OFFICE OF SPECIAL MASTERS

(E-Filed: October 4, 2006)
No. 99-643 V

GREGORY RIDDICK, Petitioner, v. SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent.	PUBLISHED Motion to dismiss; Proof of vaccination absent immunization records

Ronald C. Homer, Boston, MA, for petitioner.

Althea W. Davis, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Vincent J. Matanoski, Acting Deputy Director, and Catharine E. Reeves, Assistant Director, Department of Justice, Civil Division, Torts Branch, Washington, DC, for respondent.

Ruling Regarding Petitioner's Proof of Vaccination[1]

On August 4, 1999, Gregory Riddick (petitioner or Mr. Riddick), filed a petition pursuant to the National Vaccine Injury Compensation Program[2] (the Act or the

[1] In accordance with Vaccine Rule 18(b), when a special master files a decision or substantive order with the Clerk of the Court, each party has 14 days within which to identify and move for the redaction of privileged or confidential information before the document's public disclosure. Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b).

[2] The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2000 & Supp. II 2003) (Vaccine Act or the Act). All citations in

Program). 42 U.S.C. §§ 300aa-1 to -34 (2000 & Supp. II 2003). Mr. Riddick alleges that he suffered injury as a result of receiving hepatitis B vaccines in November of 1991 and February of 1992. Petition (Pet.) ¶¶ 2-3. On March 4, 2002, petitioner filed an amended petition alleging that, as a result of the hepatitis B vaccinations he received in November 1991 and February 1992, he suffered from chronic fatigue syndrome[3] and postural orthostatic tachycardia syndrome[4] (POTS). Amended Petition at 1. In support of his claim, petitioner filed: (1) his own affidavit describing his receipt of the vaccinations and the onset of his symptoms; (2) an affidavit prepared by his father, David H. Riddick, M.D.; and (3) petitioner's medical records.

I. Procedural Background

On February 6, 2003, respondent moved to dismiss this case because "petitioner has failed to provide objective documentation of the receipt of hepatitis vaccines in November, 1991, and February, 1992, as alleged in his petition." Status Report of 3/31/06 at 1; see Respondent's Motion to Dismiss at 1. On February 19, 2003, petitioner filed his response to respondent's motion to dismiss. Petitioner's Response to Respondent's Motion to Dismiss at 1. No ruling on respondent's motion to dismiss issued pending efforts to resolve, through omnibus proceedings,[5] the numerous hepatitis

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this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

[3] Chronic fatigue syndrome is "persistent debilitating fatigue of recent onset, with reduction of physical activity to less than half of usual, accompanied by some combination of muscle weakness, sore throat, mild fever, tender lymph nodes, headaches, and depression, with the symptoms not attributable to any other known causes. Its nature is controversial; viral infection (including Epstein-Barr virus and human herpesvirus-6) may be associated with it, but no causal relationship has been demonstrated." Dorland's Illustrated Medical Dictionary, at 1813 (30th ed. 2003).

[4] Postural orthostatic tachycardia syndrome is a condition characterized by the "disproportionate rapidity of the heart rate on rising from a reclining to a standing position." Dorland's Illustrated Medical Dictionary, at 1494 (defining postural), at 1850 (defining orthostatic tachycardia) at 1808, (defining syndrome).

[5] An "omnibus" proceeding involves litigating, with the consent of counsel, test cases at a joint hearing to determine the general causation issue of whether a particular vaccine can cause a particular injury. Evidence is also heard on the issue of specific causation in each test case. A finding on the issue of general causation may be considered in each of the remaining cases requiring a determination of whether or not the vaccine caused the injury alleged in that particular case.

B cases before the Office of Special Masters. After a coordinated, digitally-recorded status conference conducted on March 24, 2006 by several special masters, including the undersigned, for the purpose of scheduling further proceedings in various cases involving allegations of injuries caused by the administration of hepatitis B vaccines, see Order of 3/27/06, respondent filed a status report on March 31, 2006 renewing its motion to dismiss.

By status report filed March 31, 2006 and "[u]pon further review of the records filed in this case, respondent renew[ed] [the earlier filed] motion to dismiss this case for failure to establish that petitioner received a covered vaccine." Status Report of 3/31/06 at 1. Further to a series of status conferences and pursuant to Orders dated April 4, 2006, May 15, 2006, and July 14, 2006, the parties filed the following documents: (1) Letter dated May 17, 2006 from the Office of General Counsel for the University of Pennsylvania regarding the vaccination policy for incoming medical students in 1991 (U. Penn. Letter of 5/17/06); (2) Respondent's Brief Regarding Petitioner's Proof of Vaccination (R's Br.); (3) Petitioner's Response to Respondent's Brief Regarding Petitioner's Proof of Vaccination (P's Resp.); and (4) Respondent's Response to July 14, 2006 Order (R's Resp.) and accompanying Exhibits A-B (R's Exs. A-B).[6] The matter is now ripe for a ruling.

I. Discussion

The Vaccine Act requires, as a predicate to obtaining compensation under the Program, that petitioner demonstrate by a preponderance of the evidence that he received

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[6]Attached as Exhibit A to respondent's filing are the recommendations of the Immunization Practices Advisory Committee for the use of hepatitis B vaccine for "prophylaxis against hepatitis B virus . . . infection." R's Ex. A at 6 (Protection Against Viral Hepatitis, Recommendations of the Immunization Practices Advisory Committee (ACIP), 39 MMWR (RR-2) (Feb. 9, 1990)). The Centers for Disease Control and Prevention (CDC) issued the recommendations in its Mortality and Morbidity Weekly Report (MMWR) dated February 9, 1990. R's Resp. at 1. The MMWR Recommendations and Reports "contain in-depth articles that relay policy statements for prevention and treatment with regard to all areas in CDC's scope of responsibility ([including] recommendations from the Advisory Committee on Immunization Practices)." R's Resp. at 1 n.1 (citing http://www.cdc.gov/mmwr/mmwr_rr.html).

Attached as Exhibit B to respondent's filing are the updated recommendations of CDC issued on November 22, 1991. R's Ex. B (Hepatitis B Virus: A Comprehensive Strategy for Eliminating Transmission in the United States Through Universal Childhood Vaccination: Recommendations of the Immunization Practices Advisory Committee (ACIP), 40 MMWR (RR-13) (Nov. 22, 1991)).

a vaccine covered by the Vaccine Act. 42 U.S.C. §§ 300aa-11(c)(1)(A), 13 (a)(1)(A). To satisfy his burden of proof, petitioner must provide an affidavit and documentation supporting his claim. 42 U.S.C. §§ 300aa-11(c)(1)(A). The court cannot make a finding that a vaccination has occurred "based on the claims of a petitioner alone, unsubstantiated by medical records" or supporting documentation. 42 U.S.C. §§ 300aa-11(c)(1)(A), 13 (a)(1)(A). If petitioner cannot prove by a preponderance of the evidence that he received a vaccine covered by the Act, he cannot maintain a petition for compensation, and the court must dismiss the claim. See 42 U.S.C. §§ 300aa-11 (entitling "any person who has sustained a vaccine-related injury. . . [to] file a petition for compensation," § 300aa-11(b)(1)(A), provided that "the person who suffered such injury . . . [meets the requirement of proving that he] received a vaccine set forth in the Vaccine Injury Table," § 300aa-11(c)(1)(A)).

Respondent states that petitioner's "medical records most contemporaneous to the alleged dates of vaccinations do not document receipt of either vaccination." R's Br. at 10. It is respondent's contention that although petitioner "suspected an association between his alleged hepatitis B vaccinations and his symptoms in 1992 [when he refused administration of the third hepatitis B vaccination], . . . he did not mention the vaccinations or his alleged adverse reaction to any of the numerous health care providers from whom he sought treatment for various symptoms and illnesses as one might reasonably expect." Id. at 11. Respondent asserts that petitioner's medical records do not "contain specific notations as to the dates of receipt of the vaccinations or any evidence that [his health care] providers had objective, independent evidence of the administration of the vaccines petitioner averred he received." Id. at 11. Rather, respondent argues, not until November 1998 did petitioner began to give histories of the onset of his symptoms as occurring around the time he allegedly received hepatitis B vaccinations while at medical school. Id. At that time, more than six years after the alleged receipt of his second hepatitis vaccination and shortly before he filed his claim for compensation, petitioner first "inquired about the possible relationship between his vaccination and his symptoms." Id.

Petitioner states that although the hepatitis B vaccine was first licensed in 1986, it was "a new vaccine" in 1991. P's Resp. at 14 and n.16. Petitioner reasons that because "[n]o side effects of the hepatitis B vaccine were known to exist at that time," id. at 14 (quoting Petitioner's Exhibit (P's Ex.) 8 at 3 (Affidavit of Gregory Riddick)), "the doctors' notes in [his] early medical records fail to mention a possible association," id. Petitioner contends that "13(a)(1) [of the Vaccine Act] only requires a petitioner to file supporting documentation that the petitioner received the vaccine at issue. It does not require the actual vaccination records. It does not require that the documentation be contemporaneous." Id. at 13. Rather, petitioner asserts, "[i]t simply requires that, based

on the record as a whole, there is preponderant evidence that he received the vaccines." Id. at 13-14. Petitioner argues that notwithstanding the absence of his vaccination records, "he has filed enough documentation to show he received the two hepatitis B vaccinations." Id. at 14.

The court now considers whether the statements in petitioner's affidavit and the offered documentation establish that petitioner more likely than not received two hepatitis B vaccines, first in November 1991 and then in February 1992, during petitioner's first year of medical school.

A. Petitioner's Claims

In his affidavit, petitioner states that he began his first year of medical school at the University of Pennsylvania in the fall of 1991. P's Ex. 8 at 1 (Affidavit of Gregory Riddick). He asserts that as a medical student, he was required to receive a series of three hepatitis B vaccinations, the first of which he received in the middle of November 1991. Id. at 1. He claims that "[a]pproximately a week after the vaccination, [he] began to feel unusually tired and lightheaded" and that he sought treatment at Student Health on the University of Pennsylvania campus. Id. at 1. Petitioner states that after a blood test showed "no unusual results," the doctors attributed his condition to stress and advised petitioner "to get plenty of rest." Id. Petitioner asserts that his "lightheadedness grew worse" and that he began to have "difficulty paying attention in class and . . . speaking clearly." Id.

Returning to campus in January 1992 after Christmas break, petitioner states that he attended classes "[a]lthough the lightheadedness did not fully resolve." Id. at 2. Petitioner claims that he received his second hepatitis B vaccination "[i]n the middle of February, 1992" and began to experience muscle and joint pain, nausea, lightheadedness, impaired vision and speech, and "much more severe" cognitive problems. Id. at 2-3. Petitioner stopped attending classes and spent the rest of the academic year in bed with "very intense headaches" that lasted several days and were accompanied by "stiffness in his knees joints." Id. at 3. Aware that his symptoms began within a week of his first hepatitis B vaccination and "reemerged in a more severe form a week after the second shot," petitioner refused the third hepatitis B vaccination. Id. Petitioner felt that the association between his symptoms and the vaccine "was unlikely to be a coincidence, and . . . [he] was unwilling to risk doing anything further to damage [his] health," by receiving the third shot. Id.

After finishing the first year of medical school, petitioner "arranged for a year off doing research at the University of Virginia." Id. Petitioner asserts that his

"incapacitat[ing]" headaches and speech difficulties persisted, and eventually, he was granted an extended leave of absence from medical school. Id. at 4-5. Petitioner states that he "never became well enough to return to medical school." Id. at 5.

B. Offered Documentation Pertaining to Petitioner's Claim

1. Affidavit of Petitioner's Father, David H. Riddick, M.D.

Dr. Riddick states in his affidavit that he acted as his son's personal physician until his son started medical school at the University of Pennsylvania on August 30, 1991. P's Ex. 9 at 1 (Affidavit of David H. Riddick, M.D.). He asserts that prior to medical school, petitioner "enjoyed excellent health and maintained an active life." Id. Dr. Riddick explains that he is offering his affidavit "because no records exist of my son." Id.

Dr. Riddick asserts that petitioner received his first and second vaccinations for hepatitis B during his first year in medical school. Dr. Riddick avers:

> After the first vaccination, Greg complained of lightheadedness and malaise that began within a week of receiving the vaccination. This seemed to resolve within a six week period. At that point he received a second vaccination, Greg experienced more profound and lasting symptoms. At that time he experienced headaches, blurred vision, slurred speech, and cognitive difficulties which greatly interfered with his ability to study. These symptoms persisted. He refused the third shot.

Id. at 2.

Dr. Riddick's affidavit provides a differing account of the timing of petitioner's two vaccinations, describing a six week span between the administration of the vaccines rather than the three month period of time that petitioner alleged in his affidavit. Compare P's Ex. 8 at 1 with P's Ex. 9 at 1. But, consistent with petitioner's affidavit is Dr. Riddick's assertion that petitioner declined the third hepatitis B vaccination in the series. See P's Ex. 9 at 1. Although he states that he was petitioner's general physician prior to petitioner's first year of medical school, Dr. Riddick does not allege that he administered the vaccinations to petitioner. Id. The difficulty with fully crediting Dr. Riddick's affidavit as documentation supportive of petitioner's claim is two-fold. First, it appears that Dr. Riddick's knowledge about petitioner's alleged hepatitis B vaccinations is not personal knowledge, but is information that petitioner related to his father. Second, as petitioner's father, Dr. Riddick is not disinterested in the outcome of this case. Because the source of Dr. Riddick's information about his son's alleged vaccinations is

his son, the reliability of Dr. Riddick's affidavit is best established by corroborating documentary evidence. Absent other supporting documentation, Dr. Riddick's affidavit does not supply the evidentiary weight necessary for petitioner to satisfy his burden of proof.

2. Statement Regarding Petitioner's Vaccination Records and the University of Pennsylvania's Vaccination Policy

Mr. Riddick is unable to produce documentation from the alleged vaccine administrator, University of Pennsylvania, establishing that he received hepatitis B vaccinations in November 1991 and February 1992. See P's Ex. 7 (handwritten notation that "Mr. Riddick['s] [r]ecords [h]ave [b]een [p]urge[d] [f]rom our system" at the bottom of a letter dated April 29, 1999 from petitioner's counsel to University of Pennsylvania's Student Health Services requesting all medical records pertaining to Gregory Riddick). Moreover, the University of Pennsylvania could not locate its policies concerning the vaccine requirements for its incoming students "from fifteen years ago." P's Ex. 12 at 1 (letter of 5/17/2006 from the Office of General Counsel of University of Pennsylvania to petitioner's counsel responding to a "request for policy information concerning the vaccine requirements of incoming 1991 medical students"). However, by letter dated May 17, 2006, the Office of General Counsel of University of Pennsylvania stated:

> [I]ncoming 1991 medical students . . . had special provisions for getting hepatitis B testing/immunizations done . . . . It is likely that clinical students were being advised about Hep B, but we are unable to confirm that it was required then. We believe that it was not then required. . . . [S]tudent Health stayed in step with CDC and . . . it is likely that we sought the immunizations that [it] did."

Id. (emphasis added).

3. Recommendations of the Immunization Practices Advisory Committee of the Centers for Disease Control and Prevention

Respondent's counsel has filed for the court's review the hepatitis B vaccination practices prescribed by the Centers for Disease Control and Prevention (CDC) in 1991. R's Ex. A at 10 (Recommendations of CDC's Immunization Practices Advisory Committee issued on February 9, 1990). On February 9, 1990, CDC's Immunization Practices Advisory Committee issued, in pertinent part, the following recommendations for hepatitis B vaccination:

> HBV infection is a major infectious occupational hazard for health-care and public-safety workers. The risk of acquiring HBV infection from occupational exposures is dependent on the frequency of percutaneous and permucosal exposures to blood or blood products. . . .
>
> Risks among health-care professionals . . . are often highest during the professional training period. For this reason, when possible, vaccination should be completed during training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions before workers have their first contact with blood.

R's Ex. A at 10 (Recommendations of CDC's Immunization Practices Advisory Committee, issued on February 9, 1990) (emphasis added). The Immunization Practices Advisory Committee recommended a "series of three intramuscular doses of hepatitis B vaccine [to] induce[] an adequate antibody response." Id. at 7. The "deltoid (arm) [muscle] is the recommended site for hepatitis B vaccination" for adults and children. Id. Administration of this vaccine consists of "three intramuscular doses of vaccine, with the second and third doses given 1 and 6 months, respectively, after the first." Id. This guidance was in effect when Mr. Riddick began his first year at University of Pennsylvania's medical school.

Also in effect during Mr. Riddick's first year of medical school were the updated recommendations of CDC's Immunization Practices Advisory Committee, which were issued on November 22, 1991. The 1991 guidance was as follows:

> HBV infection is a major infectious occupational hazard for health-care and public-safety workers. The risk of acquiring HBV infection from occupational exposures is dependent on the frequency of percutaneous and permucosal exposures to blood or blood products. . . .
>
> Risks among health-care professionals . . . are often highest during the professional training period. For this reason, when possible vaccination should be completed during training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions before workers have their first contact with blood.

R's Ex. A at 10 (emphasis added). The Immunization Practices Advisory Committee recommended a "series of three intramuscular doses of hepatitis B vaccine to induce an adequate antibody response." Id. at 7. The recommended site for hepatitis B vaccination remained the deltoid muscle in the arm. Id. The administration schedule of the vaccine

for the second and third doses continued to be one month and six months, respectively, after the first dose. Id.

The updated recommendations of CDC's Immunizations Advisory Practice Committee issued in November 1991 did not change the November 1990 hepatitis B immunization practices. Additionally, CDC's recommendation that medical students receive a three dose administration of hepatitis B vaccine before their first clinical exposure to blood products did not change.

As a first year medical student during the academic year 1991-1992, petitioner was a member of an identified group, specifically, the class of "health-care professionals . . . [in] training in schools of medicine, dentistry, nursing, laboratory technology, and other allied health professions" at "substantial risk [for] H[epatitis] B V[irus] infection," for whom CDC recommended pre-exposure vaccination.[7] Based on the effective recommendations of CDC's Immunization Practices Advisory Committee during petitioner's first year of medical school together with the statement from University of Pennsylvania that CDC's vaccination policy informed the medical school's vaccination practice in 1991, it is more likely than not that University of Pennsylvania recommended hepatitis B vaccinations for its medical school students at the time petitioner attended. However, because the recommended vaccination series was merely a recommendation and not a requirement, the offered evidence regarding the vaccination policy for University of Pennsylvania's medical school, without more, does not persuade the undersigned that petitioner more likely than not received the recommended vaccinations. Rather, the offered documentary evidence of the general vaccination policy of the University of Pennsylvania's medical school establishes only a possibility that petitioner received the hepatitis B vaccine series.

Petitioner has offered no evidence, other than the bare assertions contained in his affidavit, regarding when or how first year medical students at University of Pennsylvania who elected to receive hepatitis B vaccinations were vaccinated. Nor has petitioner offered any evidence regarding when University of Pennsylvania medical students would have had their first exposure to blood, evidence from which the undersigned might infer the time frame within which medical students who elected to receive hepatitis vaccines might have been vaccinated. Accordingly, the undersigned examines petitioner's medical records, to determine whether the evidence supported a finding that it is more likely than not that petitioner received the recommended shots.

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[7] See R's Ex. A at 10 (Recommendations of CDC's Immunization Practices Advisory Committee, issued on February 9, 1990); R's Ex. B at 12-13 (Recommendations of CDC's Immunization Practices Advisory Committee, issued on November 22, 1991).

3. Petitioner's Medical Records

Unable to produce his vaccination records from University of Pennsylvania, petitioner has produced for review his medical records documenting the treatment he sought for his condition following his first year in medical school. Petitioner's medical records span from May 1992 through January 2001. Included in the recorded notes of his visits to the various treating physicians are summaries of petitioner's medical history that he apparently provided to the examining doctors.

The Federal Circuit has instructed:

> Medical records, in general, warrant consideration as trustworthy evidence. The records contain information supplied to or by health professionals to facilitate diagnosis and treatment of medical conditions. With proper treatment hanging in the balance, accuracy has an extra premium. These records are also generally contemporaneous to the medical events.

Cucuras v. Secretary of HHS, 993 F.2d 1525, 1528 (Fed. Cir. 1993). The "lack of contemporaneous, documentary proof of a vaccination does not necessarily bar recovery." Centmehaiey v. Secretary of HHS, 32 Fed. Cl. 612, 621 (Fed. Cl. 1995). But, the provided documentary evidence must "support" petitioner's claims. See 42 U.S.C. §§ 300aa-13(a)(1) ("supporting documentation" required by the Act). Without more than petitioner's claims, the undersigned cannot conclude that petitioner more likely than not received the recommended hepatitis B vaccination.

Petitioner was born on June 3, 1968. P's Ex. 2 at 2 (Hospital of the University of Pennsylvania, Emergency Services Department, Patient Information Report, dated 5/30/92). On May 30, 1992, four days before his twenty-fourth birthday, petitioner walked into the University of Pennsylvania's emergency room with complaints of nausea and a headache that had lasted two days and had caused him to have difficulty reading. See id. at 5, 7 (Hospital of the University of Pennsylvania, Emergency Services Department Records). He stated that he had been seeing a neurologist for headaches and that he had been experiencing "li[ght]headedness, dizz[iness], malaise, [decreased] energy and recurrent [headaches]" for two to three months. Id. The results of petitioner's physical and neurological examinations, blood tests and head computed tomography (CT)[8] scan were all within normal limits. See id. at 7-10. Petitioner's treating physicians

[8] Computed tomography, also known as computerized axial tomography (CAT) is a procedure during which "the emergent x-ray beam is measured by a scintillation counter; the

noted that petitioner's symptoms "may be" consistent with stress or depression, prescribed motrin to address petitioner's pain, and advised petitioner to seek follow-up care with his neurologist. Id. at 7, 11.

On June 22, 1992, John M. O'Bannon, III, M.D. of Neurological Associates, Inc., examined petitioner in Dr. O'Bannon's Virginia office. P's Ex. 1 at 1 (letter dated 6/22/92 from John M. O'Bannon, III, M.D. of Neurological Associates, Inc., to petitioner's father David Riddick, M.D.). In a letter dated June 22, 1992 to petitioner's father, Dr. O'Bannon wondered whether petitioner had suffered a "viral illness" and stated that petitioner had "a normal neurologic exam at present." Id. In his notes of the office visit, Dr. O'Bannon wrote:

> This 24 year old right handed single white male freshman medical student at the Univ. of Pennsylvania is seen for a neurologic opinion regarding symptoms which have occurred over the last several months. He had a mild illness over Christmas but then in mid February and specifically around February 15th he had the rather abrupt onset of complaints of dizziness described as a lightheaded sensation, being foggy and "out of it" with a dazed sensation. Unfortunately, this was severe and he was virtually bedridden for a period of time. He had intermittent blurred vision, a lot of difficulty with concentration, reading and writing and specifically had difficulty making presentations. . . .
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> For the initial period of time over several weeks, he was evaluated at Student Health and some blood studies were done. He was seen by a neurologist who had a CT of the head done, Lyme titer[9] and no specific diagnosis was made. Several possibilities were apparently entertained

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electronic impulses are recorded on a magnetic disk and then are processed by a mini-computer for reconstruction display of the body in cross-section on a cathode ray tube." Dorland's Illustrated Medical Dictionary, at 1919. The procedure permits evaluation of a well-imaged brain, which is useful in the diagnosis of brain tumors as well as other conditions. Mosby's Manual of Diagnostic and Laboratory Tests, at 1095 (3rd ed. 2006).

[9] Lyme titer tests are performed to test for the presence or absence of antibodies to Lyme disease which is "a recurrent, multisystemic disorder" caused by the tick-borne bacterial agent, Borrelia burgdorferi. Dorlands Illustrated Medical Dictionary, at 537. The disease begins with a red papule at the site of the tick bite. As the disease progresses, it involves "highly variable manifestations, including myalgia, arthritis of the large joints, and involvement of the nervous and cardiovascular systems." Id.

including some sort of viral illness. . . .

Id. at 2. Dr. O'Bannon observed that petitioner's "course this year was complicated by what appeared to be a severe allergy to formaldehyde prompting him to require specific equipment when trying to dissect." Id. Dr. O'Bannon opined that petitioner's dizziness was of uncertain cause with "differential [diagnosis] to include a low grade chronic viral infection [versus] a low grade vestibular problem." Id. at 3; R's Resp. at 3.

Nearly six months later, on December 8, 1992, petitioner saw Matthew Goodman, M.D.,[10] complaining of "irritation in both eyes . . . [that] began during [his] exposure to formaldehyde fumes during anatomy class in medical school." P's Ex. 3 at 52 (medical notes of Matthew Goodman, M.D. dated 12/8/92). As part of petitioner's patient history, Dr. Goodman noted:

> During [Mr. Riddick's] first year of medical school, he had ten months of fatigue and some knee arthritis. He had a big work[-]up with multiple medical tests, Lyme's [sic] titers and scans, all of which [were] negative. He has recently been feeling somewhat better. He has noted some hypersomnolence 8-9 hours a night, with difficulty getting out of bed and a 30-40 lb. weight gain and decrease in activity over the past year.

Id.

Dr. Goodman diagnosed petitioner with "[c]hemical conjunctivitis" and referred him to Stephen V. Scoper, M.D., an ophthalmogist, for further evaluation. Id. Dr. Goodman also diagnosed petitioner with "[r]eactive depression, noting that petitioner was having "some difficulty" deciding about his medical career. Id. Declining to provide petitioner with antidepressive medication, Dr. Goodman provided petitioner with the name of a psychotherapist "should he choose to undergo counseling." Id. at 52-53.

As reflected in his examination notes dated April 13, 1993, Dr. Scoper, an ophthalmologist in University of Virginia's Department of Ophthalmology, saw petitioner for a "[f]ollow[-]up visit" for petitioner's "chronic lid disease." P's Ex. 3 at 54 (medical notes of Stephen V. Scoper, M.D. dated 4/13/93). Dr. Scoper had previously seen petitioner on December 15, 1992 and January 28, 1993 for the same condition. Id. Mr.

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[10] Based on the header in the upper left corner of Dr. Goodman's notes, specifically, "Prog. Note, Dept. of Int. Med., Northridge Practice," the undersigned surmises that Dr. Goodman is an internist. See P's Ex. 3 at 52-53.

Riddick had complained of a "burning" sensation and expressed "concern[] that the difficulties were secondary to his exposure to formaldehyde vapors while in the lab . . . in medical school for several months." Id. After his examination of petitioner, Dr. Scoper diagnosed petitioner with chronic lid disease and recommended reinstitution of Doxcycline,[11] and treatment with warm compresses and an eyelid ointment at night. Id.

More than a year later, by letter dated September 19, 1994 to petitioner's father, Charles E. Hess, M.D., a professor of internal medicine in University of Virginia's Department of Medicine, Division of Hematology/Oncology, summarized his evaluation of petitioner for complaints of a two and one-half year medical history of chronic fatigue-like symptoms. P's Ex. 3 at 45-46 (letter dated 9/19/94 to petitioner's father from Charles Hess, M.D., a professor of internal medicine in University of Virginia's Department of Medicine, Division of Hematology/Oncology). Dr. Hess wrote:

> [Mr. Riddick's] major symptoms are that he tires easily, he frequently has lightheadedness and after he exercises he often runs a low grade fever of around 100 degrees. He also has experienced some difficulty concentrating and occasionally has had some mild blurring of his vision. After he exercises[,] he also has some aching in his head but these are not vascular type headaches. He dates the onset of all of these difficulties to approximately November of 1991 during his first year of medical school at the University of Pennsylvania. He feels the symptoms began when he was exposed to formaldehyde in the Anatomy Lab and apparently developed a hepatitis. He definitely developed a severe conjunctivitis following exposure [to the formaldehyde] and this was subsequent to his developing hepatitis. The hepatitis was manifested mainly by a flu-like symptom complex with aching, weakness, and soreness in his muscles. He did have a low grade fever at the time, and subsequent to the onset of these symptoms he has had rather extensive evaluations which have included an LP [Lumbar Puncture][12], a head CT scan and many other studies. The results of these studies have been normal. He was also evaluated by Dr. Sawyer in the Division of Infectious Disease here at the University in 1992 and actually had the LP done at that time. He had many other tests done then but I do

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[11]Doxycycline is "a semisynthetic broad-spectrum antibacterial of the tetracycline group; administered orally." Dorland's Illustrated Medical Dictionary, at 563.

[12] A lumbar puncture is "the withdrawal of fluid from the subarachnoid space in the lumbar region, usually between the third and fourth lumbar vertebrae, for diagnostic or therapeutic purposes." Dorland's Illustrated Medical Dictionary, at 1546

not have the results of all of these. He says that they were all essentially normal.

Id. at 45 (emphasis added). Dr. Hess reported that his examination in September 1994 of Mr. Riddick was normal, and the results of the tests that he obtained were also normal. Id. at 46. Dr. Hess did not recommend any further testing or treatment.

Notwithstanding petitioner's representation during his 1994 office visit to Dr. Hess that his symptoms began in November 1991 when he "apparently developed a hepatitis . . . [that] was manifested mainly by a flu-like symptom complex," Dr. Hess's notes make no mention of petitioner's alleged hepatitis B vaccinations. Additionally, there is no evidence in petitioner's medical records that he either received a diagnosis of hepatitis or received treatment for hepatitis. Nor is there any indication in the medical records that petitioner made this particular representation to any of his other treating physicians.

The recorded notes in petitioner's medical records between 1992 and 1994 focus on petitioner's symptoms and address the possible causes and diagnoses of petitioner's condition. The medical records reflect a consistent description of petitioner's symptoms the onset of which petitioner dates to the fall of 1991. But the records are devoid of any mention of petitioner's vaccinations. Not until 1996 is there any mention at all in petitioner's medical records regarding his hepatitis B vaccinations.

On November 14, 1996, J. Randall Moorman, M.D., of the Cardiovascular Division of the University of Virginia's Department of Internal Medicine, evaluated petitioner for "tilt table testing[13] and possible therapy for neurally[-]mediated hypotension."[14] P's Ex. 3 at 71 (letter of 11/14/96 to Charles Hess, M.D. from J. Randall Moorman, M.D., of the Cardiovascular Division of the University of Virginia's

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[13] A tilt table is "a plinth, equipped with a footboard for support, to which a patient can be strapped for rotation to a nearly upright position; used in cases of spinal cord injury and other neurological disorders to enhance blood circulation to the lower limbs, improve posture, and aid in muscle training and sense of balance." Dorland's Illustrated Medical Dictionary, at 1849. Tilt-table testing is used to evaluate the impact of posture on heart rhythm disturbances that are characterized by an abnormally increased heart rate, known as tachyarrhythmia. Mosby's Manual of Diagnostic and Laboratory Tests, at 733; Dorland's Illustrated Medical Dictionary, at 1850 (defining tachyarrhythmia).

[14] Neurally-mediated hypotension is abnormally low blood pressure effected through the nerves. Dorland's Illustrated Medical Dictionary, at 898 (defining hypotension), 1111 (defining mediate), 1251 (defining neural).

Department of Internal Medicine). Dr. Moorman noted that petitioner had no cardiovascular symptoms and that his primary symptom "through the years has been lightheadedness" which was worse in the morning and partially relieved by lying down. Id. Noting that petitioner's blood pressure was 115/70, Dr. Moorman stated that he discussed with petitioner "his diagnosis of mild aortic insufficiency." Id. Dr. Moorman also discussed the uses and limitations of tilt table testing with petitioner, who began a one-month trial of medication to address his symptoms. Id. at 72. Dr. Moorman wrote: "If [the trial] is not successful, we will discuss pursuing the tilt table test."[15]

Also filed in the court's records with Dr. Moorman's November 14, 1996 letter to Dr. Hess, see P's Ex. 3 at 75-76, are handwritten notes on a patient's notes form with a header of "University of Virginia, Department of Medicine[,] Cardiology," see id at 77. The notes are undated, but include petitioner's birth date and the following notations:

> 5 yrs
> main sx is lightheadedness
> every day worse in am
> better $\overline{c}$[16] lying down
> 1 day $\overline{p}$[17] aerobic exercise = more lightheaded, feverishness
> 1 wk $\overline{p}$ hep vaccine, 2nd shot
> better now - at first - couldn't
> difficulty pronounce words
> better $\overline{p}$ 1 yr.

Id. at 77 (emphasis added). In the bottom right hand corner of that same document is the handwritten notation "A/I 115/70."[18] Id. While the undersigned is not a handwriting

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[15] Petitioner's medical records include the results of his tilt table test at Johns Hopkins University on April 8, 1998. P's Ex. 4 at 1-3 (tilt table test report dated 4/8/98, The John Hopkins Hospital). The findings were "consistent with neurally[-]mediated hypotension and postural orthostatic tachycardia syndrome (POTS)." Id. at 3. The report further stated that "the patient's symptoms are likely due to this form of autonomic dysfunction." Id.

[16] The abbreviation "$\overline{c}$" is commonly used in medical records for the word "with." Neil M. Davis, Medical Abbreviations, at 73 (12th ed. 2005).

[17] The abbreviation "$\overline{p}$" is commonly used in medical records for the word "after." Medical Abbreviations, at 267.

[18] "A[/]I" is a commonly used abbreviation for the medical condition of aortic insufficiency. Medical Abbreviations, at 43. Aortic insufficiency is the "defective functioning of

expert, the script is substantially similar to the script notations that appear at the conclusion of Dr. Moorman's typed letter of November 14, 1996 to Dr. Hess. The notations "5 yrs,"[19] "main sx is lightheadedness," "better c̄ lying down" and "A/I 115/70" seem to be the recorded notes that informed Dr. Moorman's November 14, 1996 letter to Dr. Hess. Based on the handwriting on the undated document and the apparent relationship between the handwritten notations on that document and the typed letter from Dr. Moorman to Dr. Hess, it appears to the undersigned that it is more likely than not that the handwritten notes were written by Dr. Moorman during his examination of petitioner in November 1996.

Of particular interest to the undersigned is the handwritten notation "1 wk. p̄ hep vaccine, 2nd shot." The notation seems to refer to the onset of petitioner symptoms and is the first mention of any vaccinations in petitioner's provided medical records. Although mention of petitioner's vaccinations was not included in Dr. Moorman's letter to Dr. Hess regarding his evaluation of petitioner, the mention in Dr. Moorman's notes is corroborative evidence of petitioner's claim that he received two hepatitis B vaccinations. Moreover, even though petitioner himself most likely supplied the information to Dr. Moorman, it appears that he offered the information in the course of seeking treatment for his condition. As the Federal Circuit stated in Cucuras, medical records containing information typically provided "to or by health professionals to facilitate diagnosis and treatment of medical conditions" are generally considered "trustworthy evidence." While the notation occurs nearly five years after his alleged receipt of the first vaccination, the notation is the only reference to petitioner's vaccinations that occurs in his medical records prior to November 1998 when petitioner began to contemplate filing a claim for compensation under the Program. Because the notation "1 wk p̄ hep vaccine, 2 shot" in Dr. Moorman's notes occurs well before petitioner began preparing for the litigation of his vaccine claim and because the notation appears to reflect patient history provided by

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the [heart's] aortic valve, with incomplete closure resulting in aortic regurgitation." Dorland's Illustrated Medical Dictionary, at 937 (defining aortic insufficiency), 2004 (defining aortic valve).

The numbers following the abbreviation "A/I" appear to be the recorded blood pressure reading for petitioner that is subsequently reported in Dr. Moorman's November 14, 1996 letter to Dr. Hess.

[19] Five years prior to the date of Dr. Moorman's November 1996 examination of petitioner would be consistent with petitioner's alleged onset date of November 1991 for his symptoms to be consistent with an initial vaccination occurring in November of 1991.

petitioner in an effort to facilitate the diagnosis and treatment of his troubling medical condition, the undersigned finds that the undated document containing the notation is the type of supporting documentation contemplated by section 300aa-11(c)(1)(A) of the Act and is sufficient to substantiate petitioner's claim that he received two hepatitis B vaccinations.

Petitioner's medical records also reflect that on September 1, 1998, petitioner saw Ivan S. Login, M.D., of the University of Virginia's Department of Neurology, for a neurological examination. P's Ex. 3 at 30-33 (letter dated 9/1/98 from Ivan S. Login, M.D., to petitioner's general practice physician, John Gazewood, M.D.). Dr. Login wrote:

> The patient was in his first year of medical school in 1992 when he apparently started developing symptoms that were diagnosed as chronic fatigue syndrome. In association with that, he also began to experience his current headache syndrome. . . . Of potential importance is the fact that these headaches occur almost weekly and actually, almost every weekend. . . . In the last two years, his headache syndrome has increased in number and severity, but it still follows the pattern of virtually every weekend.
>
> . . .
>
> He wound up being referred to a physician at Johns Hopkins who made the interesting observation that patients with chronic fatigue syndrome also suffered from neurogenic orthostatic hypotension and postural orthostatic tachycardia (POTS syndrome). . . . He feels that his headaches are related to the vascular phenomenon associated with his orthostatic hypotension. . . . Dr. Moorman also diagnosed autonomic insufficiency, but not to a degree requiring any specific intervention. . . .
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> . . .
>
> Upon learning about the inescapable appearance of [Mr. Riddick's] headaches only on weekends, I thought it would be reasonable to try to pursue any psychological factors that might be contributing to the headache[s]. . . . In recognizing that he was reluctant to pursue these obviously poignant issues, I simply left the area alone and continued on with more general medical interaction.

Id. at 30-32 (emphasis added). Dr. Login noted that Mr. Riddick's neurological

examination was "normal." Id. at 32. Dr. Login stated that his "major diagnostic conclusion is that [petitioner] is suffering from headaches related to depression and stress." Id.

Dr. Login's evaluation of petitioner's condition makes reference to Dr. Moorman's diagnosis of aortic insufficiency in petitioner. This reference lends additional support to the undersigned's finding that Dr. Moorman more likely than not prepared the undated document filed with Dr. Moorman's typed letter of November 14, 1996 to Dr. Hess regarding petitioner's examination.

Petitioner's medical records also show that on October 6, 1998, petitioner visited Daniel Becker, M.D., of the University of Virginia's Department of Internal Medicine. P's Ex. 3 at 39-40 (letter of referral dated 9/1/98 from J. Randall Moorman, M.D., to Daniel Becker, M.D.); see also id. at 37 (clinic notes of Daniel Becker, M.D., dated 10/6/98). Dr. Becker noted "a 6-year history of chronic fatigue syndrome and autonomic insufficiency." Id. Dr. Becker also noted that petitioner "dropped out of medical school in 1992 during his first year." Id. Dr. Becker reported that petitioner continues to suffer from "frequent disabling headaches." Id.

Nearly one month later, on November 3, 1998, petitioner returned to Dr. Becker. Id. at 36 (clinic notes of Daniel Becker, M.D., dated 11/3/98). Dr. Becker wrote:

> He raised several questions today: use of omega-3 fatty acids in this setting, possible precipitating role of HBV vaccine, need for career counseling, and referral to an autonomic insufficiency clinic at Vanderbilt University. He is not overtly depressed, but I think that counseling would be a good idea since he has some real limitations as far as professional and social development.

Id. (emphasis added). Dr. Becker suggested that petitioner "consider a referral to [Dr.] Carol Manning in Neurology for neuropsych testing and psychological evaluation." Id.

Three weeks later, on November 24, 1998, Dr. Wong,[20] an infectious disease resident with the University of Virginia Health System, evaluated petitioner for a "possible chronic infection (H[uman]H[erpes]V[irus] 6)." P's Ex. 3 at 34-35 (physicians notes dated 11/24/98, University of Virginia Health System). Dr. Wong noted:

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[20] Only Dr. Wong's surname is legible on the notes. See P's Ex. 3 at 35 (physicians notes dated 11/24/98, University of Virginia Health System).

> [Petitioner] developed problems in early 1990s, first developing roseola[21] (rash on trunk) [and] then 1 yr later having [symptoms] of headache, [and] orthostasis that were so severe he had to quit medical school.[22] He reports Hep B vaccination around time of [symptom] onset. Since then he has had frequent [headaches] (several [times] a wk during the warm summer, less in winter) . . . .

Id. at 35 (emphasis and footnotes added). Dr. Wong noted "no known association" between HHV-6 or other viruses and petitioner's symptom complex. Id.

Between December 22, 1998 and July 15, 1999, petitioner attended weekly counseling sessions with Carol Manning, Ph.D., Assistant Professor of Clinical Neurology with the University of Virginia. P's Ex. 3 at 13-29 (office notes of Carol Manning, Ph.D., Assistant Professor of Clinical Neurology with the University of Virginia). Dr. Manning's office notes describe circumstances that are anxiety-producing for petitioner and address petitioner's difficulties with social situations and his familial relationships. See id.

Petitioner filed this action on August 4, 1999. On January 26, 2001, petitioner saw Dr. Becker "for follow-up." P's Ex. 3 at 2-3 (clinic notes of Daniel Becker, M.D., dated 1/26/01). Dr. Becker noted:

> This . . . patient . . . has a poorly defined chronic condition associated with poor exercise tolerance, chronic headache and intermittent mental confusion. He has been followed by Carol Manning in neuropsychology. He resisted diagnosis of depression or panic attacks. He is interested in some sort of a comprehensive evaluation of both autonomic function and possible brain inflammation. His symptoms began after hepatitis B series while he was a medical student. . . .

Id. at 2 (emphasis added). As part of the "[a]ssessment and [p]lan" for petitioner, Dr. Becker wrote:

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[21] Roseola is "a rose-colored rash, as may be seen in measles, syphilis, and certain other exanthematous diseases" Dorland's Illustrated Medical Dictionary at 1642.

[22] The medical records variously refer to petitioner's completion of his first year and his dropping out during his first year. The undersigned need not resolve this factual issue to determine whether petitioner has satisfied his burden of proof that he received the alleged hepatitis B vaccinations.

> I am not sure how I can help this patient. I told him that I am maintaining an open mind about the underlying process. At one point, he thought he had a variant of chronic fatigue with associated postural orthostasis. He now thinks it is something else. Should he find an NIH study that is interested in people like him, I will do my best to assemble a chart and refer him. For now, no medication changes or interventions. . . . We agreed to routine six month follow-ups.

Id.

Even though petitioner was preparing to file this action during his doctors' visits that are reflected in his medical records between the fall of 1998 and January 2001, his offered patient history that he received two hepatitis B vaccinations while he was in medical school is corroborated by an earlier medical record, specifically the handwritten notes of Dr. Moorman in 1996. Affording Dr. Moorman's handwritten notes the evidentiary weight prescribed by the Federal Circuit in Cucuras, 993 F.2d at 1528, and evaluating "the record as a whole," § 300aa-13(a)(1), the undersigned is persuaded that petitioner has satisfied his burden under the Act of proving that he more likely than not received two hepatitis B vaccinations during his year in medical school.

III. Conclusion

For the foregoing reasons, the undersigned finds that it is more likely than not that Mr. Riddick received two hepatitis B vaccinations during his year of medical school. Accordingly, the court **DENIES** respondent's motion to dismiss. On or before October 13, 2006, the parties shall contact chambers to schedule further proceedings in this matter.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master