NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

TARPON SPRINGS HOSPITAL FOUNDATION, INC., d/b/a HELEN ELLIS MEMORIAL HOSPITAL; CHRISTINE HILDERBRANDT, A.R.N.P., C.N.M.; and FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION, Appellants, v. ALLISON ANDERSON and TIMOTHY ANDERSON, individually, and as parents and natural guardians of Samuel J. Anderson, a minor child; WEST COAST MEDICAL GROUP, INC.; HOLLY MARIA BAUER; MATTHEW H. CONRAD, M.D.; TERESA CONRAD, M.D.; A. TRENT WILLIAMS, M.D.; and TATIANA GOODWIN, M.D., Appellees.	)	Case Nos. 2D08-4201 2D08-4226 CONSOLIDATED

Opinion filed December 30, 2009.

Appeals from the Division of Administrative Hearings.

G. Bruce Hill and Christopher J. Steinhaus of Hill, Adams, Hall & Schieffelin, P.A., Winter Park, for Appellant Tarpon Springs Hospital Foundation.

Judith W. Simmons, Gabrielle S. Osborne, and Mindy McLaughlin of Burton, Beytin & McLaughlin, P.A., Tampa, for Appellant Christine Hilderbrandt.

Wilbur E. Brewton, Kelly B. Plante, and Tana D. Storey of Brewton Plante, P.A., Tallahassee, and Robert J. Grace, Jr., of Stiles, Taylor & Grace, P.A., Tampa, for Appellant Florida Birth-Related Neurological Injury Compensation Association.

Rebecca Bowen Creed of Mills Creed & Gowdy, P.A., Jacksonville, and James W. Gustafson, Jr., of Searcy Denney Scarola Barnhart & Shipley, P.A., Tallahassee, for Appellees the Andersons.

No appearance for remaining appellees.

WALLACE, Judge.

In these consolidated appeals, Christine Hilderbrandt (Nurse Hilderbrandt); Tarpon Springs Hospital Foundation, Inc., d/b/a Helen Ellis Memorial Hospital (the Hospital); and the Florida Birth-Related Neurological Injury Compensation Association (NICA) challenge the final order in which an administrative law judge (ALJ) determined that Nurse Hilderbrandt was not a participating physician under the Florida Birth-Related Neurological Injury Compensation Plan (the Plan) and that the Hospital failed to comply with the notice provisions of the Plan. We conclude that the ALJ erred in making these determinations. Accordingly, we reverse and remand with instructions to modify the final order consistent with this opinion.

I. THE FACTS AND PROCEDURAL HISTORY

Allison Anderson and Timothy Anderson are the natural parents of a male child born at the Hospital on July 29, 2004. During the child's delivery, Mrs. Anderson was treated by Dr. Matthew Conrad and Nurse Hilderbrandt. Dr. Conrad and Nurse Hilderbrandt were employees of the Hospital at all relevant times. Dr. Conrad was also a participating physician under the Plan. Nurse Hilderbrandt's physician assessment under the Plan was paid for the calendar years 2003 and 2004. NICA sent Nurse Hilderbrandt a certificate for the year 2004 for her participation under the Plan. However, whether Nurse Hilderbrandt was a participating physician under the Plan was a disputed issue before the ALJ.

Mrs. Anderson received her prenatal care at West Coast Medical Group, Inc., d/b/a West Coast Obstetrics & Gynecology (West Coast OB/GYN).[1] During Mrs. Anderson's initial prenatal visit on December 12, 2003, she was given a NICA brochure titled Peace of Mind for an Unexpected Problem and an acknowledgment form that stated, in pertinent part, as follows:

> I have been furnished information by [West Coast OB/GYN], prepared by [NICA], and have been advised that M. Conrad MD . . . and Christine Hilderbrandt CNM, are participating providers in that program, wherein certain 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 [NICA], P.O. Box 14567, Tallahassee, Florida 32317-4567, 1-800-398-2129. I further acknowledge that I have received a copy of the brochure by NICA.

Mrs. Anderson signed and dated the form.

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[1]The Hospital owns West Coast OB/GYN.

On June 24, 2004, the Andersons went to the Hospital to preregister. They were interviewed by a registration clerk, who entered the Andersons' demographic, employment, insurance, and delivery information into a computer. The registration clerk did not provide the Andersons with an acknowledgment form or a NICA brochure.

Mrs. Anderson did not return to the Hospital until early on the morning of July 28, 2004. Upon her arrival at the Hospital, Mrs. Anderson signed an acknowledgment form that stated, in pertinent part, as follows:

> I have been furnished information by [the Hospital] prepared by [NICA], and have been advised that [the Hospital] participates in that program, wherein certain limited compensation is available in the event certain neurological injury may occur during labor, delivery, or resuscitation. I understand that for specifics on the program I can contact [NICA] as described in the brochure prepared by NICA titled Peace of Mind for an Unexpected Problem. I further acknowledge that I have received a copy of the brochure.

Mrs. Anderson was diagnosed with false labor and discharged with a prescription for a sleeping aid and instructions to rest. Mrs. Anderson returned home and slept for the remainder of the day.

Mrs. Anderson returned to the Hospital on July 29, 2004. She signed another acknowledgment form identical to the one she had signed the previous day. The nurse on duty at the Hospital called Nurse Hilderbrandt, who gave orders to monitor Mrs. Anderson. Nurse Hilderbrandt later arrived at the Hospital and examined Mrs. Anderson. Nurse Hilderbrandt called Dr. Conrad, who authorized augmentation of labor. Approximately nine hours later, Mrs. Anderson was moved to the operating room where Dr. Conrad performed an emergency cesarean section. At delivery, the child

was not breathing. The child was resuscitated but suffered a birth-related neurological injury.

In 2007, the Andersons filed a complaint in the circuit court against Nurse Hilderbrandt; the Hospital; West Coast Medical Group, Inc.; and two other defendants. The circuit court proceedings were abated for a determination by the Division of Administrative Hearings concerning whether the child's injuries were covered by the Plan. The Andersons filed a petition with NICA. Subsequently, Nurse Hilderbrandt, the Hospital, Dr. Conrad, and other health care providers working at West Coast OB/GYN were granted leave to intervene. NICA determined that the neurological injury for which the parents were seeking redress was compensable under the Plan and requested a formal administrative hearing before an ALJ.

A final administrative hearing was conducted in April 2008. At that hearing, Nurse Hilderbrandt, the Hospital, Dr. Conrad, and the other health care providers working at West Coast OB/GYN sought to establish the compensability of the claim, their compliance with the notice provisions of the Plan, and their entitlement to immunity under the Plan.[2] Nurse Hilderbrandt submitted a seventy-page document titled West Coast Obstetrics & Gynecology, Certified Nurse Midwife Protocol (the Guidelines). She submitted an "edit copy" that contained numerous handwritten notes because she did not have a copy of the final draft of the Guidelines.[3] The Guidelines addressed multiple situations that Nurse Hilderbrandt was called upon to handle in the

[2]The ALJ determined that he did not have jurisdiction to resolve the issue of immunity from tort liability under subsection 766.303(2), Florida Statutes (2004).

[3]When the hearing was held, Nurse Hilderbrandt was no longer employed at West Coast OB/GYN.

course of her practice with West Coast OB/GYN. Nurse Hilderbrandt testified that she was familiar with the Guidelines and used them in the course of her practice on a daily basis.

In addition, Nurse Hilderbrandt testified that she signed protocols that were filed yearly with the Board of Nursing as required by chapter 464, Florida Statutes, and Florida Administrative Code Rule 64B9-4.010. Nurse Hilderbrandt described these protocols as "an outline" of the more detailed Guidelines that she submitted at the hearing. However, Nurse Hilderbrandt did not introduce into evidence a copy of the protocols she filed with the Board of Nursing. She explained that she did not have a copy, and she entered into evidence a letter from the Board of Nursing indicating that the protocol she filed in 2004 could not be located.

In his written final order, the ALJ found that Dr. Conrad and the other health care providers working at West Coast OB/GYN were participating physicians under the Plan and had complied with the notice requirements. The ALJ also found that Nurse Hilderbrandt had filed procotols with the Board of Nursing. Nevertheless, the ALJ concluded that she "failed to establish that [she] was a 'participating physician' at the time of [the child's] birth" because she could not produce the final draft of the Guidelines or the protocols that she filed with the Board of Nursing to prove that the prearranged plan of treatment required by section 766.314(4)(c), Florida Statutes (2004), existed. The ALJ also ruled that the "[H]ospital failed to comply with the notice provisions of the Plan" because Mrs. Anderson was not given a NICA brochure or an acknowledgment

form when she preregistered on June 24, 2004. The ALJ declined to address the issue of immunity.[4] Nurse Hilderbrandt and the Hospital appeal from this final order.

II. STANDARD OF REVIEW

We "will not disturb the ALJ's findings of fact unless they are not supported by competent substantial evidence." Univ. of Miami v. Ruiz, 916 So. 2d 865, 868 (Fla. 3d DCA 2005). However, we review de novo the ALJ's interpretation of the Plan. See Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 948 So. 2d 705, 709-10 (Fla. 2007). We are authorized to set aside or modify the ALJ's final order if we find that the ALJ's interpretation of the Plan is erroneous. Romine v. Fla. Birth Related Neurological Injury Comp. Ass'n, 842 So. 2d 148, 150 n.4 (Fla. 5th DCA 2003); Gugelmin v. Div. of Admin. Hearings, 815 So. 2d 764, 767 (Fla. 4th DCA 2002); see § 120.68(7)(d), Fla. Stat. (2004) ("The court shall remand a case . . . or set aside agency action, as appropriate, when it finds that . . . [t]he agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action . . . .").

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[4]Although the issue of Nurse Hilderbrandt's immunity was raised on appeal, we decline to address it because the ALJ correctly ruled that he did not have jurisdiction to rule on that issue. See All Children's Hosp., Inc. v. Dep't of Admin. Hearings, 863 So. 2d 450, 455 (Fla. 2d DCA 2004) ("There is no basis . . . for the ALJ's foray into the issue of immunity from tort liability under [the Plan]."), quashed on other grounds by Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 948 So. 2d 705, 716-17 (Fla. 2007) (finding that ALJ had jurisdiction to determine whether a health care provider complied with the notice provisions of the Plan); Depart v. Macri, 902 So. 2d 271 (Fla. 1st DCA 2005) (holding that ALJ did not have jurisdiction to address whether a certified nurse midwife was entitled to immunity under the Plan).

III. NURSE HILDERBRANDT'S PREARRANGED PLAN OF TREATMENT

A. The Parties' Arguments

Nurse Hilderbrandt and NICA contend that the ALJ ignored the plain language of section 766.314(4)(c) and instead "created additional and burdensome requirements that do not exist." They argue that the ALJ improperly required proof of a written protocol to establish the existence of the prearranged plan of treatment required by section 766.314(4)(c). In response, the Andersons claim that the ALJ correctly interpreted section 766.314(4)(c) as requiring proof of a written protocol because the Nurse Practice Act, §§ 464.001-.027, Fla. Stat. (2004), and rule 64B9-4.010 permit certified nurse midwives to practice only if they are supervised by a licensed physician and governed by a written protocol filed with the Board of Nursing.

B. The ALJ's Interpretation of Section 766.314

The Plan treats certified nurse midwives as "participating physicians" if two conditions are met. First, nurse midwives must pay "50 percent of the physician assessment required by [the Plan]." § 766.314(4)(c). Second, they must be "supervised by a participating physician who has paid the assessment required by [the Plan]." Id. Under the Plan, "[s]upervision for nurse midwives shall require that the supervising physician will be easily available and have a prearranged plan of treatment for specified patient problems which the supervised certified nurse midwife may carry out in the absence of any complicating features." Id.

The ALJ found that Nurse Hilderbrandt had paid the required assessment and that she was supervised by a participating physician who would be easily available. But the ALJ ruled that Nurse Hilderbrandt did not have a prearranged plan of treatment

based on her "failure to offer the [written] protocols she claimed were in place." The ALJ interpreted section 766.314(4)(c) to require proof that the prearranged plan of treatment was reduced to writing. We conclude that the ALJ's interpretation of section 766.314(4)(c) was erroneous.

The supreme court teaches that " '[w]hen 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) (alteration in original) (quoting A.R. Douglass, Inc. v. McRainey, 137 So. 157, 159 (Fla. 1931)). Courts are " 'without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.' " Holly, 450 So. 2d at 219 (emphasis omitted) (quoting Am. Bankers Life Assurance Co. of Fla. v. Williams, 212 So. 2d 777, 778 (Fla. 1st DCA 1968)).

The ALJ interpreted "prearranged plan of treatment" as a written document. However, the plain language of section 766.314(4)(c) does not indicate that the prearranged plan of treatment must be in writing. The term "prearranged plan of treatment" is not defined by the statute or the case law. "When necessary, the plain and ordinary meaning of words can be ascertained by reference to a dictionary." Seagrave v. State, 802 So. 2d 281, 286 (Fla. 2001). The dictionary definitions of the words "prearrange,"[5] "plan,"[6] and "treatment"[7] do not lend support to the ALJ's

[5]"Prearrange" is defined as "[t]o arrange in advance." The American Heritage Dictionary of the English Language 1380 (4th ed. 2000).

interpretation of the statute as requiring a written document. Thus, based on the plain language of section 766.314(4)(c), a "prearranged plan of treatment" is not required to be a written document.

The Andersons' argument that section 766.314(4)(c) should be interpreted in light of the Nurse Practice Act and rule 64B9-4.010 is unpersuasive for two reasons. First, the Nurse Practice Act and rule 64B9-4.010 should not be used to ascertain the plain and ordinary meaning of "prearranged plan of treatment." "In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term . . . ." Jones v. Williams Pawn & Gun, Inc., 800 So. 2d 267, 270 (Fla. 4th DCA 2001) (citing State v. Barnes, 686 So. 2d 633, 637 (Fla. 2d DCA 1996)). In Cason v. Florida Department of Management Services, 944 So. 2d 306, 308 (Fla. 2006), the supreme court interpreted the term "taxpayer" as used in section 194.171, Florida Statutes (2006). Because section 194.171 did not define "taxpayer," the supreme court looked at the definition of "taxpayer" in section 192.001(13), Florida Statutes (2006). 944 So. 2d at 313. Here, unlike in Cason, the ALJ could not use the Nurse Practice Act or rule 64B9-4.010 for guidance when interpreting section 766.314(4)(c) because the Nurse Practice Act and the rule do not define the term "prearranged plan of treatment." See § 464.003; Fla. Admin. Code R. 64B9-4.010.

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[6]"Plan" is defined as "[a] scheme, program, or method worked out beforehand for the accomplishment of an objective . . . [;] [a] proposed or tentative project or course of action . . . [;] [a] systematic arrangement of elements or important parts; a configuration or outline." The American Heritage Dictionary of the English Language 1341 (4th ed. 2000).

[7]"Treatment" is defined as "[a]dministration or application of remedies to a patient or for a disease or injury; medicinal or surgical management; therapy." The American Heritage Dictionary of the English Language 1838 (4th ed. 2000).

Second, the Plan could not be read in pari materia with the Nurse Practice Act or rule 64B9-4.010. The Plan does not reference the Nurse Practice Act or the rule. See §§ 766.301-.316. Furthermore, the Plan, the Nurse Practice Act, and rule 64B9-4.010 do not relate to the same subject matter or share the same purpose. The Plan governs the exposure to civil liability of hospitals and physicians providing obstetrical services, see §§ 766.301-.316, and its purpose "is to limit a participating physician's exposure to civil liability in cases where the doctor's professional involvement could make him or her a defendant in a lawsuit," Fluet v. Fla. Birth-Related Neurological Injury Comp. Ass'n, 788 So. 2d 1010, 1012 (Fla. 2d DCA 2001). In contrast, the Nurse Practice Act is concerned with the regulation of the nursing profession and its purpose "is to ensure that every nurse practicing in this state meets minimum requirements for safe practice." § 464.002. "Rule 64B9-4.010 . . . sets minimum standards for protocols pursuant to which an [advanced registered nurse practitioner] performs medical acts identified and approved by the joint committee pursuant to" the Nurse Practice Act. Fla. Admin. Code R. 64B9-4.008. Because the Plan, the Nurse Practice Act, and rule 64B9-4.010 do not relate to the same subject matter or share the same purpose, the ALJ could not construe them together to require proof of a written "prearranged plan of treatment." See State v. Mason, 979 So. 2d 301, 303 (Fla. 5th DCA 2008) ("A law should be construed together with any other statute relating to the same subject matter or having the same purpose if they are compatible.").

The ALJ erroneously interpreted section 766.314(4)(c) as requiring proof of a written document to demonstrate that the doctor supervising Nurse Hilderbrandt "ha[d] a prearranged plan of treatment for specified patient problems." A correct

interpretation of that section compels a finding that a prearranged plan of treatment existed because (1) Nurse Hilderbrandt presented unrefuted evidence of the course of action she was authorized to follow when caring for a patient and (2) the ALJ acknowledged that the nurse filed a protocol[8] with the Board of Nursing for the year 2004. Because Nurse Hilderbrandt paid the required assessment, was supervised by a participating physician that was easily available, and had a prearranged plan of treatment, we conclude that she was a participating physician under the Plan.

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[8]The version of rule 64B9-4.010 in effect when the protocols were filed required that the protocols include:

> 1. A description of the duties of the [nurse].
> 2. A description of the duties of the physician or dentist (which shall include consultant and supervisory arrangements in case the physician or dentist is unavailable).
> 3. The management areas for which the [nurse] is responsible, including
>
> a. The conditions for which therapies may be initiated,
>
> b. The treatments that may be initiated by the [nurse], depending on patient condition and judgment of the [nurse],
>
> c. The drug therapies that the [nurse] may prescribe, initiate, monitor, alter, or order.
>
> 4. A provision for annual review by the parties.
> 5. Specific conditions and a procedure for identifying conditions that require direct evaluation or specific consultation by the physician or dentist. The parties to the protocol, to insure an acceptable standard of supervision and medical care, will decide the detail and scope needed in the description of conditions and treatments, and in doing so will consider the factors listed in paragraphs (1)(a) through (e) above.

Fla. Admin. Code R. 64B9-4.010(2)(b) (effective 1988 until amended 2007).

IV. THE HOSPITAL'S COMPLIANCE WITH THE PLAN'S NOTICE PROVISIONS

A. The Parties' Arguments

The Hospital and NICA raise three issues on appeal, but only one merits discussion. The Hospital claims that the notice Mrs. Anderson received on December 12, 2003, obviated the need for any further notice by the Hospital for two reasons. First, based on general agency principles, the Hospital provided notice through its employees. Second, any further notice by the Hospital would have been meaningless under this court's decision in Bayfront Medical Center, Inc. v. Florida Birth-Related Neurological Injury Compensation Ass'n, 982 So. 2d 704 (Fla. 2d DCA 2008). In response, the Andersons contend that the Plan requires that both hospitals and any participating physicians provide the requisite notice to obstetrical patients.

B. Notice Requirements for Hospitals Under the Plan

The Plan's notice provision states, in pertinent part, as follows:

> Each hospital with a participating physician on its staff and each participating physician . . . under the [Plan] shall provide notice to the obstetrical patients as to the limited no-fault alternative for birth-related neurological injuries. . . . Notice need not be given to a patient when the patient has an emergency medical condition . . . or when notice is not practicable.

§ 766.316. The supreme court has explained that "health care providers must, when practicable, give their obstetrical patients notice of their participation in the [P]lan a reasonable time prior to delivery." Galen of Fla., Inc. v. Braniff, 696 So. 2d 308, 309 (Fla. 1997). The purpose of the notice is to permit patients to decide whether to use health care providers that participate in the Plan or to preserve their civil remedies by using providers that are not participants. Id. at 309-10. Thus, "if the notice given [to the

patient] is to meet the intent of the statute, it would be necessary to notify [the patient] that [the health care provider] was, in fact, a participant." Fla. Health Scis. Ctr., Inc. v. Div. of Admin. Hearings, 974 So. 2d 1096, 1100 (Fla. 2d DCA 2007). If the health care provider does not give the required notice, the Plan's exclusivity provisions do not apply and the patient may elect between pursuing a civil claim or accepting the Plan's benefits. Bayfront, 982 So. 2d at 707.

C. General Agency Principles

The Hospital's argument that the notice given by the Hospital's employees was effective as notice given by the Hospital is unpersuasive. "A notification given by an agent is effective as notification given by the principal if the agent has actual or apparent authority to give the notification, unless the person who receives the notification knows or has reason to know that the agent is acting adversely to the principal . . . ." Restatement (Third) of Agency § 5.02(2); see also Banditree, Inc. v. Calpo, Inc., 539 N.Y.S.2d 15, 17 (N.Y. App. Div. 1989) (interpreting Florida law to hold that notice of default on note given by law firm to note maker and guarantors was given by note holder); Bob Holding Corp. v. Normal Realty Corp., 164 A.2d 457, 460-61 (Md. 1960) (holding that notice to a third party by an attorney on behalf of a client was effective as notice by the client to the third party). Here, the record does not reflect that the Hospital's employees at West Coast OB/GYN were authorized to provide notice under the Plan on behalf of the Hospital. Moreover, the record does not reflect any actions by the Hospital that would have led the Andersons to reasonably believe that the Hospital employees providing obstetrical services at West Coast OB/GYN had authority to act on behalf of the Hospital. Because the Hospital employees did not have

actual or apparent authority to give notice, the notice given by the Hospital's employees was not effective as notice given by the Hospital.

D. Bayfront

The Hospital also contends that the reasoning in Bayfront compels a reversal because any notice by the Hospital would have been "unnecessary surplusage" after the December 12, 2003, notice. In response, the Andersons argue that the holding in Bayfront supports an affirmance because the Hospital was a "hospital with a participating physician on its staff" that must always provide notice under the Plan.

In Bayfront, this court considered whether a hospital complied with the Plan's notice provisions. 982 So. 2d 706. The participating physician had given the patient notice of his participation in the Plan but the hospital where the delivery occurred failed to provide the patient with notice of the Plan. Id. The ALJ found that the hospital's failure to provide notice precluded application of the Plan's exclusivity provisions and the claimants could elect whether to accept benefits under the Plan or pursue a medical malpractice claim. Id. at 707. On appeal, we disagreed with the ALJ's conclusion that the hospital was required to provide notice under the Plan. Id. at 707-08. Notably, we concluded that "any notice given by [the hospital] would have been meaningless." Id. at 708. Our ruling on this point is instructive:

> First, the notice provided to [the patient] by her physician put her on notice of her option to either continue in his care and be covered by the Plan or seek care from a nonparticipating physician. The purpose of the notice statute, as determined by the Florida Supreme Court in Galen, was satisfied. Any additional notice provided by [the hospital] would not have enhanced [the patient's] understanding of her options.

> Additionally, unlike the option [the patient] enjoyed with regard to the selection of a nonparticipating physician, she could not have chosen to seek services at a hospital that was not covered by the Plan. The statute does not provide any hospital with the option of participating or declining to participate in the Plan; rather, all hospitals are assessed equally. See § 766.314(4)(a), (5)(a). Further, nothing in the statute or case law suggests that it is a hospital's duty to advise a patient that her physician is or is not a participating physician. Hospitals with participating physicians on staff are simply required to provide obstetrical patients with the NICA-prepared "Peace of Mind" brochure, see § 766.316 (requiring that notice be given on forms furnished by NICA), which does not address the participation status of any particular physician, see Jackson v. Fla. Birth-Related Neurological Injury Comp. Ass'n, 932 So. 2d 1125, 1128 (Fla. 5th DCA 2006) ("The pamphlet contains a clear and concise explanation of a patient's rights and limitations under the NICA plan, as is required by the terms of the statute.").
>
> Accordingly, we conclude that a physician's pre-delivery notice of his participation in the Plan satisfies the statutory notice requirement as defined by the Florida Supreme Court in Galen, 696 So. 2d 308. Therefore, in the instant case, the statute was satisfied by the notice provided to [the patient] by her physician.

Id.

Here, we are likewise concerned with whether a hospital complied with the Plan's notice provision. As in Bayfront, the participating physicians provided notice to Mrs. Anderson about their participation in the Plan. Any further notice by the Hospital would not have improved Mrs. Anderson's understanding of her options regarding treatment by a participating physician and her ability to choose to give birth at a hospital that was not covered by the Plan. Thus the participating physicians' notice of their participation in the Plan satisfied the statutory notice requirement.

We are not persuaded by the Andersons' argument that Bayfront supports an affirmance. The Andersons focus on language following our holding where we

commented that hospitals are statutorily required to give notice if the "patient's delivering physician is a Plan participant *and* is also an employee of the hospital." Id. at 709. However, this statement was dicta because the question of whether a hospital must provide notice to a patient after the patient received notice by a participating physician employed by the hospital was not at issue in Bayfront. Our holding was grounded on the principle "that a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion." Holly, 450 So. 2d at 219; Polite v. State, 973 So. 2d 1107, 1111 (Fla. 2007); Phoenix Ins. Co. v. McCormick, 542 So. 2d 1030, 1032 (Fla. 2d DCA 1989). Therefore Bayfront requires us not to affirm but to reverse because the Plan's notice requirement was satisfied by the December 12, 2003, notice and any additional notice provided by the Hospital would have been superfluous.

V. CONCLUSION

The ALJ erroneously interpreted the Plan, and a correct interpretation of that law compels a finding that Nurse Hilderbrandt was a participating physician under the Plan and that the notice provision was satisfied by the notice provided by the participating physicians. Accordingly, we reverse the ALJ's final order, and we remand with instructions that the ALJ modify the final order consistent with this opinion. However, because our decision is based on an extension of the reasoning in Galen, 696 So. 2d 308, and our statutory analysis of the Plan, we certify the following as a question of great public importance:

> IN LIGHT OF THE FLORIDA SUPREME COURT'S DECISION IN GALEN OF FLORIDA, INC. v. BRANIFF, 696 SO. 2D 308 (FLA. 1997), DOES A PHYSICIAN'S PREDELIVERY NOTICE TO HIS OR HER PATIENT OF

THE PLAN AND HIS OR HER PARTICIPATION IN THE PLAN SATISFY THE NOTICE REQUIREMENTS OF SECTION 766.316, FLORIDA STATUTES (2006), IF THE HOSPITAL WHERE THE DELIVERY TAKES PLACE FAILS TO PROVIDE TIMELY NOTICE?

Reversed and remanded; question certified.

VILLANTI and LaROSE, JJ., Concur.