STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NATALIE KIM WELLS AND CODY WELLS,
INDIVIDUALLY, AND AS NATURAL PARENTS
OF ROSLYN SUE WELLS, DECEASED,

Petitioners,

vs. Case No. 20-3837N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

SEABORN M. HUNT, M.D., 17TH STREET,
LLC, AND MUNROE HMA HOSPITAL, LLC,
D/B/A MUNROE REGIONAL MEDICAL
CENTER,

Intervenors.
_____/

FINAL ORDER

On May 10, 2021, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (DOAH), conducted a final hearing pursuant to sections 120.569, 120.57(1), and 766.304, Florida Statutes (2016), via Zoom web-conference.

APPEARANCES

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For Respondent: Brooke M. Gaffney, Esquire
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For Intervenors:

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For Intervenors Seaborn Hunt, M.D., and 17th Street, LLC:

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STATEMENT OF THE ISSUE

Whether Roslyn Sue Wells (Roslyn) suffered a "birth-related neurological injury" as defined by section 766.302(2) for which compensation should be awarded under the Florida Birth-Related Neurological Injury Compensation (NICA) Plan (the Plan).

PRELIMINARY STATEMENT

On August 17, 2020, Natalie Kim Wells (Natalie) and Cody Wells, Individually and as Natural Parents of Roslyn, deceased, filed a Petition to Determine Applicability of Florida Birth-Related Neurological Compensation Association with DOAH. Petitioners filed an Amended Petition on August 24, 2020. The Amended Petition named Seaborn M. Hunt, M.D. (Dr. Hunt), as the physician who provided obstetrical services and who was present at the

birth of Roslyn on March 24, 2016, at Munroe HMA Hospital, LLC, d/b/a Munroe Regional Medical Center (MRMC).

The Amended Petition reflected that Petitioners filed a lawsuit in the Fifth Judicial Circuit, in and for Marion County, for medical negligence resulting in the death of Roslyn; however, Intervenors (defendants in the lawsuit) moved to abate the lawsuit, so that a proceeding at DOAH could determine whether Petitioners' claims fell within the purview of the Plan. The parties to the lawsuit agreed to entry of a Joint Stipulation for the circuit court to abate for the requested determination of compensability under the Plan at DOAH.

On August 28, 2020, DOAH sent copies of the Amended Petition via Certified U.S. Mail to Respondent NICA, and Intervenors, Dr. Hunt and MRMC. The returned certified receipts reflect that NICA and Dr. Hunt received the Amended Petition on September 8, 2020; it is unknown on what date MRMC received notice of the Amended Petition.

On August 25, 2020, MRMC filed a Petition for Leave to Intervene, which the undersigned granted on September 10, 2020. On August 31, 2020, Seaborn M. Hunt, M.D, and 17th Street, LLC, filed a Petition for Leave to Intervene, which the undersigned granted on September 9, 2020.

On September 23, 2020, NICA filed a Response to Petition for Benefits, which stated its position that Roslyn suffered a birth-related neurological injury, as defined in section 766.302(2), and that it was prepared to provide medical benefits as specified in section 766.31(1)(a), the full $100,000.00 parental award, and the $10,000.00 death benefit provided in

section 766.31(1)(b). The response also requested that Petitioners' counsel forward detail of his time and expense records, so that the parties may reach agreement on reasonable attorney's fees and costs, under section 766.31(1)(c).

On October 6, 2020, the undersigned entered an Order Requiring Status Report, requiring the parties to confer and provide a joint status report no later than November 18, 2020, indicating, *inter alia*, whether a hearing was necessary. On November 18, 2020, the parties filed a Joint Status Report, which requested an additional 30 days to respond to the Order Requiring Status Report, which the undersigned granted on November 19, 2020. On December 16, 2020, the parties filed a Status Report, which stated that "the parties agree a hearing is necessary on the issue of whether [Roslyn] sustained a birth-related neurological injury as defined by Florida Statute section 766.302(2)."

Based on the Status Report, the undersigned, on December 22, 2020, entered a Notice of Hearing by Zoom Conference, setting the final hearing in this matter for March 23, 2021. On March 1, 2021, the parties filed a Joint Motion to Continue Final Hearing. On March 2, 2021, the undersigned entered an Order Granting Continuance and Rescheduling Hearing by Zoom Conference, resetting the final hearing in this matter for May 10, 2021.

The parties filed the Joint Pre-hearing Stipulation on April 30, 2021. The final hearing occurred on May 10, 2021. The parties agreed that, in light of calling live witnesses, they would offer the deposition testimony of Petitioners' expert, Deward Voss, M.D., and NICA's expert, Donald Willis, M.D., which the undersigned accepted. The undersigned admitted Petitioners' Exhibits P1 through P3, as well as Joint Exhibits J1 through J6, into evidence. The undersigned also heard argument from counsel for Petitioners, NICA, and Intervenors.

The one-volume Transcript of the final hearing was filed with DOAH on May 26, 2021. On June 4, 2021, NICA filed an Unopposed Motion for Extension of Time to Submit Proposed Final Order, which the undersigned granted that same date. On June 8, 2021, NICA timely submitted a Proposed Final Order, and on June 10, 2021, Petitioners submitted a Proposed Final Order, both of which the undersigned has considered in preparing this Final Order.

All references to the Florida Statutes are to the 2016 version.

FINDINGS OF FACT

Pursuant to the Joint Pre-hearing Stipulation, the parties agreed to the following facts:

1. Roslyn was delivered on March 24, 2016, at MRMC—a hospital.

2. Roslyn was a single gestation, weighing 3,240 grams at delivery.

3. Dr. Hunt was the delivering physician and was a NICA participating provider at the time of Roslyn's delivery.

4. MRMC provided notice of NICA participation to Petitioners.

5. Provision of notice of Dr. Hunt's NICA participation to Petitioners was excused.

The undersigned makes the following additional Findings of Fact:

6. Natalie, who was pregnant with Roslyn for approximately 38 weeks, began experiencing contractions at about 11:30 a.m., on March 24, 2016. Natalie arrived at MRMC at 3:30 p.m., that day, and MRMC began fetal heart rate monitoring at 3:32 p.m.

7. At 4:12 p.m., Lisa Roberson, R.N., in the OB Triage notes, noted that "Dr. Hunt covering for Dr. Marquette. Called w/full report. Fhts. w/minimal variability and variables w/every ctx. Reported ctx. Pattern and urine dip. Orders to continue watch pt." The OB Triage notes indicate, at 4:27 p.m.,

prolonged accelerations with fetal heart rates down to the "60s" with "occasional rises to the 90s" over 8 minutes.

8. At 4:34 p.m., the OB Triage notes indicate that the fetal heart rate and maternal heart rate "not in sync [:] maternal hr 80s and fhts in 100s." At 4:36 p.m., Nurse Roberson's notes indicate "MD called back to inform of fhts continue to decel. MD orders to take pt. to the OR now."

9. Natalie arrived in the operating room at 4:41 p.m., and Dr. Hunt arrived at 4:45 p.m. The MRMC notes indicate "MD arrived to OR and spoke w/pt. about c/s. Informed MD at that time that the baby's hr was in the 80-90s prior to prep."

10. Dr. Hunt delivered Roslyn, via cesarean section, at 4:54 p.m. Dr. Hunt's operative report states:

> The patient is a 30-year-old, gravida 2, para 1 female, admitted at 38 weeks gestation in active labor. She states that contractions became quite strong and she came to the labor room. ON the monitor, she was having mild contractions, but they were at 1 and 2 minute intervals. She had a baseline fetal heart beat of 110. There were no accelerations noted. She was in the labor room short time for monitoring when she had decelerations down to the 60s and had come back up to the 90s. I was called and came in for immediate cesarean section. Just prior to being placed on the operating table, fetal heart tones were 90. The patient had no vaginal bleeding and membranes were intact.

11. The operative report further states, "[a] 6-pound-15-ounce female infant was delivered with Apgars of 0, 0, and 2 at 15 minutes. The baby required immediate resuscitation by the neonatologist."[1]

[1] "An Apgar score is a numerical expression of the condition of the newborn and reflects the sum total of points gained on an assessment of heart rate, respiratory effort, muscle tone, reflex irritability and color." *Nagy v. Fla. Birth-Related Neurological Injury Comp. Ass'n*, 813 So. 2d 155, 156 n.1 (Fla. 4th DCA 2002) (*citing Dorland's Illustrated Medical Dictionary* 1498 (27th ed. 1988)).

12. The Neonatologist Transfer Note states, in pertinent part:

> Baby Girl Wells born via state C/s due to NRFHR – HR in the 50-60s for ~10 minutes. Mother is serology negative. Infant with APGARS 0/0/0/3 at 1,5/10/15 minutes requiring CPR for ~15 minutes. Infant was limp, cyanotic, no respiratory effort, intubated and given manual breaths until 15 minutes and placed on mechanical ventilator. . . .
>
> Per OB mother had massive abruption placenta.

The Neonatology Delivery/Consult Note reflects the following diagnoses: "term newborn born via c/s for NFEHR"; "hypoxic ischemic encephalopathy"; and "respiratory failure."

13. The MRMC Delivery Summary reflects that Roslyn was "alive." The MRMC Admission Orders reflect that Roslyn was "[l]iveborn in hospital by cesarean section (primary)."

14. Following delivery and resuscitation, MRMC's records reflect Roslyn's vital signs on March 24, 2016, as follows: blood pressure of 75/35 at 5:12 p.m.; blood pressure of 69/50 at 5:18 p.m.; blood pressure of 69/50, with some spontaneous respirations noted at 5:34 p.m.; blood pressure of 74/32 at 5:36 p.m.; pulse of 124/minute, and with 5-6 spontaneous respirations noted at 6:03 p.m.; a pulse of 120/minute at 6:19 p.m.; and blood pressure of 78/47, and a pulse of 120/minute, at 6:33 p.m.

15. At 6:45 p.m., on March 24, 2016, Roslyn was discharged from MRMC and transferred to Shands Hospital at the University of Florida (Shands) for continued care in its neonatal intensive care unit (NICU). Shands NICU started a cooling protocol for hypoxic ischemic encephalopathy, and also started a video EEG. Roslyn remained on a mechanical ventilator. The neurological examination of Roslyn reflects that she "doesn't react[] to light by squinting," has "[w]eak withdraw with some antigravity effort to noxious stimuli seen in all 4 extremities," and "withdraws to pain equally in all

extremities." Video EEG from overnight revealed multiple seizures, and Phenobarbital was administered.

16. Roslyn remained on a mechanical ventilator through March 28, 2016, at Shands. She received two blood transfusions. A trial of feeding started on day 3 of life that Roslyn did not tolerate.

17. On March 28, 2016, a brain MRI showed global injury to Roslyn's brain involving the whole cortex and basal ganglia. According to the notes of the treating physician at Shands:

> After discussing results of the MRI concerning the global injury, along with the signs of hemodynamic instability, and the EEG readings the parents decided to withdraw care. Two attendings supported the decision. Sedative drips were stopped and prn medications were ordered. The patient was extubated at 1800, 3/28/16. Time of death 3/29/16 4:28 a.m., pronounced by [the attending physician].

Testimony of Expert Witnesses[2]

18. The parties' respective experts opined on the critical issue in this matter: whether Roslyn was a "live infant" or "live birth" as contemplated under section 766.302(2) (and would therefore be entitled to compensation under the Plan), or whether she suffered a "fetal death," which would fall outside of section 766.302(2). The experts relied on Roslyn's Apgar scores, and also relied on the definitions of "fetal death," "live birth," and "stillbirth" found in section 382.002, Florida Statutes, which is the definitional provision of the Vital Statistics chapter of the Florida Statutes, in rendering their opinions.

[2] The parties stipulated to the undersigned accepting Dr. Voss and Dr. Willis as medical experts. The undersigned has reviewed the deposition transcripts of both, has considered their credentials, and the bases for their respective opinions, and accepts both as expert witnesses.

19. Section 766.302(2) defines "Birth-related neurological injury" as:

> [An] 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 he course of labor, deliver, 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 supplied).

20. Section 382.002(8) defines "fetal death" as:

> [A] death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th week of gestation has been reached and death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

21. Section 382.002(12) defines "live birth" as:

> The complete expulsion or extraction of a product of human conception from its mother, irrespective of the duration of pregnancy, which, after such expulsion, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, and definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

22. Section 382.002(17) defines "stillbirth" as "[a]n unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks."

23. Petitioners' expert, Dr. Voss, whom they originally retained in the previous medical negligence lawsuit, opined that Roslyn was not born alive, based primarily on her Apgar scores. Dr. Voss stated:

> This – this child had Apgar scores of zero at one minute; zero at five minutes; zero at ten minutes. And, finally—there's a discrepancy in the records between the note made by the obstetrician and the note made by the neonatologist; either had a score of two or three. But at one minute, five minutes, and ten minutes, this baby did not have a detectable heartbeat, made no respiratory efforts, and had no movement based on the Apgar scores.
>
> Q: But you would agree with me that the Apgar score of either two or three at 15 minutes would indicate signs of life, wouldn't you?
>
> A: After resuscitative efforts, yes.

24. Dr. Voss also opined that the statutory definitions of "live birth," "fetal death," and "stillbirth" include the factors that are considered in the assignment of Apgar scores. He further opined that Roslyn showed signs of life sometime between 10 and 15 minutes after extraction, but also that she showed no signs of life prior to that. Dr. Voss testified, "I think this fetus died in utero. I think this was a fetal death." However, upon further questioning, he clarified his opinion as follows:

> But—so again, at birth, at the time of extraction, or delivery, or whatever term you want to put to it, this baby had no signs of life. And it's only—and it occurred temporally enough that these tissues were still viable enough, with the right stimulus, signs of life could be restored through this child.
>
> But by the legal definition that is outlined in the statute, I would declare this a stillbirth, and clearly so, unless you want to say that, yes, at 10 to 15 minutes, signs of life—through the right stimulus,

> signs of life were restored; that the tissues were still viable enough, that with the right stimulus, the signs of life could be restored to the child.
>
> Q: Okay. So to be fair … it sounds like—and correct me if I'm wrong—your opinion is that this can be characterized as both a fetal death or stillbirth as well as—
>
> A: A live birth.
>
> Q: --a live birth, according to your medical definitions set forth in the statute, is that fair?
>
> A: Yes, that's very fair.

25. NICA's expert, Dr. Willis, opined that Roslyn suffered oxygen deprivation during labor and delivery, resulting in brain injury.

26. Dr. Willis opined that Roslyn's Apgar scores (either 0/0/0/2 or 0/0/0/3) indicated that Roslyn showed signs of life after extraction from the mother. Dr. Willis further opined that Roslyn was born alive. He further testified:

> [S]everal things would confirm that. Number one, the child died five—five days after birth, so obviously the child was alive. The definition of live birth is expulsion of a baby that shows signs of life after birth. That can be a heartbeat or voluntary muscle movement or respiratory effort. There's no time limit on it. So to show signs of life, it doesn't mean it has to be by a certain time after life. It's at any time after birth.
>
> In order to be considered a stillbirth, or demised at birth, you should remember that the—the diagnosis of death is a permanent diagnosis. So—so you can't die and then be alive. So to say that a baby is stillborn means the baby is born without a heartbeat and is never resuscitated. Never shows signs of life. So in this case the baby was—obviously lived for several days, so it was alive.

> Also the records confirm this. On the delivery summary there's a box that—that states several things about the baby. And on is—it has choices between alive and stillbirth and clearly circled is alive. So that would again confirm that impression, but clearly the baby was a live birth.

27. When questioned on cross-examination whether Roslyn's receiving a 0 Apgar score upon extraction indicated an intrauterine fetal death, Dr. Willis stated it did not, "because intrauterine fetal demise would be a baby that's born without a heartbeat and never obtains one." Dr. Willis later clarified, "[a]t any point after expulsion if there's a heartbeat or sign of life, it is considered a live birth."

28. Based on the weight of the credible evidence presented, the evidence established that Roslyn suffered oxygen deprivation during labor, delivery, or resuscitation in the immediate post-delivery period in a hospital (MRMC). Further, Roslyn weighed in excess of 2,500 grams.

29. Additionally, the weight of the credible evidence establishes that Roslyn was, after extraction, a "live infant" and that this was a "live birth," based on the statutory definitions found in section 382.002, the medical record evidence presented, and the expert testimony of both Dr. Voss and Dr. Willis, and that this was not a "fetal death" or "stillbirth." The medical record evidence indicates that, between 10 and 15 minutes after extraction, signs of life were present, including a pulse, blood pressure, and spontaneous respirations following resuscitative efforts. Additionally, after the Petitioners made the decision to withdraw mechanical care to Roslyn, and care was withdrawn, Roslyn lived for approximately 10 and one-half hours on her fifth day of life. Further, Dr. Voss and Dr. Willis both testified that Roslyn was a live birth, although Dr. Voss testified that Roslyn was both a live birth and a fetal death/stillbirth. The undersigned credits Dr. Willis's testimony that "live birth" means a baby that shows signs of life after birth, which is what happened with Roslyn, and that Roslyn suffered a neonatal death. The

undersigned does not credit Dr. Voss's testimony that Roslyn was both a fetal death/stillbirth and a live birth.

CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

31. The Legislature established the Plan "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" relating to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

32. The injured infant, her or his personal representatives, parents, dependents, and next of kin may seek compensation under the Plan by filing a claim for compensation with DOAH. §§ 766.302(3), 766.303(2), and 766.305(1), Fla. Stat. NICA, which administers the Plan, has "45 days from the date of service of a complete claim . . . in which to file a response to the petition and to submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." § 766.305(4), Fla. Stat.

33. 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, the parties dispute the compensability of the claim under the Plan, as has occurred here, the dispute must be resolved by the assigned administrative law judge in accordance with the provisions of chapter 120. §§ 766.304, 766.309, and 766.31, Fla. Stat.

34. In discharging this responsibility, the administrative law judge must make the following determination based upon the available evidence:

> (a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).
>
> (b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital.

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

35. Section 766.302(2) defines the term "birth-related neurological injury" 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.

36. The NICA statutes do not contain definitions of "live birth," "fetal death," or "stillbirth." In the absence of a statutory definition, it is

permissible to look to case law or related statutory provisions to define a term. *See State v. Brake,* 796 So. 2d 522, 528 (Fla. 2001)(looking to other chapter laws and case law for definitions of "dependent" and "delinquent"). Accordingly, the undersigned has considered the definitions of "fetal death," "live birth," and "stillbirth" in section 382.002. *See also Ervin v. Capital Weekly Post, Inc.,* 97 So. 2d 464, 469 (Fla. 1957)("A statutory definition of a word is controlling and will be followed by the Courts.").

37. Additionally:

> [B]ecause the Plan … is a statutory substitute for common law rights and liabilities, it should be strictly construed to include only those subjects clearly embraced within its terms … [and] a legal representative of an infant should be free to pursue common law remedies for damages resulting in an injury not encompassed within the express provisions of the plan.

Adventist Health Sys./Sunbelt, Inc. v. Fla. Birth-Related Neurological Injury Comp. Ass'n, 865 So. 2d 561, 568 (Fla. 5th DCA 2004)(*en banc*)(internal citations and quotations omitted).

38. Based on the Finding of Facts above, the credible evidence established that Roslyn was a "live infant" and was a "live birth," as those terms are contemplated in sections 766.302(2) and 382.002(12). The undersigned declines Petitioners' attempt to read the word "immediate" into either the "live birth" or "fetal death" definitional statutes, to conclude that a baby that has a "0" Apgar score at the first, fifth, and/or tenth minute is not a "live infant" or "live birth."[3] The credible evidence established that between 10 and 15 minutes after extraction, signs of life were present, and that after care

[3] And, such an interpretation would be counter to some other persuasive published decisions in which an infant with a "0" Apgar scores at one, five, and ten minutes, appears to have been a live birth. *See, e.g., Bravo v. U.S.*, 403 F. Supp. 2d 1182, 1187-88 (S.D. Fla. 2005) (noting that a child with "0" Apgar scores at one, five, and ten minutes of life, but a "2" at 15 minutes of life after resuscitative efforts, and who was eventually discharged from hospital, had suffered a neurological injury that was subject of negligence action under the Federal

was withdrawn, Roslyn lived for approximately 10 and one-half hours on her fifth day of life.

39. The undersigned credits the testimony of Dr. Willis, whose opinion that Roslyn was a "live birth" because she exhibited requisite signs of life comports with the statutory language discussed above.

40. The undersigned concludes that Roslyn was a "live birth" as that term is applied under sections 766.301 through 766.316, and 382.002(12), and that she suffered a birth-related neurological injury pursuant to section 766.302(2). *See Univ. of Miami v. Klein,* 603 So. 2d 651, 653 (Fla. 3d DCA 1992)(holding that birth-related neurological injuries which result in post-delivery death fall within the Plan).

41. Based on the credible evidence presented in this case, and pursuant to section 766.309, the undersigned concludes that: Roslyn suffered a birth-related neurological injury, *see* section 766.309(1)(a); and obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital, *see* section 766.309(1)(b). Based on the parties' stipulation, Roslyn weighed more than 2,500 grams at the time of delivery, and was a single gestation. Additionally, based on the parties' stipulation, the notice requirements of section 766.316 have been satisfied.

CONCLUSION

Based on the Findings of Fact and the Conclusions of Law, it is ORDERED that:

a. Petitioners' Claim is compensable under the Plan;

Tort Claims Act); *Inova Fairfax Hosp. & Inova Health Care Servs. v. Yost,* 2007 WL 2238052 (App. Ct. Va. 2007) (noting, in a case brought under the Virginia Birth-Related Neurological Injury Compensation Act, that baby was born with "0" Apgar scores at one, five, and ten minutes of life, but who, after resuscitative efforts, achieved a heartbeat and spontaneous respirations; but holding that baby was ineligible under Virginia Plan because of conflicting expert opinion on extent of baby's injury).

b. The parties shall, within 30 days of the date of this Order: confer in an attempt to resolve the amount and manner of compensation, including the manner of payment of an award, the reasonable expenses incurred in the filing of the Claim, and the amount owing for expenses previously incurred, as found in section 766.31. Any resolution of these items shall be subject to approval of the undersigned.

c. If the parties are unable to resolve the items discussed above, the parties shall so advise the undersigned in writing. In such an event, the undersigned will schedule a hearing to resolve such issues and award compensation pursuant to section 766.31.

DONE AND ORDERED this 9th day of July, 2021, in Tallahassee, Leon County, Florida.

ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of July, 2021.

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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).