

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-1150V

Filed: April 4, 2011; Reissued for Publication: February 3, 2012¹

**RICHARD STEINWEG AND
MICHELLE STEINWIG, Parents of
MASON STEINWEG, a Minor,**

Petitioners,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICES**

Respondent.

PUBLISHED

Denial of Untimely Filed Motion to
Redact

ORDER DENYING UNTIMELY MOTION TO REDACT²

On May 6, 2003, petitioners filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”).³

¹ A footnote regarding publication has been added to this order, which is otherwise substantively identical to the one originally issued.

² Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. *Id.*

³ The Program comprises Part 2 of the National Childhood Vaccine Injury Act of

By use of the special “Short-Form” developed for use in the context of the Omnibus Autism Proceeding, petitioners allege that various vaccinations caused Mason to suffer a particular type of injury.

On February 10, 2011, the undersigned issued a decision dismissing this case for insufficient proof. On March 3, 2011, petitioners’ counsel filed a motion to redact the undersigned’s decision. On March 3, 2011, the undersigned denied petitioners’ motion to redact because it was untimely filed under Vaccine Rule 18(b).

On March 4, 2011, petitioners’ counsel filed a motion for relief to file motion to redact nunc pro tunc. Petitioners’ counsel explains that administrative error prevented timely filing of the initial motion to redact.⁴ Seeking nunc pro tunc relief, petitioners’ counsel requests the issuance an order directing the Clerk of Court to file the motion to redact and proposed redacted decision with a filing date of February 17, 2011. The requested date of filing is fifteen days earlier than the actual filing date of the redaction motion and is untimely by seven days.

Petitioners’ counsel specifically requests that the name of the minor child be redacted from the decision, substituting instead the minor child’s initials. In support of the underlying redaction motion, petitioners explain that details concerning their minor child’s medical condition are contained in the decision and would be ascertainable through a name search on the internet.

Having carefully considered the filed motion for relief, the undersigned **DENIES** petitioners’ request for redaction.

The Vaccine Act requires special masters’ decisions to be published. The Act also confers authority on special masters to order redaction of medical and other personal information meeting specified criteria. In this case, no information in the entitlement decision qualifies for redaction under the Congressionally-prescribed criteria in section 12(d)(4)(B) of the Vaccine Act.

Under the E-Government Act, which applies to the Office of Special Masters as a component of the United States Court of Federal Claims, the courts have adopted rules

1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

⁴ Petitioners’ counsel explained that a motion for redaction and a proposed redacted decision had been prepared on February 17, 2011, but was not filed with the court until March 3, 2011, due to an administrative error. Petitioners’ counsel became aware of the problem on March 4, 2011.

governing redaction of private information. RCFC 5.2(a) permits redaction of certain identifying information, including the redaction of the name of a minor child to initials, and, if applicable, an individual's birth date. See E-Government Act of 2002, Pub. L. No. 107-347, § 205(a)-(c), 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)); RCFC 5.2(a). No further redaction of identifying information is required by the E-Government Act or the rules implementing it.

Here, petitioners' counsel filed an untimely motion for redaction of the decision dismissing the petition pursuant to Vaccine Rule 18(b). Counsel makes the highly unusual request of retroactively dating the motion to cure an administrative error acknowledged by counsel's office.

On December 12, 2010, the Chief Special Master issued an Order, now posted on the website for the United States Court of Federal Claims, clearly describing the parameters of the new redaction policy being enforced by the Office of Special Masters and emphasizing the importance of timely filing.

We will expect compliance with the provisions in the Vaccine Act governing redaction, see 42 U.S.C. 300aa-12(d)(4), and Vaccine Rule 18(b). Upon timely request for redaction (the request must be received within 14 days or it will be too late), including a proper motion under Rule 18(b), we will redact the names of minors to their initials.

U.S. Court of Federal Claims, New Redaction Procedures, <http://www.uscfc.uscourts.gov/new-redaction-procedures> (last visited on March 30, 2011).

Establishing a practice of abrogating the requirement for timely filing of redaction motions diminishes the effectiveness of the Rule and creates tremendous uncertainty about the content of and timing for issued decisions that will become publicly available. Entertaining untimely redaction motions—except in extraordinary circumstances such as the court's administrative error or an emergent closing of the court—risks introducing unnecessary opportunities for erroneous disclosures in posted decisions.⁵ Adopting a practice that fails to comply with the rules for redaction has proven to be administratively unmanageable and cannot be sustained.

For these reasons, the undersigned **DENIES** petitioners' motion.

⁵ It must be noted that once a decision has been posted on the court's website and published electronically in a reporter, the information is in the public domain and no longer within the control of the court.

IT IS SO ORDERED.

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