

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRANDI L. JENNINGS AND EVAN M. MABE,
ON BEHALF OF AND AS PARENTS AND
NATURAL GUARDIANS OF KILLIAN MABE, A
MINOR CHILD,

Petitioners,

vs.

Case No. 19-5428N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

ST. JOSEPH'S HOSPITAL, INC. D/B/A
ST. JOSEPH'S WOMEN'S HOSPITAL,

Intervenor.

FINAL ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569, 120.57(1), and 766.304, Florida Statutes,¹ on July 23, 2020, by Zoom Conference in Tallahassee, Florida.

APPEARANCES

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¹ All statutory references are to Florida Statutes (2019), unless otherwise noted.

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STATEMENT OF THE ISSUE

The issue to determine in this matter is whether the minor child should be awarded compensation under the Florida Birth-Related Neurological Injury Compensation Association Plan.

PRELIMINARY STATEMENT

On September 27, 2019, Petitioners Brandi L. Jennings and Evan M. Mabe, on behalf of and as parents and natural guardians of Killian Mabe ("Killian"), a minor child, filed an Involuntary Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (the "Petition") with the Division of Administrative Hearings ("DOAH") for the determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (the "Plan").

Killian was born at Intervenor St. Joseph's Hospital, Inc. d/b/a St. Joseph's Woman's Hospital ("St. Joseph's") in Tampa, Florida. Kathryn Hegland Leenhouts, M.D., provided obstetrical services at Killian's birth.

DOAH served a copy of the Petition on Respondent Florida Birth-Related Neurological Injury Compensation Association ("NICA") on October 21, 2019. DOAH also served Dr. Leenhouts with a copy of the Petition, as well as St. Joseph's, on that same date.

St. Joseph's filed a motion to intervene on October 31, 2019, which was granted.

On February 14, 2020, NICA filed a Notice of Compensability and Request for Evidentiary Hearing on Compensability, accepting Petitioners' claim as compensable under the Plan. However, NICA acknowledged that Petitioners challenged whether obstetrical services were delivered by a physician who participated in the NICA Plan. NICA took no position on that specific issue. Instead, NICA requested DOAH schedule a hearing to determine the Petition's compensability and possible award under section 766.31.

On May 6, 2020, DOAH issued a Notice of Hearing advising the parties that an evidentiary hearing would be held on July 23, 2020, to determine "whether the injury claimed is a birth-related neurological injury and whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in the hospital."

On June 4, 2020, the undersigned issued an Order Granting Motion for Partial Summary Final Order ruling that Killian suffered a "birth-related neurological injury" as defined in section 766.302(2). However, before concluding that Petitioners' claim was compensable under the NICA Plan, the undersigned noted that the issue of whether obstetrical services were delivered by a "participating physician" under section 766.309(1)(b) remained to be determined following a chapter 120 evidentiary hearing.

The final hearing was held on July 23, 2020. At the hearing, Petitioners' Exhibit 1 was admitted into evidence. Intervenor's Exhibits 1 and 2 were admitted into evidence. No party presented witnesses. At the final hearing, the parties stipulated to the facts listed in the Findings of Fact section below.

A Transcript of the final hearing was filed with DOAH on August 11, 2020. At the close of the hearing, the parties were advised of a ten-day deadline after receipt of the hearing transcript to file post-hearing submittals. All parties filed post-hearing submittals, which were duly considered in preparing this Final Order.

FINDINGS OF FACT

1. On October 16, 2018, Petitioner Brandi L. Jennings was admitted to St. Joseph's to deliver her child (Killian).

2. As part of her admission that day, Ms. Jennings signed a Receipt of NICA Information ("Receipt") presented to her by St. Joseph's pursuant to section 766.316. The Receipt notified Ms. Jennings that St. Joseph's was furnishing her information prepared by NICA, and stated that "certain limited compensation is available in the event certain types of qualifying neurological injuries may occur during labor, delivery or resuscitation."

3. By providing Ms. Jennings this Receipt, St. Joseph's complied with the terms of the NICA notice requirement set forth in section 766.316.

4. On October 18, 2018, Ms. Jennings gave birth to Killian at St. Joseph's.

5. Killian was born a live infant weighing at least 2,500 grams. However, during the course of labor, delivery, or resuscitation in the immediate postdelivery period, Killian sustained an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury, which rendered him permanently and substantially mentally and physically impaired. (Killian was ultimately diagnosed with hypoxic-ischemic encephalopathy.) As such, Killian's injury qualifies as a "birth-related neurological injury" as defined in section 766.302(2).

6. Killian was delivered by obstetrician, Kathryn Leenhouts, M.D.

7. Dr. Leenhouts was the only physician who directly provided obstetrical services to Ms. Jennings in the course of her labor and delivery or in the immediate postdelivery period at St. Joseph's.

8. At the time of Killian's birth, Dr. Leenhouts was not employed by St. Joseph's. Instead, Dr. Leenhouts worked for Exodus Women's Center, where she, along with other members of that group, had previously applied for and were granted staff privileges at St. Joseph's.

9. During the year of Killian's birth (2018), Dr. Leenhouts did not pay the assessment set forth in section 766.314, which is required for participation in the NICA Plan. Neither was any evidence offered to establish that Dr. Leenhouts was exempt from payment of the assessment for 2018. Consequently, Dr. Leenhouts was not a "participating physician" in the Plan as that term is defined by section 766.302(7).

10. St. Joseph's, on the other hand, was current with its assessment payments under section 766.314 for 2018.

11. Based on "all available evidence" in the record, Petitioners' claim does not meet the statutory requirements for compensability under the Plan. The evidence produced at the final hearing establishes that the obstetrical services provided at Killian's birth were not delivered by a "participating physician" as defined in section 766.302(7). Therefore, Petitioners' claim does not meet the requirements for compensation under section 766.309(1), and Killian is not eligible for an award of NICA benefits under section 766.31.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 766.301 through 766.316. The undersigned, as an Administrative Law Judge ("ALJ"), has "exclusive jurisdiction to determine whether a claim filed under NICA is compensable." §§ 766.301(1)(d), 766.304, and 766.311(1), Fla. Stat.

13. In 1988, the Florida Legislature created the Plan as a means to alleviate the high costs of medical malpractice insurance for physicians practicing obstetrics. *Bennett v. St. Vincent's Med. Ctr., Inc.*, 71 So. 3d 828, 836 (Fla. 2011); and *Univ. of Miami v. Ruiz*, 164 So. 3d 758, 764 (Fla. 3d DCA 2015). Specifically, the Legislature established the Plan "to provide compensation, on a no-fault basis, for a limited class of catastrophic [birth-related neurological] injuries that result in unusually high costs for custodial care and rehabilitation." *Fla. Birth-Related Neuro. Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354 (Fla. 1997); and § 766.301(2), Fla. Stat. The Plan's purpose is to "provid[e] compensation, irrespective of fault, for birth-related neurological injury claims." § 766.303(1), Fla. Stat.

14. When considering whether a claim is compensable under the NICA Plan, section 766.309(1) charges the ALJ to make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury ... ;

(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; and

(c) How much compensation, if any, is awardable pursuant to s. 766.31.

(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.

15. Upon determining that a claim does not qualify for an award of compensation, section 766.309(2) instructs:

If the administrative law judge determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, she or he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail.

On the other hand, if a claim does qualify for compensation, section 766.31(1) directs that:

Upon determining that an infant has sustained a birth-related neurological injury *and that obstetrical services were delivered by a participating physician at the birth*, the administrative law judge shall make an award providing compensation for the following items relative to such injury: (emphasis added).

16. Section 766.303 establishes that civil action is foreclosed against "any person or entity" following a determination that a claim is compensable under the NICA Plan, stating, in part:

(2) The rights and remedies granted by this plan on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, her or his personal representative, parents, dependents, and next of kin, at common law or otherwise, against any person or entity directly involved with the labor, delivery, or immediate postdelivery resuscitation during which such injury occurs, arising out of or related to a medical negligence claim with respect to such injury.^[2]

The exclusiveness of the NICA remedy is emphasized in section 766.304, which states, in part:

No civil action may be brought until the determinations under s. 766.309 have been made by the administrative law judge. If the administrative law judge determines that the

² See *Fla. Birth-Related Neuro. Injury Comp. Ass'n v. Dep't of Admin. Hearings*, 29 So. 3d 992, 998 (Fla. 2010)(wherein the court identified section 766.303(2) as "NICA's exclusivity of remedies rule, which provides that if an injury is found to be compensable under NICA, then all civil remedies are precluded.").

claimant is entitled to compensation from the association, or if the claimant accepts an award issued under s. 766.31, no civil action may be brought or continued in violation of the exclusiveness of remedy provisions of s. 766.303.

17. The term "participating physician" is defined in section 766.302(7) as:

[A] physician licensed in Florida to practice medicine who practices obstetrics or performs obstetrical services either full time or part time and who had paid or was exempted from payment at the time of the injury the assessment required for participation in the birth-related neurological injury compensation plan for the year in which the injury occurred. Such term shall not apply to any physician who practices medicine as an officer, employee, or agent of the Federal Government.

Stated another way, in order for an obstetrician to be considered a "participating physician," he or she must pay the requisite annual fee to NICA during the year of the injury.

18. The annual assessment required for participation in the Plan is discussed in section 766.314, which states, in pertinent part:

(4) The following persons and entities shall pay into the association an initial assessment in accordance with the plan of operation:

(a) On or before October 1, 1988, each hospital licensed under chapter 395 shall pay an initial assessment of \$50 per infant delivered in the hospital during the prior calendar year, as reported to the Agency for Health Care Administration;

* * *

(b)1. On or before October 15, 1988, all physicians licensed pursuant to chapter 458 or chapter 459 as of October 1, 1988, other than participating physicians, shall be assessed an initial assessment of \$250, which must be paid no later than December 1, 1988.

* * *

(c) On or before December 1, 1988, each physician licensed pursuant to chapter 458 or chapter 459 who wishes to participate in the Florida Birth-Related Neurological Injury Compensation Plan and who otherwise qualifies as a participating physician under ss. 766.301-766.316 shall pay an initial assessment of \$5,000.

* * *

(5)(a) Beginning January 1, 1990, the persons and entities listed in paragraphs (4)(b) and (c) ... shall pay an annual assessment in the amount equal to the initial assessments provided in paragraphs (4)(b) and (c). If payment of the annual assessment by a physician is received by the association by January 31 of any calendar year, the physician shall qualify as a participating physician for that entire calendar year. If the payment is received after January 31 of any calendar year, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the association. On January 1, 1991, and on each January 1 thereafter, the association shall determine the amount of additional assessments necessary pursuant to subsection (7), in the manner required by the plan of operation, subject to any increase determined to be necessary by the Office of Insurance Regulation pursuant to paragraph (7)(b). On July 1, 1991, and on each July 1 thereafter, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, shall pay the additional assessments which were determined on January 1. Beginning January 1, 1990, the entities listed in paragraph (4)(a), including those licensed on or after October 1, 1988, shall pay an annual assessment of \$50 per infant delivered during the prior calendar year. The additional assessments which were determined on January 1, 1991, pursuant to the provisions of subsection (7) shall

not be due and payable by the entities listed in paragraph (4)(a) until July 1.

19. The burden of proof in this matter falls on St. Joseph's (and NICA) to prove that Petitioners' claim is covered by the NICA Plan. (Petitioners initiated this matter. However, they are not seeking compensation. Instead, Petitioners argue that Killian does not fall within the scope of the Plan.) *See Bennett*, 71 So. 3d at 846; *Fla. Health Scis. Ctr., Inc. v. Div. of Admin. Hearings*, 974 So. 2d 1096, 1099 (Fla. 2d DCA 2007); and *Balino v. Dep't of Health & Rehab. Servs.*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977)("The general rule is, that as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.").

20. The preponderance of the evidence standard is applicable to this matter. *See* § 120.57(1)(j), Fla. Stat.

21. The Plan provides limited remedies as a statutory substitute for common law rights and liabilities. Therefore, the NICA statute "should be strictly construed to include only those subjects clearly embraced within its terms." *Bennett*, 71 So. 3d at 836; and *Fla. Birth-Related Neuro. Injury Comp. Ass'n*, 686 So. 2d at 1354.

22. Turning to the injury in this case, the competent substantial evidence in the record establishes that Killian suffered a "birth-related neurological injury" as defined in section 766.302(2). However, the undisputed facts establish that Dr. Leenhouts was not a "participating physician" as defined by section 766.302(7). Based on these underlying facts, the specific legal issue to address in this matter is whether St. Joseph's independent compliance with NICA's notice requirements protects it from civil action, despite the fact that obstetrical services were not delivered by a "participating physician."

23. Petitioners argue that based on a plain reading of the statutory language, the Petition is not covered by the Plan. Petitioners assert that, for compensability, the injury must meet two requirements. First, the infant

must have sustained a "birth-related neurological injury." Second, the obstetrical services must have been delivered by a "participating physician." See §§ 766.302, 766.309, and 766.31, Fla. Stat. Consequently, because both requirements were not met at Killian's birth, the Petition must be denied, and St. Joseph's is not entitled to immunity from civil action under section 766.303.

24. For its part, NICA agrees that Petitioners' claim is not compensable under the Plan. NICA contends that the statutory language is "crystal clear;" to award compensation, a "participating physician" must have delivered the obstetrical services. Although NICA initially agreed to accept Petitioners' claim, upon verifying that Dr. Leenhouts did not pay the annual assessment for 2018, NICA sides with Petitioners that Killian is not eligible for coverage.

25. Petitioners and NICA present the most persuasive arguments on how to interpret and apply the NICA statute to the facts of this matter. Based on the plain meaning of the above quoted statutes, in order for a claim to be compensable under the Plan, thereby shielding "any person or entity" from civil action, obstetrical services at the birth must be delivered by a "participating physician."³ Conversely, if obstetrical services are not delivered by a "participating physician," the claim is not compensable under the Plan, and no "person or entity" is granted immunity from civil action under NICA.

26. The language of section 766.309 leads directly to this conclusion by walking through the decisions the ALJ must make when considering whether a claim qualifies for compensation.⁴ Section 766.309(1) expressly requires the

³ As a general rule, statutory interpretation begins with the plain meaning of the statute. *Fla. Birth-Related Neuro. Injury Comp. Ass'n*, 29 So. 3d at 997. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. *Holly v. Auld*, 450 So. 2d 217, 219 (Fla.1984).

⁴ As described in section 766.311(1), "[a] determination of the administrative law judge *as to qualification of the claim for purposes of compensability under s. 766.309 ... shall be conclusive and binding as to all questions of fact.*" (emphasis added).

ALJ to make three separate findings.⁵ First, the ALJ must determine whether the claim is a "birth-related neurological injury" as defined by section 766.302(2). Second, the ALJ must determine whether the obstetrical services were delivered by a "participating physician" as defined in section 766.302(7). Finally, if the first and second requirements are met, section 766.309(1)(c) directs the ALJ to determine the amount of the award.⁶ Thereafter, if the ALJ determines that a claim is compensable, compensation under the NICA Plan becomes the claimant's exclusive remedy. *See* § 766.303(2), Fla. Stat.

27. This decision process is further emphasized by the language of section 766.31, which states:

(1) Upon determining that an infant has sustained a birth-related neurological injury *and* that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury. (emphasis added).

As drafted, section 766.31(1) squarely conveys that compensation under the Plan is only awarded following the ALJ's finding both that the infant suffered a "birth-related neurological injury," and that the delivering healthcare provider was a "participating physician." *See Galleon Bay Corp. v. Bd. of Cty. Comm'rs of Monroe Cty.*, 105 So. 3d 555, 567 (Fla. 3d DCA 2012)("[A]nd' is a

⁵ Section 766.309(1)(d) also allows a party to raise a fourth determination regarding whether the notice requirement set forth in section 766.316 is satisfied. This issue, however, only becomes significant if the claim meets sections 766.309(1)(a) and (b). In the present matter, Petitioners did not challenge the sufficiency of the notice St. Joseph's provided to Killian's mother. Therefore, the undersigned did not have to make a notice determination. Further, because Petitioners' claim does not satisfy the "participating physician" prong of section 766.309(1), the notice determination is not necessary to reach the ultimate conclusion.

⁶ *See Fla. Birth-Related Neuro. Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings*, 948 So. 2d 705, 711 (Fla. 2007); and *Fla. Birth-Related Neuro. Injury Comp. Ass'n v. Jimenez*, 278 So. 3d 864, 867 (Fla. 3d DCA 2019)(Salter, J., specially concurring)("The ALJ is to determine whether the claim is a birth-related neurological injury, then determine whether the injury was caused by a participating medical provider as defined in 766.302, and '[f]inally, if the first and second requirements are met, the ALJ **must determine** the amount of the award without any regard for fault.").

conjunction to mean that both elements must be met.") *See also Fla. Birth-Related Neuro. Injury Comp. Ass'n*, 686 So. 2d at 1355, wherein the Florida Supreme Court addressed the language of section 766.302(2) ruling that:

[R]eading the word "and" as used in the phrase "permanently and substantially mentally and physically impaired" ... in the conjunctive does not lead to absurd results, nor does it undermine the legislative policy in enacting the NICA statute.

Quite to the contrary, reading the phrase as it is plainly written and construing the word "and" in the conjunctive is completely consistent with the legislature's intent ...

28. Finally, the above application is supported by caselaw which rejects arguments similar to those St. Joseph's presents. *Orlando Reg. Healthcare Sys., Inc. v. Gwyn*, 53 So. 3d 385, 386–87 (Fla. 5th DCA 2011). *Orlando Regional* considered a NICA claim in which the attending obstetrician was not a "participating physician" under section 766.302(7). The court observed that, pursuant to section 766.31(1), "[t]he remedies and protections afforded by NICA are limited to those cases in which obstetric services were provided by a participating physician at the infant's birth." *Gwyn*, 53 So. 3d at 388. Consequently, *Gwyn* held that NICA did not afford the hospital protection from a tort claim. *Gwyn* specifically dismissed the hospital's argument that it was immune from civil suit simply by giving notice under section 766.316.

29. St. Joseph's disputes the above conclusion, taking the position that it should be granted protection from civil action under section 766.303 because it independently complied with all NICA annual assessment and notice requirements. St. Joseph's asserts that it should not be deprived of immunity simply because a non-employee physician operating in its facility elected not participate in NICA. On the contrary, St. Joseph's argues, the Petition should be treated as compensable regardless of whether the obstetrician who delivered Killian was a "participating physician."

30. To support its position, St. Joseph's turns to the legislative intent behind the original enactment of the NICA statute. St. Joseph's maintains that the Florida Legislature created the Plan to stabilize malpractice premiums for *all* providers of obstetrical services, not just physicians. The Florida Legislature did not intend to punish an entity who has otherwise dutifully complied with the statute. Instead, St. Joseph's asserts it should be "decoupled" from the "participating physician" element of the compensability determination, and section 766.303 should shield it from civil liability.

31. St. Joseph's interpretation of the NICA statute is not persuasive. As stated above, a plain reading of section 766.309(1), as confirmed by the *Gwyn* holding, establishes that claims are only compensable under NICA if obstetrical services are provided by a "participating physician." In this case, the undisputed evidence establishes that Killian was not delivered by a "participating physician." Consequently, Petitioners do not qualify for coverage under NICA because Killian's claim does not meet all the requirements of section 766.309(1).

32. The undersigned finds the two cases St. Joseph's cites for support do not apply to the specific facts of this matter. *Florida Birth-Related Neurological Injury Compensation Association*, 29 So. 3d 992, considered a claim where a hospital provided the requisite notice under section 766.316, but the delivering physician did not. The court held that when one person or entity fails to provide notice, the notice requirement is severable, and a claimant may pursue a civil action against the party that failed to provide notice instead of accepting NICA benefits. In other words, the hospital, which did provide notice, was entitled to NICA immunity, even though the physician was not. *Fla. Birth-Related Neuro. Injury Comp. Ass'n*, 29 So. 3d at 999.

33. Similarly, *Florida Health Sciences Center, Inc. v. Division of Administrative Hearings*, 974 So. 2d 1096 (Fla. 2d DCA 2007), considered

whether the notice provided by the participating physician was sufficient to meet the intent of section 766.316. The court held that it was not.

34. Neither of these cases discuss the effect on compensability or immunity of a delivering healthcare provider who is not a "participating physician." Both courts examined compliance with the section 766.316 notice requirement, not the ALJ's determinations under section 766.309(1). Further, in both cases, obstetrical services were delivered by a "participating physician."⁷

35. Finally, St. Joseph's attempt to distinguish *Gwyn* from the present case is unconvincing. On the contrary, *Gwyn* establishes controlling precedent that complying with the NICA notice requirement in section 766.316 alone is not enough to shield a hospital from tort liability. No exception exists in the NICA statutes affording immunity protection to hospitals that give the requisite notice, regardless of whether obstetrical services were delivered by a "participating physician." The NICA Plan does not provide the exclusive remedy for Killian's birth-related injuries for the simple reason that he does not have a compensable claim.

36. In sum, the evidence in the record establishes that Killian's injury is a "birth-related neurological injury" which occurred "in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital." However, the undisputed evidence also establishes that Killian was not delivered by a "participating physician." In order to award compensation under the NICA Plan, sections 766.309(1) and 766.31(1) require the claim to meet both requirements. Accordingly, Petitioners' Petition does not qualify for compensation.


DISPOSITION

⁷ The *Gwyn* court itself commented that the *Florida Birth-Related Neurological Injury Compensation Association* case "is readily distinguishable because, unlike here, the obstetric services were provided by a participating physician As a matter of law, [the *Gwyns*] have no NICA claim because their claim does not fall within the scope of the Act." *Gwyn*, 53 So. 3d at 388.

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

1. Petitioners' Petition for compensation under the Plan is DENIED, with prejudice.

DONE AND ORDERED this 23 day of September, 2020, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
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Filed with the Clerk of the
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this 23 day of September, 2020.

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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).