Center (Lakeland Regional). DOAH served the Birth-Related Neurological Injury Compensation Association (Association) with a copy of the Petition on January 28, 2013. DOAH served copies of the Petition on Lakeland Regional Medical Center and Dr. Duke on January 21, 2013. DOAH served Dr. Fiesta with a copy of the Petition on January 22, 2013. DOAH served Dr. Harris-Watson with copies of the Petition on January 21 and 22, 2013.

On March 13, 2013, Dr. Duke filed Intervenor's Motion to Intervene, which was granted by Order dated March 20, 2013. On March 20, 2013, Dr. Harris-Watson filed Intervenor's Motion to Intervene, which was granted by Order dated March 29, 2013. On August 29, 2013, Dr. Fiesta filed a Motion to Intervene, which was granted by Order dated September 10, 2013. On September 25, 2013, Dr. Fiesta and United Surgical Assistants filed an Amended Motion to Intervene, which was granted by Order dated October 8, 2013. Lakeland Regional Medical Center did not file a petition to intervene in this proceeding.

On June 28, 2013, Respondent filed a Motion for Summary Final Order, alleging that Elijah sustained a birth-related neurological injury as defined in section 766.302(2), Florida

Statutes. On July 10, 2013, a Summary Final Order on Compensability was entered, finding that Elijah sustained a birth-related neurological injury, which is compensable under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). Jurisdiction was retained on the issues of notice and award.

The final hearing, which was scheduled for October 23, 2013, was continued and rescheduled for November 22, 2013.

Intervenors, Dr. Duke and Dr. Harris-Watson, noticed Ms. Rodriguez for a deposition, which she did not attend. Dr. Duke and Dr. Harris-Watson filed a Motion to Strike Ms. Rodriguez as a witness. The motion was heard by telephonic conference call on November 18, 2013, at which time Ms. Rodriguez was ordered to appear for her deposition on the following day. Ms. Rodriguez did not appear for her deposition as ordered. On November 19, 2013, Intervenors, Dr. Duke and Dr. Harris-Watson, filed a Motion to Strike the Testimony of Irene Rodriguez, which was granted by Order dated November 20, 2013.

At the final hearing, Intervenors, Dr. Duke and Dr. Harris-Watson, called the following witnesses: Dr. Harris-Watson, Lori Payne Garcia, Jane Ann Carlson, Anjani Roqed, Kayla Renee Willis, and Maria Annette Murphy. Dr. Duke's testimony was presented by deposition.

Intervenor, Dr. Fiesta, testified on his own behalf. Dr. Fiesta and United Surgical Assistants called Carol Ann Fox as a witness.

Neither Respondent nor Petitioner presented any live witnesses. Petitioner presented the testimony of Heather Ward and Maria Annette Murphy by deposition.

The Exhibits numbered 1, 2, 3, 4, 5, 8, 9, 10, 12, 15, 16, 26, 28, 31, and 50 of Intervenors, Dr. Duke and Dr. Harris-Watson, were entered in evidence. The Exhibits numbered 1 and 27 of Dr. Fiesta and United Surgical Assistants were admitted in evidence. Respondent did not present any exhibits. Petitioner's Exhibits 2, 3, 4, 6, 7, 8, 9, and 10 were admitted in evidence. The court reporter did not accurately reflect all the exhibits that were entered in evidence, and the enumeration of the exhibits above are based on the exhibits that were numbered and initialed at the final hearing by the undersigned.

The Transcript of the final hearing was filed by the court reporter, as instructed, on January 3, 2014. The parties agreed to file their proposed final orders within ten days of the filing of the transcript. Intervenors filed their Proposed Final Order on January 13, 2014. Respondent did not file a proposed final order. At 4:56 p.m., on January 13, 2014, Petitioner filed Petitioner's Motion for Extension of Time to File Proposed Final Order, stating: "Petitioners are currently working on other

matters of great importance.” The following day Petitioner filed Petitioner’s Supplemental Motion for Extension of Time to File Proposed Final Order, stating that Petitioner had never been given notice that the Transcript had been filed.

Intervenors opposed the motion for extension of time, and the motion was heard by telephonic conference call on January 17, 2014. Petitioner filed her Proposed Final Order on January 16, 2014. On January 21, 2014, an Order was entered providing that the Intervenors could file a response to Petitioner’s Proposed Final Order on or before January 31, 2014.

On January 22, 2014, Intervenors, Dr. Fiesta and United Surgical Assistants, filed Intervenors’ Manuel Fiesta, M.D., and United Surgical Assistants Proposed Final Order. On January 28, 2014, Intervenors, Dr. Duke and Dr. Harris-Watson, filed a Notice to the Court of the Intervenors’ Intent Not to Supplement Their Proposed Final Order. The parties’ Proposed Final Orders have been considered in the preparation of this Final Order on Notice.

FINDINGS OF FACT

1. Ob Hospitalist Group contracts with Lakeland Regional Medical Center to provide physicians who will render obstetric and gynecological services to unassigned patients. An example of an unassigned patient is a patient who is not being seen by a private physician for prenatal care, but is receiving prenatal care at the local health department.

2. On December 5, 2009, Ms. Rodriguez, who is the mother and natural guardian of Elijah Theard, a minor, presented to Lakeland Regional Medical Center. She was approximately 18 to 19 weeks' pregnant and had been seen at the local health department on December 4, 2009, for prenatal care.

3. During Ms. Rodriguez's visit to Lakeland Regional Medical Center on December 5, 2009, neither the hospital nor Ob Hospitalist Group provided her with notice concerning the Plan.

4. On March 21, 2010, Ms. Rodriguez returned to Lakeland Regional Medical Center with a complaint of vaginal bleeding. She was seen by Dr. Harris-Watson, who was employed by Ob Hospitalist Group.

5. During Ms. Rodriguez's visit to Lakeland Regional Medical Center on March 21, 2010, Anjani Roqed, a patient access representative from Lakeland Regional Medical Center, provided Ms. Rodriguez with a welcome packet, which included a living will, a patient's rights and responsibilities form, a HIPPA form, a patient safety form, a form with discharge questions, and a brochure from the Association, explaining the Plan.

6. Ms. Roqed does not specifically recall the encounter with Ms. Rodriguez on March 21, 2010, but it was the policy of Lakeland Regional Medical Center to provide the brochure to an obstetric patient and to have the patient sign a form acknowledging that she received the brochure. Part of

Ms. Roged's standard practice was to witness the patient's execution of the acknowledgment form.

7. Ms. Rodriguez signed the form acknowledging that she had been provided information prepared by the Association. The form stated:

Ob Hospitalist _____
Group

NEUROLOGICAL INJURY COMPENSATION INFORMATION
(See Section 766.316, Florida Statutes)

I have been furnished information by Ob Hospitalist Group, Inc., prepared by the Florida Birth-Related Neurological Injury Compensation Association and have been advised that my doctor and all nurse midwives associated with my doctor's group participate in the Florida Birth-Related Neurological Injury Compensation program. Wherein, certain limited compensation is available in the event certain neurological injury may occur during labor, delivery or resuscitation. For specifics on the program, I understand I can contact the Florida Birth-Related Neurological Injury Compensation Association (NICA), 1435 East Piedmont Drive, Suite 101, Tallahassee, Florida 32312, (850)-488-8191. I further acknowledge that I have received a copy of the brochure prepared by NICA.

Ob Hospitalist Group, Inc., physicians:

Dr. Bill Duke
Dr. Mike Baird
Dr. Brenda Harris-Watson
Dr. Lisa Davis

Ms. Roged signed the acknowledgment form executed by Ms. Rodriguez, indicating that Ms. Roged witnessed Ms. Rodriguez signing the acknowledgment form.

8. Ms. Roged's normal practice as a patient access representative was to make computerized notes of her activities with a patient at or about the time that she performed the activities. The computer records of Lakeland Regional Medical Center show that on March 21, 2010, Ms. Roged had an encounter with Ms. Rodriguez and provided Ms. Rodriguez with the brochure prepared by the Association. Her computerized notes state:

13763: RCVD ORDER TO ADMIT AS OBED/SCNNED,
PT IS FROM ER. UPDATED INFO W/PT & IN SMS,
PT GVN WELPKT, NICA, HIPPA, ADLW INFO. PT
SIGNED SUM, NICA, HIPPA, PT F/C ALL FMS
SIGNED SCNND, PLCED ARM BAND ON PT
NO CC OR ID. RAN PP STS PT IS ELIG. FOR
MEDIPASS. BCBS IS NOT RESPONDING. PT IS TO
C/V OR D/C.
*OUTPT DSCH: HOME

9. Ms. Roged interpreted her computerized notes as follows:

It says, I received orders from Meadow Aribé (phonetic sp.), which is our - actually it's our emergency department, and I scanned that in the system as well. The patient came up from the ER. Updated her info with her in our SMS system. The patient was given the welcome packet, which included the NICA, HIPPA and the living will and the other info I specified earlier. Patient signed sum. The summary is consent for treatment and billing the insurance.

She signed her NICA pamphlet - or NICA form for the NICA pamphlet, which is this. She signed HIPPA, which is for privacy. Patient

financial counseling, which if she has Medicaid and the Medicaid was to fall through, she would be responsible for her bill. I placed an arm band on the patient. She had no insurance card or ID. I ran the passport system, which is the - that is to verify what type of insurance she has, and it says that she has Medipass and that Blue Cross/Blue Shield was not responding. And she was either to convert or discharge, which means if she was to convert she stays inpatient to have the baby. If she discharges, that means she goes home.

10. The medical records show that Ms. Rodriguez signed a Notice of Privacy Practices form which is dated March 21, 2010. The records also show that she signed a Patient Summary form dated March 21, 2010. These would have been documents that Ms. Roqed would have provided to Ms. Rodriguez when she presented at Lakeland Regional Medical Center on March 21, 2010. The signature on the Patient Summary form and the Notice of Privacy Practices dated March 21, 2010, are substantially similar to the signature on the form acknowledging receipt of the brochure prepared by the Association.

11. The greater weight of the evidence establishes that on March 21, 2010, Ob Hospitalist Group, Inc., provided the notice required by section 766.316 for Dr. Duke and Dr. Harris-Watson, the doctors who provided obstetric services at the birth of Elijah on May 1, 2010.

12. On May 1, 2010, Ms. Rodriguez presented to Lakeland Regional Medical Center to deliver Elijah. At the time of her

arrival, she was having contractions and her membranes had ruptured. Within an hour of her arrival at the hospital, Ms. Rodriguez met with Kayla Renee Willis, another patient access representative for Lakeland Regional Medical Center at the time. Ms. Willis' duties included providing Ms. Rodriguez with a welcome packet, which included the brochure prepared by the Association and the acknowledgment form, which was to be signed by Ms. Rodriguez. At this visit, Ms. Willis provided Ms. Rodriguez with two acknowledgment forms to sign. Ms. Rodriguez signed both acknowledgment forms, and Ms. Willis signed both forms as a witness to Ms. Rodriguez's execution of the forms.

13. One of the acknowledgment forms signed by Ms. Rodriguez on May 1, 2010, stated:

RECEIPT ACKNOWLEDGEMENT OF FLORIDA BIRTH-
RELATED NEUROLOGICAL INJURY COMPENSATION
INFORMATION
(See Section 766.316, Florida Statutes)

I have been furnished information in the form of a Brochure prepared by the Florida Birth-Related Neurological Injury Compensation Association (NICA), pursuant to Section 766.316, Florida Statutes, by Lakeland Regional Medical Center, Inc., wherein 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,

Post Office Box 14567, Tallahassee, Florida
32317-4567, (850)488-8191.

I specifically acknowledge that I have
received a copy of the Brochure prepared by
NICA.

14. The other acknowledgment form, which Ms. Rodriguez
signed on May 1, 2010, stated:

OB Hospitalist Group _____

NEUROLOGICAL INJURY COMPENSATION INFORMATION
(See Section 766.316, Florida Statutes)

I have been furnished information by OB
Hospitalist Group, Inc., by the Florida Birth
Related Neurological Injury Compensation
Association, and have been advise that my
doctor and all nurse midwives Associated with
my doctor's group participate in the Florida
Birth Related Neurological Injury
Compensation Program, wherein, certain
limited compensation is available in the
event certain neurological injury may occur
During labor delivery or resuscitation. For
specifics on the program, I understand I can
contact the Florida Birth Related
Neurological Injury Compensation Association
(NICA), 1435 East Piedmont Dr. Suite 101
Tallahassee, Florida 32312 (904)488-8191. I
further acknowledge that I have received a
copy of the brochure Prepare by NICA.
OB Hospitalist Group, Inc. Physicians:

Dr. Bill Duke
Dr. Shawn Simpson
Dr. Brenda Harris-Watson
Dr. Lisa Davis

15. Ms. Willis documented her encounter with Ms. Rodriguez
on May 1, 2010, with computerized notes, which she entered into
the computer on May, 1, 2010, and which state:

014773: RECVD ORDER TO ADM PT AS OBED
05012010. . PT VERIFIED DEMO, SIGNED SUMM,
PFRF, NICA & HIPPA.. PT COULD NOT FIND ID AND
INS CARDS. . .HDX RAN PT HAD ACTIVE COV
W/BCBS & MCAID. . NO QUOTE TO PT.
.ADLW/WELCOME PKT GIVEN. . . SCND ALL DOC. .
014773: RECVD ORDER TO ADM PT AS INPT STATUS
05012010. . .ORDER WRITTEN 05012010@100. . .
SCND DOC. . .

16. Ms. Willis interpreted her computerized notes as follows:

My imprint of my notifying myself, my number, 014773, received order to admit patient as OBED 5/01/2010. Patient verified demo, signed summary, P-F-R-F NICA and HIPPA. Patient could not find ID and insurance cards. HDX ran. Patient has ACU coverage with Blue Cross and Medicaid. No quote to patient. ADOW welcome packet given, scan all doc.

Again, I noted 014773, received order to admit patient inpatient status, 5/01/2010. Order written 5/01/2010 at 100 scan doc.

17. In her responses to requests for admissions, which were entered in evidence, Ms. Rodriguez admitted that the signatures on the two acknowledgment forms were hers, but stated that she had no recollection of signing the documents. The signatures on the acknowledgment forms signed on May 1, 2010, are substantially similar to the signature on the acknowledgment form dated March 21, 2010.

18. Dr. Duke was the first obstetrician to perform a physical evaluation of Ms. Rodriguez on May 1, 2010. When his shift ended at approximately 7:00 a.m., on May 1, 2010, he

transferred the responsibility for the care of Ms. Rodriguez to Dr. Harris-Watson. On May 1, 2010, both Dr. Duke and Dr. Harris-Watson were employed by Ob Hospitalist Group, Inc., and were participating physicians in the Plan.

19. The Petition named Dr. Manuel Fiesta as a physician who provided obstetrical services at the birth of Elijah. At the time of Elijah's birth, Dr. Fiesta was a retired physician, who was licensed by the State of Florida. He no longer practiced medicine, and was not a participating physician in the Plan.

20. Dr. Harris-Watson determined that Ms. Rodriguez required a Caesarean section for her delivery. Dr. Fiesta participated in the surgery as a surgical assistant. He was not providing obstetrical services as a physician at the time of the delivery. Petitioner acknowledges in her Proposed Final Order that Dr. Fiesta "was not working as an obstetrician" at the time of the birth of Elijah. Dr. Fiesta did not pay an assessment into the Plan.

CONCLUSIONS OF LAW

21. 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).

22. 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.

23. Section 395.002(8)(b) defines "emergency medical condition" as follows:

(8) "Emergency medical condition" means:

* * *

(b) With respect to a pregnant woman:

1. That there is inadequate time to effect safe transfer to another hospital prior to delivery;
2. That a transfer may pose a threat to the health and safety of the patient or fetus; or
3. There is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

24. 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.

25. Petitioner contends that Dr. Duke, Dr. Fiesta, Dr. Harris-Watson, and Lakeland Regional Medical Center did not give sufficient notice pursuant to section 766.316. Intervenors, Dr. Duke and Dr. Harris-Watson, contend that sufficient notice was provided pursuant to section 766.216. Dr. Fiesta and United Surgical Assistants assert that Dr. Fiesta was not providing obstetrical services as a physician at the birth of Elijah; therefore, Dr. Fiesta was not required to provide notice pursuant to section 766.316. As the proponent of the proposition that appropriate notice was given or that notice was not required, the burden on the issue of notice is upon the Intervenors. Tabb v. Fla. Birth-Related Neurological Injury Comp. Ass'n., 880 So. 2d 1253, 1257 (Fla. 1st DCA 2004).

26. Although Ms. Roved does not independently remember her encounter with Ms. Rodriguez on March 21, 2010, she follows her normal routine and practice when registering obstetrical

patients, which includes giving the brochure to the patient and having the patient sign the acknowledgment form. "Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove the conduct of the organization on a particular occasion was in conformity with routine practice." § 90.406, Fla. Stat. (2012); see also Tabb, 880 So. 2d at 1259. The computer records of Lakeland Regional Medical Center show that on March 21, 2010, Ms. Roqed gave Ms. Rodriguez a brochure prepared by the Association and that Ms. Rodriguez signed the acknowledgment form. Ms. Roqed also identified her signature on the acknowledgment form, indicating that she witnessed Ms. Rodriguez sign the acknowledgment form.

27. Section 766.316 requires that "[e]ach hospital with a participating physician on its staff and each participating physician" shall provide notice. An employee of Lakeland Regional Medical Center provided the brochure, but she did not provide it on behalf of the hospital. The acknowledgment form dated March 21, 2010, clearly indicates Ob Hospitalist Group, Inc., is providing the notice and not the hospital. Dr. Duke and Dr. Harris-Watson were specifically named in the acknowledgment form dated March 21, 2010.

28. The greater weight of the evidence establishes that Dr. Duke and Dr. Harris-Watson provided the notice required by

section 766.31 on March 21, 2010, and that the notice was sufficient.

29. Petitioner contends that the acknowledgment form dated March 21, 2010, was not signed by Ms. Rodriguez and that the document was falsified. This argument is without merit. The greater weight of the evidence establishes that Ms. Rodriguez did sign the acknowledgment form dated March 21, 2010. Section 766.316 provides that a signed acknowledgment creates a rebuttable presumption that notice has been provided, and Petitioner has not rebutted the presumption that notice was provided by Dr. Duke and Dr. Harris-Watson on March 21, 2010.

30. In Weeks v. Florida Birth-Related Neurological Injury Compensation Association, 977 So. 2d 616, 618-619 (Fla. 5th DCA 2008), the court stated:

[T]he formation of the provider-obstetrical patient relationship is what triggers the obligation to furnish the notice. The determination of when this relationship commences is a question of fact. Once the relationship commences, because [section 766.316] is silent on the time period within which notice must be furnished, under well-established principles of statutory construction, the law implies that notice must be given within a reasonable time. Burnsed v. Seaboard Coastline R. Co., 290 So 2d 13, 19 (Fla. 1974); Concerned Citizens of Putnam County v. St. Johns River Water Mgmt. Dist., 622 So. 2d 520, 523 (Fla. 5th DCA 1993). The determination depends on the circumstances, but a central consideration should be whether the patient received the notice in sufficient time to make a

meaningful choice of whether to select another provider prior to delivery, which is the primary purpose of the notice requirement.

31. Ms. Rodriguez was given a brochure prepared by the Association when she presented to the Lakeland Regional Medical Center on May 1, 2010, and she did sign acknowledgments from Lakeland Regional Medical Center and from Ob Hospitalist Group, Inc., on that date. However, at the time she was given the brochure and signed the acknowledgment forms, she was in labor and her membranes had ruptured. Thus, by definition, she had an emergency medical condition. § 766.302(8)(b)3. It was too late at that time for Lakeland Regional Medical Center to give notice pursuant to section 766.316 when it had opportunities prior to Ms. Rodriguez's admission on May 1, 2010, to provide notice.

32. The court in Weeks held:

[T]he NICA notice must be given within a reasonable time after the provider-obstetrical relationship begins, unless the occasion of the commencement of the relationship involves a patient who presents in an "emergency medical condition," as defined by the statute, or unless the provision of notice is otherwise "not practicable." When the patient first becomes an "obstetrical patient" of the provider and what constitutes a "reasonable time" are issues of fact. As a result, conclusions might vary, even where similar situations are presented. For this reason, a prudent provider should furnish the notice at the

first opportunity and err on the side of caution.

Id. at 619-620.

33. Lakeland Regional Medical Center could have provided Ms. Rodriguez with notice when she presented at the hospital on December 5, 2009, but it did not do so. At that time, hospital staff were aware that Ms. Rodriguez was pregnant and had been seen for prenatal care at the local health department. Normally, the obstetric patients receiving prenatal care at the health department would deliver at Lakeland Regional Medical Center.

34. When Ms. Rodriguez presented at Lakeland Regional Medical Center on March 21, 2010, the hospital had another opportunity to provide notice, but it did not do so on behalf of the hospital. The hospital did provide notice on behalf of Ob Hospitalist Group, Inc., which included Dr. Duke and Dr. Harris-Watson. On March 21, 2010, Ms. Rodriguez would have had a reasonable time to change physicians, if she did not want her child delivered by a participating physician.

35. By May 1, 2010, it was too late for Ms. Rodriguez to make a meaningful choice of whether to select another provider prior to delivery. She was in labor and her membranes had ruptured. Thus, the notice provided by Lakeland Regional Medical Center on May 1, 2010, was insufficient to meet the requirements of section 766.316.

36. Dr. Fiesta was not performing obstetrical services at the birth of Elijah. He did not pay the annual assessment for the Plan, and was not a participating physician as defined in section 766.302(7). Thus, Dr. Fiesta was not required to provide notice pursuant to section 766.316.

CONCLUSION

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

ORDERED:

1. Lakeland Regional Medical Center failed to provide notice for the hospital as required by section 766.316.
2. Dr. Duke provided notice as required by section 766.316.
3. Dr. Harris-Watson provided notice as required by section 766.316.
4. Dr. Fiesta was not a participating physician and was not required to provide notice pursuant to section 766.316.

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 Ms. Rodriguez; 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 Petitioner files an election of remedies declining or rejecting NICA benefits, this case will be dismissed with prejudice and DOAH's file will be closed.

DONE AND ORDERED this 25th day of February, 2014, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirkland

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 2014.

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).