

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN GARRETT PRICE AND MIRANDA
E. PRICE, INDIVIDUALLY AND ON
BEHALF OF AURORA PRICE, A MINOR,

Petitioners,

vs.

Case No. 14-5123N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION, a/k/a NICA,

Respondent,

and

UNIVERSITY OF FLORIDA BOARD OF
TRUSTEES AND SHANDS TEACHING
HOSPITAL AND CLINICS, INC.,
d/b/a UNIVERSITY OF FLORIDA
HEALTH SHANDS HOSPITAL,

Intervenors.

_____ /

FINAL ORDER

Pursuant to notice, a final hearing on the issue of notice was held in this case on February 26, 2016, in Gainesville, Florida, before W. David Watkins, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jack T. Cook, Esquire
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Orlando, Florida 32803

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STATEMENT OF THE ISSUE

The issue in this case is whether Intervenors provided notice as required by section 766.316, Florida Statutes, on behalf of both the hospital, and the physicians and nurse midwives, rendering obstetrical services to Petitioner, Miranda E. Price.

PRELIMINARY STATEMENT

On October 24, 2014, Petitioners, John Garrett Price and Miranda E. Price, on behalf of and as parents and natural guardians of Aurora Price (Aurora), a minor, filed a Petition Under Protest Pursuant to Florida Statute Section 766.301 et seq. (Petition) with DOAH.

The Petition provided that Shireen Madani Sims, M.D. was the physician providing obstetric services at the birth of Aurora, who was born at the University of Florida Health Shands

Hospital (Shands). DOAH served the Florida Birth-Related Neurological Injury Compensation Association (Association or NICA) with a copy of the Petition on October 31, 2014. DOAH served copies of the Petition on Dr. Sims on November 3, 2014, and on Shands on November 19, 2014.

On November 24, 2014, Petitions to Intervene were filed by the University of Florida Board of Trustees and by Shands Teaching Hospital and Clinics, Inc., d/b/a University of Florida Health Shands Hospital. Those Petitions to Intervene were granted by Order dated December 9, 2014.

On August 27, 2015, Respondent filed a Motion for Summary Final Order, alleging that Aurora sustained a birth-related neurological injury as defined in section 766.302(2), Florida Statutes. On October 28, 2015, an Amended Partial Summary Final Order was entered, finding that Aurora 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 January 13, 2016, was continued and rescheduled for February 26, 2016.

On February 23, 2016, the parties filed a Pre-hearing Stipulation and on February 24, 2016, filed an Amended Pre-hearing Stipulation.

The final hearing was held on February 26, 2016. At the final hearing, the "admitted facts" in paragraph (e) of the Amended Pre-hearing Stipulation were admitted into evidence.

Joint Exhibits A through I were offered into evidence. Petitioners objected, asserting lack of authenticity of the documents in the Joint Exhibits that purportedly bore the signature of Petitioner, Miranda E. Price (Ms. Price or patient). The undersigned considered the Certificates of Authenticity (Intervenors' Composite Hearing Exhibits 1 and 2, also found in Joint Exhibits A052 and I001) and the testimony of Marianne McGuinness-Gargano, the medical records custodian. Petitioners' objection was overruled, and Joint Exhibits A through I, including all of the documents bearing Ms. Price's signature, were admitted into evidence. Intervenors' Exhibit D-49 was also received in evidence.

In addition to Ms. McGuinness-Gargano, the following witnesses were called at the final hearing: Ms. Price; her husband, John Garrett Price (Mr. Price); Shayla Campbell, (Ms. Campbell); and Beverly Watson Littles, LPN (Nurse Littles). The deposition testimony of Robin E. Cunningham, RN was offered in lieu of her live testimony.

The Transcript of the final hearing was filed by the court reporter, as instructed, on March 16, 2016. The parties agreed to file their proposed final orders within 30 days of the filing

of the transcript. Intervenors filed their Proposed Final Order on April 14, 2016, and on April 15, 2016, Respondent filed a Notice of Joinder in Intervenors' Proposed Final Order.

On May 13, 2016, Petitioners filed a Motion for Extension of Time to File Proposed Order and Recommendation, stating that the attorneys of the firm representing Petitioners had been in Ohio for a five-week trial, and had just returned to Florida on May 12, 2016. The motion represented that counsel for Petitioners had conferred with counsel for both Respondent and Intervenors, and that neither party objected to the requested extension. The same day the motion for extension of time was filed, the undersigned entered an Order granting the extension to May 20, 2016.

Petitioners filed a Joint Proposed Order and Recommendation on May 23, 2016. Although Petitioners' Proposed Order was untimely filed, it has nonetheless been considered by the undersigned in the preparation of this Final Order. On June 1, 2016, Intervenors filed a Joint Response and Exceptions to Petitioners' Joint Proposed Order and Recommendation. Inasmuch as this filing was neither authorized by rule, or by order of the undersigned, it has not been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. From approximately April 2008 through the delivery of Aurora Price in May 2012, Ms. Price was employed by the University of Florida (U.F.) College of Pharmacy as an editor and writer in the medicinal chemistry section where she wrote and edited papers and grants, including academic scholarly articles.

2. By virtue of her education, training, and experience in linguistics, editing, and grant writing and editing for professional publications, her custom and habit was to pay close attention to the written word and to read documents prior to signing them.

3. When Ms. Price believed that she may have been pregnant, she chose to have her prenatal care and delivery performed by U.F. physicians and desired to have her infant born at Shands, motivated by her having graduated from U.F. and by her employment with U.F.

4. During the course of her pregnancy, Ms. Price received her prenatal care at the U.F. Magnolia Park OB/GYN clinic (prenatal clinic) in Gainesville.

5. From her initial visit at the prenatal clinic on September 21, 2011, through the delivery of her daughter, Aurora, Ms. Price knew that her prenatal care would be provided

by U.F. physicians and that her infant would be delivered by U.F. physicians at Shands.

6. The prenatal clinic changed its name, subsequent to the prenatal care Ms. Price received, to U.F. Health Women's Clinic--Springhill, and also changed its location.

7. Ms. Price's first visit to the prenatal clinic occurred on September 21, 2011. During that visit, Ms. Price physically received from the prenatal clinic check-in staff (unit clerk) two NICA "Peace of Mind" brochures (NICA brochures) stapled to a Notice to Obstetrics Patient form (NICA acknowledgment form).

8. The NICA acknowledgment form contained a "University of Florida Physicians" identifier at the top left corner and in pertinent part, relevant to the NICA notice issue, contained the words:

PHYSICIAN NOTICE TO OBSTETRIC PATIENT
(See section 766.316, Florida Statutes)

I have been furnished information on behalf of all University of Florida College of Medicine Physicians and certified midwives who practice obstetrics or perform obstetrics services, which has been prepared by the Florida Birth-Related Neurological Injury Compensation Association (NICA). I have also been advised that the University of Florida College of Medicine physicians and certified midwives who practice obstetrics or perform obstetric services are participating physicians in that program, wherein certain limited compensation is available in the event certain neurological injury may occur during labor, deliver, or resuscitation. For specifics on the

program, I understand I may contact the Florida Birth-Related Neurological Injury Compensation Association (NICA), Post Office Box 14567, Tallahassee, Florida 323117-4567, 1-800-398-2129. I specifically acknowledge that I have received a copy of the brochure prepared by NICA.

HOSPITAL NOTICE TO OBSTETRIC PATIENT
(See section 766.316, Florida Statutes)

I have been furnished information prepared by the Florida Birth-Related Neurological Injury Compensation Association (NICA) on behalf of Shands Teaching Hospital and Clinics, Inc., d/b/a Shands at the University of Florida. For specifics on the program, I understand I may contact the Florida Birth-Related Neurological Injury Compensation Association (NICA), Post Office Box 14567, Tallahassee, Florida 32317-4567, 1-800-398-2129. I specifically acknowledge that I have received a copy of the brochure prepared by NICA.

9. Additionally, Ms. Price physically received from the unit clerk a genetic screening form, a U.F. Health Cystic Fibrosis Screening form, and a Healthy Start form.

10. On this initial prenatal visit of September 21, 2011, after Ms. Price finished her business with the unit clerk and financial staff member, Mr. and Ms. Price met with Nurse Littles between 20 and 45 minutes. Nurse Littles had worked at the prenatal clinic in the same position since 2005.

11. While at hearing, Nurse Littles did not have an independent recollection of seeing the patient. She did make charting entries regarding the patient's visit.

12. During the Prices' visit of September 21, 2011, Nurse Littles followed her customary and habitual routine that was required by the prenatal clinic. In order to ensure that the required routine was followed, Nurse Littles used a checklist which has a section for circling "NICA" after Nurse Littles confirmed that patients received the NICA brochure and signed the NICA acknowledgment form.

13. A summary of Nurse Littles' customary and habitual routine, required by the prenatal clinic, that she followed (approximately 15 times per week since 2005) on Ms. Price's initial prenatal visit on September 21, 2011, included the following steps which are relevant to the NICA notice issue:

- The patient gives to Nurse Littles the two NICA Brochures stapled to the NICA acknowledgment form, as well as the Healthy Start, genetic testing, and cystic fibrosis forms that the unit clerk provided to the patient.
- Nurse Littles takes the patient's blood pressure, height and weight, talks to the patient and takes down the patient's health information, updates the patient's records, and ensures that the patient's records are in order and that the patient is prepared for the first visit with the U.F. physician

or physicians who will be providing the patient's obstetrical care.

- If the NICA acknowledgment form was signed prior to Nurse Littles having met the patient, Nurse Littles will witness the patient's signatures in the section pertaining to U.F. physicians and in the section pertaining to Shands, after she explains the form. She then affixes her signature in the two witness places indicated under the notice provisions for U.F. (physicians) and for Shands (Hospital). If the NICA acknowledgment form was not signed prior to Nurse Littles meeting with the patient, Nurse Littles, after explaining the form, witnesses the patient's signing the form and then signs her name as witness in the sections for both the U.F. (physicians) and Shands (Hospital).
- Nurse Littles advises the patient that the NICA brochures attached to the NICA acknowledgment form are given on behalf of the U.F. physicians who will be providing obstetrical care for the patient, and are also given on behalf of Shands.
- After witnessing the patient's signature, Nurse Littles detaches the NICA brochures from the NICA

acknowledgment form and gives the two brochures back to the patient.

- Nurse Littles gives the patient a general explanation that the NICA brochures contain information that explain where the patient can go for help if something unexpected happens during the birth of the child. She does not go into detail regarding rights and limitations of the NICA plan. She does not go into the legalities of the NICA program.
- Nurse Littles advises all patients to read the NICA brochure and tells the patient that if the patient has more questions to let her know.
- Nurse Littles advises the patient that the prenatal clinic provides care for patients only if the patient is to deliver her child at Shands.
- After completing the review of the documents and conversation with the patient, Nurse Littles enters an electronic note into the electronic medical record concerning the intake visit. She also takes several documents, including the NICA acknowledgment form to the chart room in the clinic and places them in a box designated for them to be scanned into the electronic record.

14. Nurse Littles' testimony regarding her customary and habitual routine at the clinic is credible. Accordingly, the undersigned finds that during Ms. Price's visit to the prenatal clinic on September 21, 2011, Nurse Littles followed her customary and habitual routine, required by the prenatal clinic.

15. Pertinent to the NICA notice issue, the undersigned finds that Nurse Littles, in accordance with her customary, habitual, and routine practice, and as required by the prenatal clinic process, took from Ms. Price the NICA brochures attached to the NICA acknowledgment form and witnessed Ms. Price's signature on the NICA acknowledgment form in the two places on the form on behalf of U.F. physicians and Shands.

16. The undersigned also finds that Nurse Littles advised Ms. Price to read the NICA acknowledgment form prior to her witnessing Ms. Price's signature, and then removed the NICA brochures from the form and returned them to Ms. Price.

17. Nurse Littles credibly testified that she placed the signed NICA acknowledgment form, along with the genetics forms, in the scanning box at the prenatal clinic for them to be scanned. Inexplicably, the NICA acknowledgment form and genetic form were not scanned into the electronic medical record of Ms. Price, and their whereabouts are unknown.

18. Nurse Littles' testimony regarding the NICA acknowledgement form is corroborated in her Progress Notes

relating to Ms. Price's visit of September 21, 2011. Her Progress Notes specifically reflect "Her NICA and Genetics forms are scanned," indicating that Nurse Littles had placed the forms in the scanning box to be scanned by other employees. Again, it is unknown why these forms were not electronically scanned.

19. At the September 21, 2011, prenatal visit, Ms. Price was also advised by Nurse Littles that she was being assigned to Sharon Young Byun, M.D. (Dr. Byun), for prenatal care. Nurse Littles advised Ms. Price that the prenatal clinic only cared for patients whose child would be delivered by the U.F. clinic physicians at Shands.

20. Ms. Price first met with Dr. Byun on September 29, 2011, for a prenatal visit at the prenatal clinic. Dr. Byun at all material times was a U.F. physician and a NICA participating physician.

21. On November 4, 2011, Ms. Price presented to the Parke Avenue Imaging Center, a Shands radiology facility, but not on the Shands hospital grounds. She was there solely for breast imaging because of an abnormality identified earlier. She was not there for pregnancy-related diagnostics, care, or treatment. At this radiology appointment, Ms. Price was not provided NICA brochures and did not sign a NICA acknowledgment form. She did sign a Consent and Authorization form.

22. On April 18, 2012, Ms. Price believed that her membranes were leaking and presented to Shands for obstetrical care.

23. Ms. Campbell served as a unit clerk in the Labor and Delivery department at Shands from approximately April or May 2011 through April or May 2013. Ms. Campbell was on duty April 18, 2012, when Ms. Price came to Shands for obstetrical care.

24. By virtue of her training and Shands' required practice, Ms. Campbell had a customary and habitual routine that included the following steps to check in a labor and delivery patient at Shands:

- Ms. Campbell signs in the patient and creates a patient account by taking personal identification and demographic information and verifies the patient's identity with the patient's identification document.
- Ms. Campbell assembles three documents on a clipboard: the NICA brochure which is on top, the Consent and Authorization form beneath the brochure, and finally the NICA acknowledgment form.
- Ms. Campbell goes over the NICA brochure with the patient and advises the patient that the patient will be asked to sign the NICA acknowledgment form

for the brochure. She advises that the NICA brochure has information that explains what NICA does if the baby suffers injury during the delivery. She advises the patients of the telephone number on the NICA brochure which the patient can call if the patient has questions. During this process, she further advises and urges the patient to read the brochure.

- After discussing the brochure, Ms. Campbell goes over the NICA acknowledgment form and again advises and urges the patient to read the form. When the patient indicates that they read the form, the patient signs the form and Ms. Campbell witnesses their signature in two places--one place for the hospital notice and one place for the physician notice. She places her signature in the witness spaces on the form. She advises the patient the NICA acknowledgment form contains information regarding the protections for the hospital and for the physicians, if something happens to the infant during its birth. Ms. Campbell next has the patient read and sign the Consent and Authorization form, which is a document with duplicate pages. Ms. Campbell witnesses the signature by affixing her

signature or initial on the Consent and Authorization form.

- The patient keeps the NICA brochure and a copy of the Consent and Authorization form, but Ms. Campbell retains the NICA acknowledgment form which is placed into a folder and is given to the labor and delivery nurse assigned to the patient.

25. Ms. Campbell's testimony at hearing credibly established that she followed her customary, habitual, and routine practice when she provided documents, including a single NICA brochure, a NICA acknowledgment form, and a Consent and Authorization form to Ms. Price when she checked into the labor and delivery area (referred to as the triage area) on April 18, 2012.

26. Ms. Campbell urged and otherwise encouraged Ms. Price to read the NICA brochure, NICA acknowledgment form, and Consent and Authorization forms.

27. The evidence established that on April 18, 2012, Ms. Price signed the NICA acknowledgment form in two places--the hospital notice section and the physician notice section.

28. Ms. Campbell witnessed both the NICA acknowledgment form of April 18, 2012, and the Consent and Authorization form of April 18, 2012, by affixing her signature in two places on the NICA acknowledgment form (the Hospital and U.F. sections)

and by affixing her initials "SC" on the Consent and Authorization form.

29. The NICA acknowledgment form, which is signed by Ms. Campbell in two places (Joint Exhibit D049)--one under the hospital notice and one under the U.F. physician notice, contained the following language:

HOSPITAL NOTICE TO OBSTETRIC PATIENT
(See section 766.316, Florida Statutes)

I have been furnished information prepared by the Florida Birth Related Neurological Injury Compensation Association (NICA) on behalf of Shands at the University of Florida. For specifics on the program, I understand I can contact the Florida Birth-Related Neurological Injury Compensation Association (NICA), Post Office Box 14567, Tallahassee, Florida, 32317-4567, 1-800-398-2129. I specifically acknowledge that I have received a copy of the brochure prepared by NICA.

PHYSICIAN NOTICE TO OBSTETRIC PATIENT
(See section 766.316, Florida Statutes)

I have been furnished information prepared by the Florida Birth-Related Neurological Injury Compensation Association (NICA) on behalf of ALL physicians and nurse midwives including University of Florida College of Medicine physicians and nurse midwives, who practice obstetrics or perform obstetric services at this facility. I have also been advised that the above physicians and nurse midwives are participants in the NICA program, and that 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), Post Office Box 14567, Tallahassee, Florida, 32317-4567, 1-800-398-2129. I specifically acknowledge that I have received a copy of the brochure prepared by NICA.

30. On April 18, 2012, after Ms. Campbell completed her business with Ms. Price, she gave the labor and delivery department nurse, Robin Cunningham, RN (Nurse Cunningham), the NICA acknowledgment form executed by Ms. Price and witnessed by Ms. Campbell.

31. Nurse Cunningham reviewed the NICA acknowledgment form and checked off an entry into Ms. Price's medical record that reads, "NICA Signature Obtained/On File," meaning that she personally viewed the NICA acknowledgment form that was executed by Ms. Price and witnessed by Ms. Campbell on April 18, 2012, prior to checking off on the medical record entry.

32. Nurse Cunningham was the nurse who discharged Ms. Price from labor and delivery triage on April 18, 2012. Nurse Cunningham witnessed Ms. Price's signing the Outpatient Obstetrical Information and Instruction sheet on April 18, 2012.

33. On May 4, 2012, Ms. Price presented to Shands labor and delivery triage for admission for delivery. At that time Ms. Price signed a NICA acknowledgment form given to her by the unit clerk. She signed it in two places--one under the hospital notice on the form and one under the U.F. physician notice on the form. The language on the May 4, 2012, NICA acknowledgment

form was the same as the language on the form signed by Ms. Price on April 18, 2012.

34. Ms. Price delivered her infant, Aurora Price, on May 5, 2012. The attending physician at the delivery was Dr. Sims, who is, and was at the time of Aurora's delivery, a University of Florida NICA participating physician.

35. The greater weight of the evidence established that on September 21, 2011; April 18, 2012; and May 4, 2012, Intervenors provided the notice required by section 766.316 on behalf of Dr. Sims and Shands.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 766.301-766.316, Fla. Stat. (2016).

37. 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.

38. 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.

39. 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.

40. Petitioners contend that Dr. Sims and Shands did not give sufficient notice pursuant to section 766.316. Intervenor's contend that sufficient notice was provided 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 Intervenor's. Tabb v. Fla. Birth-Related Neurological Injury Comp. Ass'n., 880 So. 2d 1253, 1257 (Fla. 1st DCA 2004).

41. Although Nurse Little's does not independently remember her encounter with Ms. Price on September 21, 2011, 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. (2016); see also Tabb, 880 So. 2d at 1259. Nurse Little's Progress Notes of September 21, 2011 further corroborate the fact that Ms. Price was provided a NICA brochure

during that visit and that Ms. Price signed the acknowledgment form.

42. Although Ms. Price denies or otherwise has no current recollection of having been given a NICA brochure at any time during her visits to Shands labor and delivery triage on both April 18, 2012, and May 4, 2012, her signatures on the NICA acknowledgment forms dated April 18, 2012, and May 4, 2012, raise the statutory rebuttable presumption provided by section 766.316 that she not only received the NICA brochure provided to her on those dates on behalf of both U.F. (physicians) and Shands, but also that the notice requirements of section 766.316 were met by U.F. (physicians) and Shands. Based upon the totality of the evidence admitted, the undersigned finds by a preponderance of the evidence that the Petitioners have not rebutted the statutory presumption.

43. 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.

44. Petitioners assert that if NICA brochures were not provided to Ms. Price on the very first instance when she saw Dr. Byun (September 29, 2011), U.F. (physicians) and Shands would not be in compliance with the NICA notice provisions in section 766.316. The undersigned finds that Petitioners' position is unfounded. Although Florida courts use the establishment of the physician-patient relationship as an important consideration to determine compliance with the statutory NICA notice provision, the date that the relationship is formed merely triggers the starting point upon which to determine if the NICA notice is given within a reasonable time to conform to the NICA notice requirements. The formation of the physician-patient relationship does not establish a date after which any NICA notice would be unreasonable per se. Although the Fifth District Court of Appeal advised providers in dicta to "furnish the notice at the first opportunity and err on the side of caution," the court did not establish a bright line

rule that the NICA notice must be given when the patient first encounters her OB/GYN physician or first encounters the hospital where the delivery takes place. Weeks v. Fla. Birth-Related Neuro. Injury Comp. Ass'n., 977 So. 2d 616, 620 (Fla. 5th DCA 2008). The Fifth District Court of Appeal concluded: "In summary, we hold that the NICA notice must be given within a reasonable time after the provider-obstetrical relationship begins. . . ." (emphasis added), Id. at 619; see also Galen of Florida v. Braniff, 696 So. 2d 308, 311 (Fla. 1997).

Additionally, the court went on to state that "[W]hen the patient first becomes an 'obstetrical patient' of the provider and what constitutes a 'reasonable time' are issues of fact." Weeks, 977 So. 2d at 620. The Weeks court noted that the central consideration is whether the timing of the notice provides the patient with a reasonable opportunity to make a meaningful choice of selecting the NICA participating provider or a provider who is not a NICA participant.

45. The undersigned has found that the NICA brochures on behalf of U.F. (physicians) and Shands were provided to Ms. Price at her first prenatal intake visit at the prenatal clinic, in advance of her seeing Dr. Byun for the first time. As reason would dictate, even though Ms. Price did not first see a UF physician until September 29, 2011, and did not present to Shands for obstetrical care until April 18, 2012, it is not

unreasonable for the NICA brochures to have been provided to her on September 21, 2011, in advance of those events. Accordingly, this Court finds that the NICA brochures provided to Ms. Price on September 21, 2011, on behalf of both U.F. (physicians) and Shands, satisfied the requirements of section 766.316.

46. The undersigned further finds that had the NICA brochure not been provided to Ms. Price on behalf of UF (physicians) and Shands on September 21, 2011, the NICA notice provided to Ms. Price on behalf of U.F. (physicians) and Shands on April 18, 2012, was also provided within a reasonable time prior to the delivery of Ms. Price's infant in light of all the circumstances of this case, and thus satisfied the purpose of the NICA notice requirements for U.F. (physicians) and Shands on that date.

47. Finally, Petitioners' contend that even if the NICA brochures were given to Ms. Price during the September 21, 2011, prenatal visit and during her presentations at Shands on April 18, 2012, and May 4, 2012, the notice was deficient because the verbal explanations by Nurse Littles and Ms. Campbell constituted an insufficient verbal explanation of benefits and limitations on liability regarding the NICA plan. The undersigned finds that there is no requirement in section 766.316 that the health care provider, the hospital, or someone on their behalf verbally explain and counsel patients

about such matters regarding the NICA plan. The Fifth District Court of Appeal has held that the NICA brochure in and of itself satisfies the statutory requirement of a "clear and concise explanation of a patient's rights under the plan." Dianderas v. Fla. Birth-Related Neurological, 973 So. 2d 523, 527 (Fla. 5th DCA 2007), see also Jackson v. Florida Birth-Related Neurological, 932 So. 2d 1125, 1128 (Fla 5th DCA 2006). Any other explanation from the healthcare providers, or from someone on behalf of the healthcare providers, is unnecessary because the NICA brochure provides an adequate explanation of the NICA plan benefits and limitations.

CONCLUSION

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

ORDERED:

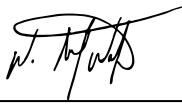
1. The claim for compensation filed by Petitioners, under protest, as parents and natural guardians of Aurora Price, a minor, is compensable and is APPROVED.^{1/}

2. Intervenors complied with the statutory Notice requirements of the NICA plan pursuant to section 766.316.

3. The parties are accorded 45 days from the date of this Order to resolve, subject to approval by the Administrative Law Judge, the amount and manner of payment of an award to the parents, reasonable expenses incurred with the filing of the

claim, including reasonable attorneys' fees, and the amount owing for expenses previously incurred and future expenses to be incurred. If not resolved within such period, the parties shall advise the Administrative Law Judge, and a hearing will be scheduled to address these remaining issues.

DONE AND ORDERED this 22nd day of June, 2016, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of June, 2016.

ENDNOTE

^{1/} Compensability of the claim was previously found and determined by this Tribunal's Corrected Partial Final Summary Order of October 7, 2015.

COPIES FURNISHED:
(via certified mail)

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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).