

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JESSICA IBASFALEAN and CODY
IBASFALEAN, individually and as
parents and natural guardians of
LONDON IBASFALEAN, a minor,

Petitioners,

vs.

Case No. 13-4646N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

LAKWOOD RANCH MEDICAL CENTER
AND JENNIFER SWANSON, M.D.,

Intervenors.

_____ /

FINAL ORDER

Pursuant to an Order dated September 15, 2014, the parties were granted leave to submit a stipulated factual record and written argument in lieu of a contested hearing in this case. The stipulated record with CD was filed on October 10, 2014; the stipulated record with all printed exhibits was filed on October 15, 2014.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Landon Ibasfalean suffered an injury for which compensation should be awarded under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

PRELIMINARY STATEMENT

On November 25, 2013, Jessica Ibasfalean and Cody Ibasfalean, individually and as parents and natural guardians of Landon Ibasfalean (Landon), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition),

with the Division of Administrative Hearings (DOAH). The Petition alleged that Landon suffered brain damage as a result of a birth-related neurological injury.

The Petition named Jennifer Swanson, M.D., as the physician providing obstetric services of Landon, and stated that Landon was born at Lakewood Ranch Medical Center which is located in Bradenton, Florida, on November 21, 2011.

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (NICA) and Jennifer Swanson, M.D., with a copy of the Petition on December 2, 2013, and served Lakewood Ranch Medical Center on November 29, 2013.

On December 4, 2013, Dr. Swanson filed a Petition to Intervene on Behalf of Jennifer Swanson, M.D., which was granted by Order dated January 3, 2014. On December 5, 2013, Lakewood Ranch Medical Center filed Lakewood Ranch Medical Center's Petition to Intervene, which was granted by Order dated December 23, 2013.

On April 23, 2014, NICA filed a response to the Petition, giving notice that the alleged injury did not "meet the definition of a 'birth-related neurological injury' as defined in section 766.302(2), Florida Statutes, which specifically requires that the injury render 'the infant permanently and substantially mentally and physically impaired.'" NICA requested that a hearing be scheduled to resolve whether the claim was compensable.

A final hearing was scheduled for September 30, 2014. On September 12, 2014, the parties filed a Joint Motion to Submit Stipulated Factual Record in Lieu of a Contested Hearing. On September 15, 2014, an Order was entered granting the parties leave to submit a stipulated record in lieu of a live administrative hearing.

On October 10, 2014, the parties filed a Stipulated Record with a CD of the stipulated exhibits. On October 15, 2014, the parties filed a Stipulated Record, consisting of printed copies of Joint Exhibits A through Y. Included in these exhibits is the deposition testimony of three witnesses. Petitioners submitted the deposition testimony of Jessica Ibasfalean and Cody Ibasfalean. Respondent submitted the deposition testimony of Michael Duchowny, M.D. Intervenors did not present testimony of any witnesses.

On October 10, 2014, the parties filed a Pre-Hearing Stipulation, in which they agreed to certain facts as set forth in section E of the Pre-Hearing Stipulation. These facts have been incorporated into this Final Order.

On October 16, 2014, an Order was entered extending the time in which the parties must submit proposed final orders. Respondent and Intervenors timely filed their proposed final orders, which have been carefully considered in the drafting of this Final Order. Petitioners did not file a proposed final

order, but stated their position on the issues in the Pre-Hearing Stipulation.

FINDINGS OF FACT

1. Jessica and Cody Ibasfalean are the natural parents of Landon Ibasfalean.

2. Landon was born a live infant at Lakewood Ranch Medical Center, a licensed hospital in Bradenton, Florida, on November 21, 2011.

3. The physician providing obstetrical services at the time of Landon's birth was Jennifer Swanson, M.D. At all material times, Dr. Swanson was a participating physician in the Florida Birth-Related Neurological Compensation Plan. NICA notice is not at issue as to Dr. Swanson or Lakewood Ranch Medical Center in this proceeding.

4. Landon weighed in excess of 2,500 grams at birth.

5. The parties are in agreement that Landon suffered an injury to his brain. The parties, however, disagree as to the timing and cause of that injury, and, specifically, whether such injury was caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate post-delivery period. The Petitioners and Intervenors take the position that Landon's brain injury was caused by oxygen deprivation occurring in the course of labor, delivery or resuscitation in the immediate post-delivery period. Respondent

contends that Landon's brain injury was more likely than not prenatally acquired.

6. Petitioner Jessica Ibasfalean was admitted to Lakewood Ranch Medical Center on November 21, 2011. Her labor began around 0635 and her membranes were artificially ruptured at 0715. Mrs. Ibasfalean labored from 0700 to 1708 when the decision was made to perform a C-Section. Landon was born via C-Section at 1757.

7. Cephalopelvic disproportion and tachycardia occurred during labor. Intervenor, Dr. Swanson, performed a C-Section. During the C-Section, Landon's head was stuck in his mother's "very narrow pelvis" and meconium stained amniotic fluid was noted. Dr. Swanson's operative note stated that the C-Section events lasted approximately nine minutes. Landon's APGAR scores were 2 (one minute), 5 (five minutes), and 7 (ten minutes).

8. The cord pH was 6.9.

9. Landon was intubated upon delivery, suctioned, and bagged with 100% bag mask valve.

10. Landon was admitted to the NICU immediately after delivery for perinatal distress. He was observed at 0658 on November 22, 2011, to have seizure activity.

11. Landon was then transferred to All Children's Hospital. His discharge diagnoses from Lakewood Ranch Medical Center were hypovolemia (resolved), metabolic acidosis (resolved), respiratory

distress (resolved), meconium stained amniotic fluid, sepsis, perinatal asphyxia, and at risk for seizures.

12. Landon was treated at All Children's Hospital where he was treated from November 22, 2011, through December 5, 2011. While at All Children's Hospital, Landon received a cranial CT scan, a video EEG, and a brain MRI. Landon's Discharge Summary from All Children's Hospital lists the following: hypoxic ischemic encephalopathy, history of seizures, anemia, patent foramen ovale, and subgaleal bleed under the category of "Active Diagnoses at Time of Discharge."

13. Landon was discharged from All Children's Hospital on December 5, 2011, with prescriptions for Phenobarbital 6.5 mg PO twice daily and Poly-vi-sol with iron 1 ml PO once daily. Landon is no longer on these medications.

14. NICA retained Donald C. Willis, M.D.,^{1/} to review Landon's medical records. Dr. Willis made the following findings and expressed the following opinion:

I have reviewed the medical records for the above individual. The mother, Jessica Lynn Ibasfalean was a 26 year old GI with an uncomplicated prenatal course. She was admitted to the hospital at 39 weeks for induction of labor due to advanced cervical dilation at term. Her cervix dialated 6 cms at the time of hospital admission.

The fetal heart rate (FHR) monitor tracing during labor was reviewed. The baseline FHR was 150 bpm on admission with normal heart rate variability. Variable FHR decelerations

with uterine contractions began about 4 hours after admission. The FHR dropped to about 90 bpm with contractions. The decelerations became more prolonged with a slow recovery to baseline about 2 hour[s] prior to delivery. A baseline tachycardia of 180 bpm was present when the FHR monitor was removed for delivery. Delivery occurred about 30 minutes after the FHR monitor was removed.

After being complete and pushing for two hours, Cesarean section delivery was done for failure to progress and a non-reassuring FHR pattern. Birth weight was 3,202 grams (7 lbs 1 oz).

The baby was depressed at birth. Apgar scores were 2/5/7. Cord blood gas was consistent with acidosis with a pH of 6.9. The newborn had no respiratory effort, no tone and poor color. Intubation was done for meconium with meconium present below the vocal cords. This was suctioned. Bag and mask ventilation was given for 4 minutes, followed with blow-by oxygen. The baby's first cry was at 7 minutes.

The baby's condition was considered unstable upon arrival at the NICU. Color remained pale or cyanotic and muscle tone was poor. The baby was immediately intubated. Chest X-Ray was clear. Respiratory effort improved and the baby remained intubated only 30 minutes.

Seizure activity was noted at 13 hours after birth. The baby was transferred from Lakewood Medical Center to All Children's Hospital for evaluation and management.

The baby was diagnosed with hypoxic ischemic encephalopathy at All Children's Hospital. The initial platelet count was low at 95,000. Platelet transfusions were given. Liver function studies were also elevated.

MRI of the brain DOL 7 identified focal areas of ischemia.

In summary, an abnormal FHR pattern developed during labor and resulted in delivery of a depressed newborn. The umbilical cord blood pH was 6.9, consistent with acidosis. Seizure activity was noted at 13 hours of life. MRI was consistent with hypoxic ischemic encephalopathy.

There was an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery, and continuing into the immediate post delivery period. The oxygen deprivation resulted in brain injury. I am not able to comment about the severity of the brain injury.

15. Dr. Willis' opinion that there was an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery, and continuing into the immediate post-delivery period which resulted in brain injury is credited.

16. When Landon was four weeks old, he was seen by Dr. Joseph Casadonte, a pediatric neurologist. Dr. Casadonte also saw Landon when he was three months, three weeks old. According to Dr. Casadonte's notes from an assessment on March 14, 2011, Landon did not have any further seizure or seizure-like activity and had been weaned off phenobarbital.

17. Dr. Casadonte examined Landon again on January 27, 2014. Dr. Casadonte's notes reflect that he informed Landon's parents that Landon has a mild form of cerebral palsy, and that he is doing very well cognitively. Dr. Casadonte noted that Landon's gait is normal.

18. On May 22, 2014, at Landon's 2 1/2 year well-child visit, his pediatrician, Dr. Federico Frias, noted that Landon's fine motor skills and his gross motor skills were abnormal. Dr. Frias also noted that Landon's language development was normal. Dr. Frias' notes indicate that he recommended continuation of physical and occupational therapy which, according to Dr. Frias' notes, he had been receiving once a week.

19. At her deposition on August 27, 2014, Mrs. Ibasfalean confirmed that Landon was receiving OT once a week for one hour and PT once a week for one-half hour. He has the ability to feed himself, can use a spoon, and can drink from a sippy cup, as long as it has a straw. She testified that Landon does fall but it has become "less and less." Landon is an active child and enjoys throwing balls for the family dog to catch. He can put his arms inside his sleeves when he is being dressed. He can pull off his socks and shoes.

20. When asked whether any physician had ever told her that in the future it is more likely than not that he will have any mental impairment or cognitive delays, Mrs. Ibasfalean replied, "They never told me that, no."

21. At his deposition also taken on August 27, 2014, Mr. Ibasfalean was asked if he had observed any cognitive deficit or shortcomings regarding Landon. Mr. Ibasfalean replied "No. Cognitive is pretty appropriate."

22. Respondent retained Michael Duchowny, M.D., to evaluate Landon. Dr. Duchowny is board-certified in pediatrics, neurology with special qualification in child neurology, and in clinical neurophysiology. He is a senior staff attending in neurology at Miami Children's Hospital where he directs the Comprehensive Epilepsy Center and neurology training programs. Dr. Duchowny holds the position of professor, clinical professor of neurology and pediatrics at the University of Miami School of Medicine and clinical professor of neurology at the FIU College of Medicine. Dr. Duchowny reviewed Landon's medical records and performed an independent medical examination on Landon on April 9, 2014. Dr. Duchowny made the following findings and summarized his evaluation as follows:

MEDICAL HISTORY:

Landon is a 2-year-old boy who, according to his parents, has been diagnosed with "mild cerebral palsy." They noted that Landon has left-sided weakness affecting both arm and leg and this affects both his gait and left hand and arm movement. However, despite his weakness, Landon runs and walks on his own, and his parents are "teaching him to jump."

Landon has been fitted with a left ankle brace which he wears throughout the day. He has intermittently worn a left hand splint to "keep his left thumb out." Landon has always been a right-hander but can use his left hand to manipulate objects. In terms of motor development, Landon walked independently at age 13 months, crawled at 10 months and stood at 11-12 months. His gait is now stable and he does not fall excessively, although he is slightly clumsy. His parents have noted that

Landon's hips move "from side-to-side" and that he prefers sitting in a "W" position. There has been no motor regression and he continues to make solid progress.

Landon's speech has been exemplary. He began speaking independently with single words at age 6-7 months and he is now able to speak in short sentences. Landon knows his letters, colors, and shapes and has a good understanding of spoken language. His parents believe he "can recognize some words." He has never had speech therapy.

Landon receives both physical therapy and occupational therapy once weekly for a 90-minute session. This is administered at the Brandon Outpatient Center of All Children's Hospital.

Landon's vision and hearing are good. He has had hearing testing on two occasions with normal results. His appetite is stable and he is a good eater. Landon sleeps through the night and gets approximately 10-12 hours per sleep nightly with an additional nap daily.

Landon is on no intercurrent medications. He experienced seizures 12 hours after birth in the Newborn Intensive Care Unit (NICU) treated with Ativan, phenobarbital and phenytoin. Phenobarbital was discontinued at age three months and phenytoin was discontinued at time of hospital discharge. He has never had subsequent seizures. He does have allergies to both food and environmental factors.

* * *

NEUROLOGIC EXAMINATION reveals Landon to be alert, pleasant and cooperative. He is somewhat overactive and socially inattentive but participates fully in the examination. He smiles frequently and is playful. Landon maintains an age appropriate stream of

attention and answers questions with 2-3 word phrases. He appeared to appreciate all social interactions. The speech sounds are fluent and well articulated. There is no drooling.

Motor examination reveals evidence of an asymmetry of movement characterized by diminished left-sided movement, primarily in the upper extremity. There is diminished arm swing when walking but a full passive range of motion without contractures or atrophy. There are no fasciculations or adventitious movements. Landon grasps an object with his right hand easily and has good fine motor coordination and thumb-finger opposition. In contrast, he prefers grasping with the right hand but easily grasps with the left and performs individual finger movements. When he grasps an object, he tends to transfer readily to the right side. He crosses the midline with his right hand unless an object is moved laterally to the left side.

* * *

In summary, Landon's neurologic examination reveals mild left hemiparesis with relatively preserved functionality and range of motion. He ambulates well, is motorically stable and evidences no obvious weakness. His cognitive level of functioning is at age level without evidence of mental impairment.

I had an opportunity to review records which were sent on February 5, 2014. They confirm the parent's history of perinatal problems but provide no clear history of a hypoxic insult. Landon's CT scan of the brain on November 22nd revealed only extra-axial hemorrhage (outside brain tissue) and an MRI obtained on November 28, 2011 revealed multiple small areas of signal abnormality on diffusion weighted images consistent with focal ischemic events. These findings are inconsistent with a hypoxic ischemic event and do not suggest a mechanical injury.

I therefore do not believe that Landon should be considered for compensation within the NICA program. He does not have a substantial mental or motor impairment and his perinatal course is inconsistent with neurological injury to the brain or spinal cord resulting from oxygen deprivation or mechanical injury.

23. He further noted in his report that Landon's gait is stable and explained further in his deposition taken on September 23, 2014: "when I looked at him walking, I thought he walked in a stable fashion, but there was a tendency, when he started running, to position the ball of his foot down, and that is slightly clumsy, yes. . . . But he certainly didn't fall, and he wasn't—he could certainly ambulate quite well despite this."

24. Dr. Duchowny was asked if his independent medical examination of Landon supported the parents' statements that Landon had mild CP. He replied, "I would say, not really, no. I guess I would just say it would be very mild CP. I guess I would put it that way. He does have some motor findings. If you had to classify it, I think it ultimately would come under the heading of CP, but it would be very, very mild."

25. When asked during his deposition about the parents' disclosure that Landon crawled at 10 months, stood at around 11, and walked at 13 months, Dr. Duchowny opined that, "these are normal milestones."

26. When asked during his deposition if he found no evidence of mental impairment, Dr. Duchowny replied, "That's correct."

27. Dr. Duchowny's opinion that Landon does not have a substantial, permanent physical and mental impairment is credited.

28. Dr. Duchowny's opinion that Landon's injury is inconsistent with a hypoxic ischemic event and is inconsistent with neurological injury to the brain or spinal cord resulting from oxygen deprivation is at odds with Dr. Willis' opinion regarding the same issue.^{2/}

29. Dr. Willis' opinion that Landon's injury was consistent with hypoxic ischemic encephalopathy is consistent with the diagnosis at Landon's discharge from All Children's Hospital where he received a CT scan, a video EEG, and an MRI.

30. The greater weight of the evidence establishes that that there was an apparent obstetrical event that resulted in loss of oxygen to Landon's brain during labor, delivery and continuing into the post-delivery period that resulted in brain injury.

31. Here, the stipulated record demonstrates, along with Dr. Duchowny's expert opinion, that Landon is not permanently and substantially mentally impaired. While Landon has some motor

deficits, these deficits do not render him permanently and substantially physically impaired.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 766.301-766.316, Fla. Stat. (2011).

33. The Plan was established by the Legislature "to provide compensation on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for custodial care and rehabilitation." § 766.301, Fla. Stat. The Plan applies only to a birth-related neurological injury, which 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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality. (emphasis added).

34. 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. The Florida

Birth-Related Neurological Injury Compensation Association, 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 submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury."

§ 766.305(4), Fla. Stat.

35. 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. If, on the other hand, NICA disputes the claim, as it has in the instant case, the dispute must be resolved by the assigned Administrative Law Judge in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

36. In discharging this responsibility, the Administrative Law Judge must make the following determinations based upon all 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. 766.302(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.

37. In the instant case, Petitioners filed a claim alleging that Landon did sustain a birth-related neurological injury that is compensable under the NICA plan. As the proponent of the issue of compensability, the burden of proof is upon Petitioners.

§ 766.309(1)(a), Fla. Stat. See also Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("[T]he burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.").

38. The parties have stipulated that a participating physician provided obstetric services at Landon's birth in a hospital licensed in Florida. Landon was born a live infant and weighed more than 2,500 grams. NICA agrees that Landon sustained

an injury to the brain, but takes the position that the injury was not caused by oxygen deprivation during labor, delivery, and resuscitation in the immediate post-delivery resuscitation period. Instead, NICA contends that Landon's brain injury was, more likely than not, prenatally acquired as a result of placental insufficiency.

39. Dr. Willis' opinion that Landon's injury was consistent with hypoxic ischemic encephalopathy is consistent with the diagnosis at Landon's discharge from All Children's Hospital where he received a CT scan, a video EEG, and an MRI.

40. The greater weight of the evidence establishes that there was an apparent obstetrical event that resulted in loss of oxygen to Landon's brain during labor, delivery and continuing into the post-delivery period that resulted in brain injury.

41. The remaining issue to be determined is whether the injury resulted in a permanent and substantial mental impairment and a permanent and substantial physical impairment, inasmuch as both are required to establish compensability. Fla. Birth-Related Neurological Injury Comp. Ass'n v. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997) (the "Birnie" decision). Intervenors take the position that Landon is permanently and substantially impaired. NICA takes the position that Landon is not permanently and substantially mentally or physically impaired. Petitioners do not take a position on this issue.

42. The Legislature did not define "permanently and substantially mentally and physically impaired." However, those terms should be read in the context of the legislation creating the Plan. The Legislature intended that only a limited class of catastrophic injuries be compensable under the Plan.

43. In Matteini v. Florida Birth-Related Neurological Injury Compensation Association, 946 So. 2d 1092, 1095 (Fla. 5th DCA 2006), the court discussed the criteria for a physical impairment.

Under the Plan, a "physical impairment" relates to the infant's impairment of his "motor abnormalities" or "physical functions," which along with the brain injury significantly affects the infant's mental capabilities so that the infant will not be able to translate his cognitive capabilities into adequate learning or social development in a normal manner.

44. In Adventist Health System/Sunbelt, Inc. v. Florida Birth-Related Neurological Injury Compensation Association, 865 So. 2d 561, 567 (Fla. 5th DCA 2004), the court in explaining the Birnie decision stated: "[U]nder NICA, the identification of a substantial mental impairment may include not only significant cognitive deficiencies but can include, in a proper case, additional circumstances such as significant barriers to learning and social development."

45. The child in the Birnie decision was found to have both permanent and substantial mental and physical impairments, although tests indicated that he was average or above average in

his cognitive skills and pre-academic skills. The child in Birnie is described as follows:

At the time of the hearing in this case, Eric was 4 1/2 years old. He was unable to stand up, walk, or crawl. His only method of independent mobility was to roll over. The use of his hands and arms was very limited. He also had great difficulty talking and/or communicating and he must take long pauses to formulate a response to any inquiry. Eric's brain dysfunction is permanent. Because Eric's speech is greatly impacted by his condition, it is virtually certain that he will always be severely limited in his verbal expression and other communication skills. While continued therapy may help him to communicate better and to become somewhat more mobile, he will almost certainly never be able to walk, feed, groom or toilet himself.

* * *

As a direct result of his injury, Eric will not be able to communicate, attend school or otherwise learn and develop intellectually without substantial accommodation. His social and vocational development have unquestionably been significantly impaired.

688 So. 2d at 1352.

46. There is a sharp contrast between Landon and the child in the Birnie decision. Landon is able to walk and run. His speech is exemplary. He knows his letters, colors, and shapes and has a good understanding of spoken language. Landon should be able to attend school and should be able to learn and to communicate.

47. Neither Petitioners, nor Intervenors, have established that Landon has a permanent and substantial mental and physical impairment. Thus, Landon is not entitled to benefits under the Plan.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the petition filed by Jessica and Cody Ibasfalean, on behalf of and as parents of Landon Ibasfalean, is dismissed with prejudice.

DONE AND ORDERED this 15th day of December, 2014, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of December, 2014.

ENDNOTES

^{1/} Although Dr. Willis is frequently called upon in NICA proceedings for his expert opinion regarding maternal-fetal medicine, his credentials are not in evidence.

^{2/} In the Pre-Hearing Stipulation, the parties stipulated to the entry of all the exhibits identified in the Notice of Filing Stipulated Record. Petitioners, however, take the position that the deposition testimony of Dr. Duchowny should be stricken relative to any opinion expressed regarding whether an obstetrical event resulted in loss of oxygen to the baby's brain during labor, delivery, or immediate post-delivery period "as he expressed no qualifications to render such an opinion." Petitioners' request that portions of Dr. Duchowny's testimony be stricken is denied.

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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).