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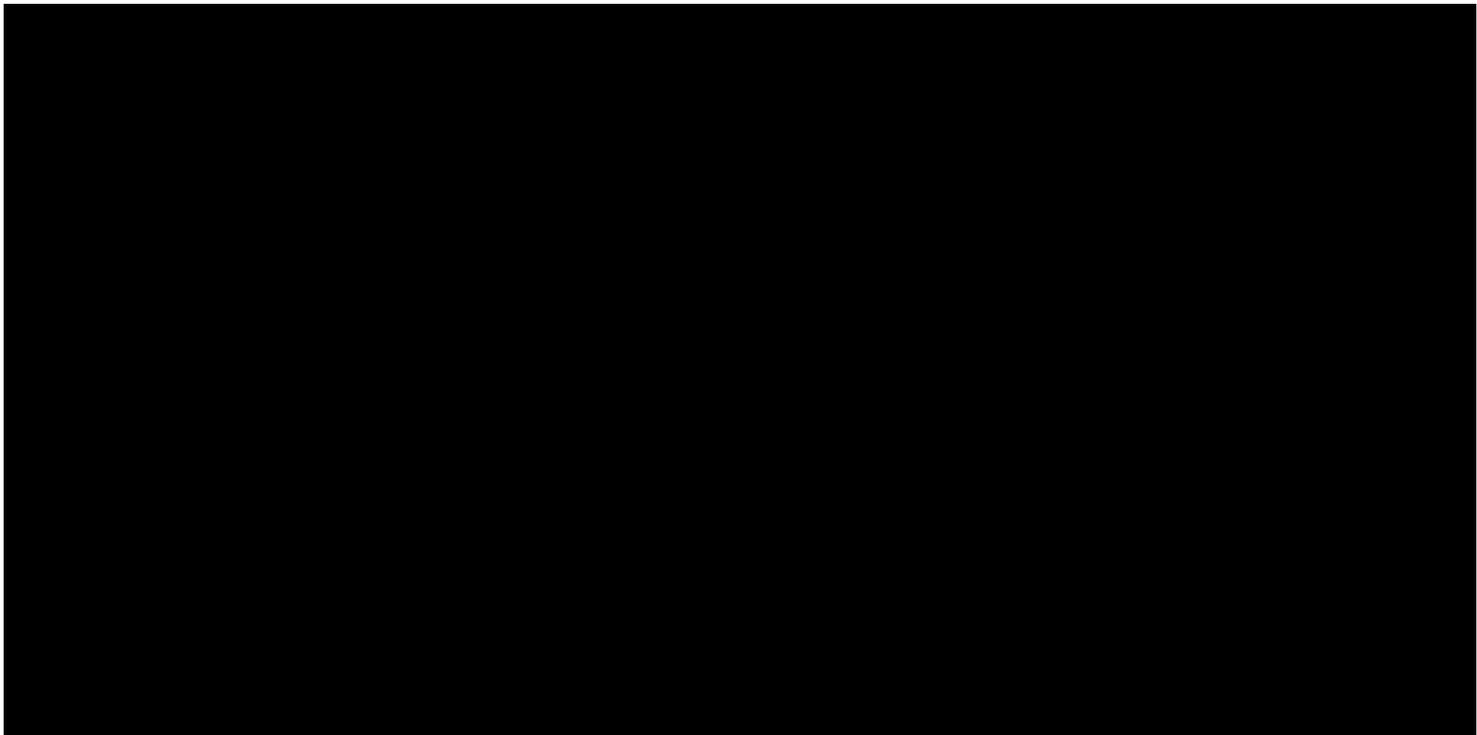
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# CBS12 News Investigates: Expecting mothers signing rights away before delivery

by Niala Charles  
Monday, November 19th 2018



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Expectant mothers all over the State of Florida sign away some of their rights often without realizing it.

CBS12 News Investigates expose a 30-year-old state statute that is still in effect today.

It means Ashley Grant can't sue her doctor after her daughter was injured during delivery.

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"I didn't want my daughter to grow up with all the difficulties that she has," said Grant as

she wiped tears away from her face.

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And that is because of the Florida Birth-Related Neurological Injury Compensation

Association or NICA for short.

In 1988, the state established the program to help pay for medical costs for babies born with neurological problems.

It is supposed to help pay the medical expenses for a baby injured during delivery.

And, it was also formed to help keep doctors from taking their practices out of state by cutting down on malpractice insurance premiums.

Once a mother signs the NICA form, she loses the right to sue the doctor and the hospital if something goes wrong.

## THE DELIVERY

So now, Grant, a mother of two, is fighting to stay out of NICA.

She said when she gave birth at a Florida hospital in 2013 she hoped for a happy, healthy baby.

But that didn't happen.

During labor, the baby's heart rate dropped.

they immediately rushed into the room. They were flipping my bed on the way to bring me into the OR," said Grant.

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~~Her doctor~~ performed an emergency C-section.

Ashley's daughter, Brooklyn, barely survived.

She was born with a neurological injury that severely restricts her physical ability.

Doctors don't know if Brooklyn will ever walk.

"Everything comes with difficulty. She can't feed herself. I don't know what a typical five-year-old does that she's actually able to do," said Grant.

The Grant family hired an attorney and sued the hospital and doctor that delivered Brooklyn.

The lawsuit claims for more than an hour there were multiple signs Brooklyn's heartbeat was going down, and the hospital's staff significantly delayed performing the C-Section.

The lawsuit states those errors caused severe permanent injuries.

"So now my daughter for the rest of her life has to deal with consequences from someone else's actions," said Grant.

## THE LAWSUIT HIT A ROADBLOCK

A Judge said the Grants can't pursue a lawsuit because she gave birth at a hospital

protected by NICA.

Every hospital in Florida that delivers babies has the same protection.

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NICA requires doctors to give patients their brochure as soon as practical so it can be signed.

Grant said she wasn't given hers until she went into labor and she didn't realize what she was signing.

"I had a stack of papers that was given to me when I was admitted into the hospital," said Grant.

Grant said her doctor never gave her any indication that something like NICA existed.

But once she signed the form, Brooklyn was enrolled in NICA, and just like that, the Grants could no longer hold their doctors or hospital liable.

## ONE-TIME PAYOUT

Instead, they get a maximum one-time payout of \$100,000.

Grant said that's not enough to cover Brooklyn's expenses.

"The chair that she's sitting in now is a tenth of the payout they give. And she's five," said Grant.

Brooklyn will need larger equipment as she grows.

"I want her to have what she needs to live a comfortable happy life and through NICA that's not going to happen," said Grant.

CBS12 Investigates discovered it's been almost 30 years since the program started, and it has never adjusted its payout for inflation.

Sean Domnick is an attorney with Domnick, Cunningham and Whalen in Palm Beach Gardens and is representing the Grants.

"I think \$100,000 for the loss of enjoyment of life, pain and suffering, disability, disfigurement a young child goes through over an 80 something year life period was wholly inadequate in 1988, and certainly 30 years ago, does nothing to really meet the needs of these families," said Domnick.

We wanted to know why the payout has not increased over the years to keep up with inflation, so we took our questions to Kenny Shipley, Vice President of NICA.

She said, "nobody has tried to do that. We talked about it several times, but part of the issue is trying to get a change in the law."

Shipley said NICA is publicly funded and any changes would have to be done and approved by the state legislature.

"Put the cost not on society, but put the cost on the person who caused the harm," said Domnick.

"The only person that's hurting the most is the children," said Grant.

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**Families in NICA can ask for extra money for medically related costs, but NICA requires them to file a claim every time for every item, and that only is for costs not covered by their private insurance.**

Virginia is the only other state that has an organization like NICA in place.

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