

162 So.3d 101
District Court of Appeal of Florida,
Fourth District.

[PALMS WEST HOSPITAL](#)
[LIMITED PARTNERSHIP](#) d/b/
a Palms West Hospital, Appellant,
v.

D.W. and R.W., individually and as parents
and next friends of L.W., a minor and Florida
Birth Related Neurological Injury Compensation
Association and Steven Pliskow, M.D., Appellees.

No. 4D13–2501.

|
Oct. 15, 2014.

Synopsis

Background: Hospital sought review of decision of the Division of Administrative Hearings finding that the hospital failed to provide sufficient notice governing the Birth–Related Neurological Injury Compensation Plan (NICA).

Holding: The District Court of Appeal held that reference to an election of remedies in administrative order was nothing more than a statement that if election was made rejecting the NICA benefits, the file would be closed, and whether there was an appropriate waiver of benefits and whether a guardian ad litem had to be appointed were matters to be litigated before the circuit court should a medical malpractice suit be pursued.

Affirmed.

West Headnotes (1)

[1] [Health](#)

[Injury compensation funds](#)

Reference to election of remedies, in administrative order finding that hospital failed to provide sufficient notice under Birth–Related Neurological Injury Compensation

Plan (NICA) related to brain-damaged infant, was nothing more than a statement that if election was made rejecting the NICA benefits, the file would be closed, and whether there was an appropriate waiver of benefits and whether a guardian ad litem had to be appointed were matters to be litigated before the circuit court should a medical malpractice suit be pursued. [West's F.S.A. § 766.316](#).

[Cases that cite this headnote](#)

Attorneys and Law Firms

*101 [Robert E. Biasotti](#) of Biasotti and Associates, St. Petersburg, for appellant.

[Julie H. Littky–Rubin](#) of Clark, Fountain, La Vista, Prather, Keen & Littky–Rubin, LLP, West Palm Beach, for appellees, D.W. and R.W., individually and as parents and next friends of L.W., a minor.

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Opinion

PER CURIAM.

Appellant, Palms West Hospital Limited Partnership d/ b/a Palms West Hospital appeals the final order of the Division of Administrative Hearings finding that the hospital failed to provide sufficient notice pursuant to [section 766.316, Florida Statutes \(2012\)](#), governing the Birth–Related [Neurological Injury](#) Compensation Plan (NICA). The effect of the order is to permit either acceptance of NICA benefits for a brain-damaged infant or pursuit of a medical malpractice suit against the hospital. See [Florida Birth–Related Neurological Injury Compensation Ass'n v. Dep't of Admin. Hearings, 29 So.3d 992, 999 \(Fla.2010\)](#). We affirm the order.

On appeal, the hospital does not challenge the administrative law judge's finding that the hospital failed to provide the mother with sufficient notice under NICA. [§§ 766.301 to 766.316, Fla. Stat. \(2012\)](#). Rather, the hospital's argument on appeal centers on language in the

order regarding the election of remedies. It contends that the administrative law judge had no jurisdiction to allow the parents to make an election of remedies, reject the child's NICA benefits, and close the case without having a circuit court-appointed guardian ad litem. The specific language in the order provides:

in the event Petitioners file an election of remedies declining or rejecting the NICA benefits, this case will be dismissed and DOAH's file will be closed.

We affirm, as we do not construe the foregoing language to be anything more than a statement that if an election

of remedies is made rejecting the NICA benefits, the file would be closed. Whether there has been an appropriate waiver of benefits and whether a guardian must be appointed are matters to be litigated before the circuit court should a medical malpractice suit be pursued.

Affirmed.

[WARNER](#), [CONNER](#) and [KLINGENSMITH](#), JJ., concur.

All Citations

162 So.3d 101, 39 Fla. L. Weekly D2164