

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: April 29, 2009; Re-Issued: May 29, 2009)¹

No. 06-227V

SAEID B. MOJABI and PARIVASH VAHABI,)
as legal representatives of their minor son,)
RYAN B. MOJABI,)
))
Petitioners,)
))
v.)
))
SECRETARY OF THE DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)
))
Respondent.)

PUBLISH

MMR Vaccine; Vaccine
Table Injury Claim of
Encephalopathy Asserted;
Factual Findings

REVISED RULING REGARDING FACTUAL FINDINGS²

On March 23, 2006, petitioners Saeid Mojabi and Parivash Vahabi,³ as parents and legal representatives of their minor son Ryan, filed a petition pursuant to the National Vaccine Injury Compensation Program⁴ (the Act or the Program).

¹ The Revised Ruling incorporates the two additional factual findings as requested by petitioners’ counsel in the May 19, 2009 status conference. See May 20, 2009 Order.

² Vaccine Rule 18(b) states that all decisions issued by special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days of the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

³ Consistent with her cultural tradition, Mrs. Vahabi has retained her maiden name.

⁴ 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.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All

Petitioners allege that Ryan suffered injuries resulting from all of the vaccinations administered to him between March 25, 2003 and February 22, 2005, and in particular, the measles-mumps-rubella (MMR) vaccination administered to him first on December 19, 2003 and again five months later, on May 10, 2004. Petition at 1. Petitioners allege that the MMR vaccination that Ryan received on December 19, 2003 (the first MMR vaccination), resulted in a Vaccine Table Injury, specifically an encephalopathy that produced “a severe and debilitating injury to his brain, described as Autism Spectrum Disorder (‘ASD’).” Id. Alternatively, petitioners argue that “as a cumulative result of [Ryan’s] receipt of each and every vaccination between March 25, 2003, and February 22, 2005, Ryan has suffered, and continues to suffer, neuroimmunologically-mediated dysfunction[] in the form of asthma and ASD, [conditions] which were ‘caused-in-fact’ by the vaccinations.” Id. at 1-2.

Among the documents that were filed in support of the petition were: (1) petitioners’ affidavit, see Petitioners’ Exhibit (Ps’ Ex.) 1; (2) Ryan’s prenatal records, see Ps’ Ex. 2; (3) Ryan’s birth certificate, see Ps’ Ex. 3; (4) Ryan’s pediatric records, see Ps’ Ex. 4; (5) Ryan’s vaccination records, see Ps’ Ex. 5; (6) affidavits concerning Ryan’s medical treatment in Tehran, Iran, see Ps’ Ex. 6; and (7) records from the June 1, 2005 evaluation of Ryan by Mike Wilson, a behavior consultant, with whom the San Andreas Regional Center contracted to help the Mojabi family address Ryan’s behavior, as well as records pertaining to the diagnosis and assessment of Ryan’s autism, see Ps’ Exs. 8-12.

Early in the proceeding, petitioners indicated that they desired to pursue their claim of a Vaccine Table Injury first. Accordingly, the proceedings to date have been conducted to develop a record that will permit an evaluation of petitioners’ Vaccine Table Injury claim.

During a fact hearing held in San Jose, California, on August 14, 2007, Ryan’s parents testified about the events that followed Ryan’s MMR immunization on December 19, 2003. See Transcript I (Tr. I). A subsequent fact hearing was held on February 11, 2008, to take the testimony of Dr. Richard Armstrong, Ryan’s treating pediatrician during the time period of interest. See Transcript II (Tr. II). Following the conduct of the fact hearings, petitioners filed five court exhibits: (1) a compact disc (CD) of five telephone calls from the Mojabis to Kaiser Permanente Call Center during the period between December 2003 and February 2004, see Court Exhibit (Court Ex.) 2b; (2) an index of the telephone calls on the filed CD, see Court Ex. 2a; (3) a letter from Dr. Armstrong

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

addressed to whom it may concern, Court Ex. 3; (4) a letter from Mr. Clause, who is counsel for Kaiser and Dr. Armstrong, addressed to Mr. Terzian, who is counsel for petitioners, see Court Ex. 4; and (5) a copy of the telephone scripts outlining the algorithmic protocol for handling incoming calls to Kaiser’s Call Center, see Court Ex. 5.

I. Discussion

A. The Documentary Record

Ryan Mojabi was born on January 18, 2003, at Santa Teresa Community Hospital in San Jose, California. Ps’ Ex. 3 at 1. Ryan had neonatal hyperbilirubinemia.⁵ Otherwise his newborn examination was normal, and his metabolic screen was normal at the time of his discharge from the hospital on January 21, 2003. Ps’ Ex. 4 at 2-4; Ps’ Ex. 16 at 12.

On March 25, 2003, at two months of age, Ryan received his first diphtheria-tetanus-acellular pertussis (DTaP),⁶ haemophilus influenzae type B (“Hib”),⁷ inactivated polio (“IPV”),⁸ and pneumococcal conjugate (“PCV”)⁹ vaccinations. Ps’ Ex. 5 at 1. He did not receive the hepatitis B vaccination because Ryan’s parents wanted to “wait some months” before it was administered. Ps’ Ex. 4 at 12.

On May 19, 2003, and subsequently on July 29, 2003, Ryan received his second and third administrations of the DTaP, Hib, IPV, and PCV vaccinations without incident. Ps’ Ex. 4 at 16-17; Ps’ Ex. 5 at 1.

⁵ Neonatal hyperbilirubinemia is a mild, transient form of excess bilirubin in the blood that can lead to jaundice in a new born child. See Dorland’s Illustrated Medical Dictionary 879 (30th ed. 2003).

⁶ The DTaP vaccine is “a combination of diphtheria toxoid, tetanus toxoid, and pertussis vaccine; administered intramuscularly for simultaneous immunization against diphtheria, tetanus, and pertussis.” Dorland’s at 1998.

⁷ The haemophilus influenzae type b vaccine protects against infection by the haemophilus influenzae type b bacterium. Dorland’s at 1999.

⁸ The IPV vaccine is “a suspension of formalin-inactivated poliovirus . . . administered intramuscularly or subcutaneously for immunization against poliomyelitis.” Dorland’s at 2000.

⁹ The pneumococcal conjugate vaccine protects against infection by the Streptococcus pneumoniae bacteria. Dorland’s at 1505, 1999.

On October 16, 2003, at nearly nine months of age, Ryan presented for a well-child visit. The findings were normal. Ps' Ex. 4 at 21. Although Ryan's pediatrician, Dr. Armstrong, noted that he should receive Hib, DTaP, IPV, and PCV vaccinations, Ryan did not receive them at that time. Id.; Ps' Ex. 5 at 1.

On December 9, 2003, Ryan's mother, Mrs. Vahabi, placed a call to Kaiser's Call Center. Court Ex. 2a at 1; Court Ex. 2b at Track 1. Mrs. Vahabi informed the Call Center operator that her family was preparing to travel to Iran for a three month trip with a departure date of December 27, 2003. Court Ex. 2b at Track 1. She desired to schedule an appointment for Ryan with Dr. Armstrong before the family's departure. Court Ex. 2b at Track 1.

The next day, on December 10, 2003, Ryan received an influenza vaccination. Ps' Ex. 5 at 1. According to the Mojabis, Dr. Armstrong had recommended that Ryan and his parents "get flu vaccines." Tr. I at 76.

Nine days later, on December 19, 2003, Ryan had a well-child visit with Dr. Armstrong in anticipation of his family's trip to Iran. Ps' Ex. 4 at 22. Dr. Armstrong's notes do not reflect any parental concerns about a reaction to the flu vaccination that Ryan received on December 10, 2003. Id. Dr. Armstrong did note in his records, however, that Ryan had been "fussy" the previous night. Id. In response to the Mojabis' concerns, Dr. Armstrong took Ryan's temperature which was measured at 98.7 degrees Fahrenheit. Id. During this office visit, Ryan received his first MMR and hepatitis B vaccinations.¹⁰ Ps' Ex. 5 at 1.

Between December 19, 2003--the date of Ryan's first MMR vaccination and the vaccination of interest for petitioners' Vaccine Table Injury claim--and December 27, 2003--the date on which the Mojabis departed for their trip to Iran, there are two calls documented in Kaiser's records pertaining to Ryan Mojabi. Both of the calls were placed to the Kaiser Call Center on December 26, 2003, the day before the Mojabis' scheduled travel. Court Ex. 2a at 1; Court Ex. 2b at Track 2 and 3. Both of the calls were from the pharmacy at which the Mojabis sought to fill prescriptions for Ryan, and both calls were accompanied by corresponding messages written to Dr. Armstrong that were placed in Ryan's medical records. Id.; Ps' Ex. 20 at 1-3. In one of the calls, the telephoning pharmacist requested that Dr. Armstrong provide a refill prescription for Polyviflor, a vitamin. Court Ex. 2b at Track 2. In the other call, the pharmacist requested that Dr.

¹⁰ Ryan received a second MMR vaccination on May 10, 1994, nearly five months after he received his first MMR vaccine.

Armstrong provide instructions on how Ryan should take diphenhydramine,¹¹ a medication that would help him sleep on the plane ride to Iran. Tr. I at 59-61; Pet. Ex. 20 at 2; Court Ex. 2b at Track 3.

On December 27, 2003, the Mojabi family flew from San Francisco, California, to Paris, France. Ps' Ex. 21 at 1. Nine days later, on January 5, 2004, the Mojabi family then flew from Paris to Tehran, Iran. Id.

The next day, on January 6, 2004, shortly after the family's arrival in Tehran, Ryan's mother took him to the Children's Hospital Medical Center in Tehran.¹² At the hospital, Dr. Goudarzi examined Ryan and determined that he had a temperature of 104 degrees Fahrenheit.¹³ Ps' Ex. 6 at 1. Dr. Goudarzi noted that Ryan was "covered from head to toe in a measles-like rash." Id. Dr. Goudarzi diagnosed Ryan with a "febrile convulsion, probably related to MMR." Id.

The next day, on January 7, 2003, Dr. Allami examined Ryan in his clinic in Tehran.¹⁴ He diagnosed Ryan with "high fever, skin rash, tremors, [and] lethargy" as "most likely due to an adverse reaction[] to multiple vaccines he received earlier." Ps' Ex. 22. Two days later, on January 9, 2004, Ryan returned to the Children's Hospital Medical Center because he had a persistent high fever of 104 degrees Fahrenheit or greater.

Nine days later, on January 18, 2004, Mr. Mojabi left Tehran and returned to the United States. Ps' Ex. 21 at 1. Nearly six weeks later, on February 28, 2004, Ryan and his mother returned to the United States. Id.

On Tuesday, March 2, 2004, Mr. Mojabi contacted the Kaiser Call Center to schedule "a routine appointment" for Ryan. Court Ex. 2a at 1-2; Court Ex. 2b at Track 4.

¹¹ Diphenhydramine hydrochloride is an antihistamine with sedative properties. Stedman's Medical Dictionary 545 (28th ed. 2006).

¹² Although referenced differently in the records, an online search for this institution yielded Children's Hospital Medical Center in Tehran, Iran.

¹³ Dr. Goudarzi provided his original affidavit dated February 12, 2006, detailing his treatment of Ryan. Ps. Ex. 6. On February 16, 2007, Dr. Goudarzi provided a supplemental letter to his affidavit indicating that his affidavit was based on his "vivid memory of treating Ryan Mojabi" who was a "patient from abroad and [. . . who had a] severe condition." Ps' Ex. 19.

¹⁴ Dr. Allami was Ryan's maternal grandmother's doctor. See Tr. at 68-69.

He explained that “[Ryan] is back from a trip[, . . . and] we were told that we could call [Dr. Armstrong] and arrange for any day.” Id. Mr. Mojabi made an appointment for Ryan on March 8, 2004 at 11:45 AM. Id.

After her husband called and made an appointment with Dr. Armstrong, Mrs. Vahabi also called Kaiser on March 2, 2004. She tried to make an appointment sooner with Dr. Armstrong but was informed that Dr. Armstrong was not in the office until March 8, 2004. Mrs. Vahabi stated that the purpose of the visit would be an “after-trip [visit].” Court Ex. 2b, Track 5. She further stated that Ryan “got measles” while the family was in Iran and he developed a very high temperature. Court Ex. 2a at 1-2; Court Ex. 2b at Track 5. When questioned by the operator handling the call regarding Ryan’s condition at the time of the call, Mrs. Vahabi stated that Ryan was not irritable or lethargic, and that he was acting normally. See id.

As scheduled, Dr. Armstrong examined Ryan on March 8, 2004. Dr. Armstrong testified during the February 11, 2008 hearing before the undersigned that his conversation with petitioners during the office visit on March 8, 2004, involved more than a discussion of the high fever, rash, and possible E. coli infection that he noted in his records; he testified that “when I put all the pieces together it did sound like possible roseola.” Ps’ Ex. 4 at 23; Tr. II at 157. Dr. Armstrong specifically recalled that petitioners were concerned that Ryan had suffered a seizure. Tr. II at 168. Ryan’s behavior at the time of Dr. Armstrong’s examination, however, was not unusual, and Dr. Armstrong stated that Ryan had not shown any signs of neurological problems or developmental regression during the March 8, 2004 office visit. Dr. Armstrong testified that “if [he] thought there were recurring seizures or recurring neurological events that were concerning, [he] would have referred [Ryan] and ordered an EEG.” Id. at 169.

B. The Fact Testimony

Ryan’s parents, Mr. Saeid Mojabi and Mrs. Parivash Vahabi, testified during the fact hearing held on August 14, 2007. Mrs. Vahabi testified first, and during her testimony, Mr. Mojabi remained sequestered outside of the courtroom.

1. Mrs. Vahabi

Mrs. Vahabi testified that Ryan was born healthy. Tr. I at 7.

Mrs. Vahabi accompanied Ryan to Dr. Armstrong’s office to receive a flu vaccine on December 10, 2003. Id. at 9. She testified that following Ryan’s receipt of the flu shot, “he didn’t feel well. He had a runny nose He cried that night a lot.” Id. at 10.

Mrs. Vahabi testified that “the following morning[, she] just called Dr. Armstrong and let him know that [Ryan] [didn’t] feel well,” and Dr. Armstrong told her that Ryan’s reaction was “just normal after the flu vaccination.” Id.

Mrs. Vahabi testified that on Dr. Armstrong’s advice, Ryan received the MMR and the hepatitis B vaccination during Ryan’s office visit on December 19, 2003. Id. at 10. The same day that Ryan received the vaccinations, Mrs. Vahabi left Ryan at home with his father (after the doctor’s visit) while she went shopping. Mr. Mojabi called and asked her to come back home because Ryan had tremors and was shaking. Id. at 11-12. When she returned home, Ryan was no longer having tremors or shaking but “[h]e was really uncomfortable, he didn’t feel well at all.” Id. at 14. Mrs. Vahabi testified that she called Dr. Armstrong’s nurse, was told that Ryan’s symptoms were “just pretty normal after the vaccination,” and was advised to “give him some Tylenol.” Id. at 14. Mrs. Vahabi testified further that the next day she spoke with Dr. Armstrong and told him that “[Ryan] is crying a lot, but it’s not a normal crying.” Id. She testified that she told Dr. Armstrong that “[Ryan] didn’t go to sleep . . .and he was without energy.” Id. at 15.

At this point, Mrs. Vahabi explored the possibility of cancelling the trip to Tehran, but the travel agency told her that if she cancelled the trip, she would not be able to book travel again until the end of January 2004 (approximately one month later than the family’s planned departure date). Id. at 15. Mrs. Vahabi contacted Dr. Armstrong’s office again, and a nurse told her that she thought that it would be fine to travel. Id. at 15.

The Mojabi family left San Francisco for Paris on December 27, 2003. Prior to leaving the United States, Mrs. Vahabi testified that Ryan was having difficulty breathing and that “he was without energy and sleepy.” See id. at 16-17. She also testified that Ryan could not support his head, although this was something that he could do prior to receiving the vaccinations. Id. at 18-19. Mrs. Vahabi insisted that she “called Dr. Armstrong’s office almost every day to report what [was] going on with Ryan.” Id. at 42.

Mrs. Vahabi testified that at the airport in San Francisco, Ryan was “really crying . . . he was screaming, he was just opening and closing his eyes so hard, [and] he was . . . pulling [her] hair.” Tr. I at 20. Once they were on the plane, Ryan slept for a few hours and then Mrs. Vahabi was “just holding him[,] . . . just walking and walking for four or five hours, and he was really crying.” Id.

Mrs. Vahabi also testified that after the vaccinations, Ryan “stopped saying those words that he had, even mommy and daddy, [even those] that he had repeated . . . [a] hundred times before.” Id. at 19.

Mrs. Vahabi explained that once they were in Paris it never occurred to her to take Ryan to the hospital “because [she] had the medication that they gave [her],¹⁵ and his temperature . . . wasn’t that high . . .and she thought that it’s . . .[fine] because Dr. Armstrong told me that [it’s] fine.” Id. at 23.

When they arrived in Tehran, on January 6, 2004, Mrs. Vahabi decided to take Ryan immediately to the hospital. Tr. I at 26. When they arrived at the hospital, the doctor removed all of Ryan’s clothes, “because. . .he ha[d] a very high temperature. Tr. I at 27. Ryan was very red, and the doctors “used two suppositor[ies] . . . to just bring the temperature down.” Id. Additionally, “[Ryan] had a lot of red spot[s] . . . everywhere, all over his body.” Id. On January 7, 2004, Mrs. Vahabi took Ryan back to the hospital because “he still had those rashes, all over his body.” During the hospital visit on January 7, 2004, Ryan was examined by another doctor who provided instruction to Mrs. Vahabi on how to keep Ryan’s temperature down. Id. at 30-31.

Mrs. Vahabi did not seek further medical treatment for Ryan during the remaining seven weeks of their stay in Tehran.

The undersigned found Mrs. Vahabi to be a concerned mother and an earnest witness.

2. Mr. Mojabi

Mr. Mojabi testified that on the day that Ryan received his first MMR vaccination, Ryan fell asleep for an hour or two after the Mojabis returned home from the pediatrician’s office. Tr. I at 78. Ryan awakened about a half-hour after falling asleep and began screaming loudly. Id. He had a frightened look on his face and his whole body began to tremor. Id. at 79. Concerned, Mr. Mojabi called his wife and asked her to return home from shopping.

Mr. Mojabi testified that his wife contacted Dr. Armstrong’s office to ask about the type of symptoms for which they should look to determine if Ryan was having a vaccine reaction. Assured that Ryan’s symptoms of fever, runny nose, and lack of energy were normal responses to the vaccinations, the Mojabis prepared to travel. Id. at 80-82.

Mr. Mojabi described Ryan’s condition as they traveled. He testified that although

¹⁵ Mrs. Vahabi testified that she gave Ryan Tylenol, amoxicillin, and a multivitamin. Tr. I at 59. Warned by the pharmacist about the side effects associated with the use of diphenhydramine as a sleep aid, she did not give any to Ryan. Id. at 60-61.

Ryan cried once or twice on the outbound flight, “he was no longer. . . reacting or responding.” Mr. Mojabi explained that Ryan “was for the most part very sleepy” during the trip from San Francisco to Paris. Tr. I at 87. Later in his testimony, he described Ryan “passed out . . . for the most part.” Id. at 108. Mr. Mojabi’s testimony that Ryan was very sleepy during most of the flight appeared to conflict with his wife’s testimony that Ryan cried for four or five hours during the flight and had screamed in the airport before boarding the plane.

Mr. Mojabi stated that Ryan’s condition worsened while the family was in Paris visiting with Mr. Mojabi’s mother and sister. See Tr. at 87-88. Ryan’s temperature was “higher,” and he developed rashes all over his body. Tr. I at 88-89. Mr. Mojabi acknowledged that during the family’s stay in Paris, he “was in and out . . . going to places, doing things [(that included sightseeing and attending a soccer match)], but . . . coming home and seeing [Ryan who remained with Mrs. Vahabi at Mr. Mojabi’s sister’s home and who] . . . was just kind of . . . a sack of potatoes.” Id. at 88-89. Mr. Mojabi explained during the August 2007 fact hearing that the family did not seek medical treatment for Ryan in Paris because he did not appear to have a “life-threatening condition.” Id. at 90.

Mr. Mojabi testified that when the Mojabis traveled to Tehran, Ryan’s symptoms “amplified even more[] and became critical.” Id. at 91. In Tehran, however, the Mojabis stayed separately at the homes of family members because the couple’s families “are not [on] good terms . . . and . . . are not communicating at all.” Id. at 92. Because Mr. Mojabi was not staying in the same home with Mrs. Vahabi and Ryan, he did not see Ryan at the hospital or in the doctor’s office in Tehran. Id. at 92-93. He learned from his wife that it was Dr. Gourdarzi’s impression that Ryan had suffered a febrile seizure. Id. at 93. Mr. Mojabi did not see Ryan again until after Ryan had seen Dr. Allami. Id. at 95. Ryan was “not responding to anyone” and he had an unhealthy, “yellowish-brown kind of a look.” Id. at 94-95. Mr. Mojabi saw Ryan once more before he returned to the United States, several weeks earlier than did Ryan and Mrs. Vahabi. Id. at 96.

Mr. Mojabi testified forcefully about what he recalled during the period of time in question. He was an emphatic witness.

3. Dr. Armstrong¹⁶

Dr. Armstrong described his recollection of the Mojabis. He testified that generally both of Ryan’s parents accompanied him to his pediatric office visits. Tr. II at

¹⁶ The undersigned called Dr. Armstrong as a court witness.

135. Dr. Armstrong recalled that it was Mr. Mojabi who ordinarily addressed him or spoke to him during the office visits. Id. at 136. In addition, Dr. Armstrong noted that it “was usually Mr. Mojabi” who placed any phone calls to the office. Id.

Dr. Armstrong did not recall recommending that Ryan receive the flu vaccine. Id. at 152. But he did recall administering the first MMR vaccine and the hepatitis B vaccine to Ryan on December 19, 2003. Id. Moreover, on review of his office notes from that visit, he recalled that Ryan’s parent’s were concerned that Ryan may have had a fever. Id. at 154. He measured Ryan’s temperature at 98.7 degrees Fahrenheit and administered the vaccines, an act which was consistent with his practice of administering vaccinations to a child with a cold or the flu unless that child had a “very high temperature of 103” or Dr. Armstrong was not sure that the ailment was a cold or the flu. Id.; Ps’ Ex. 4 at 22.

During his hearing testimony, Dr. Armstrong specifically addressed the type of information he generally gives to parents regarding a possible reaction to the MMR vaccine. His “routine discussion about the MMR [vaccination] is that [the patient] could have a swollen lymph node . . . or a swollen gland in the groin area at the site where it’s given; that there [could] be a fever, not only soon after the vaccine but 10 to 14 days after the vaccine; and that there [could] be a rash.” Id. at 154-155. The rash might appear all over the body. Id. at 155.

Dr. Armstrong had no recollection of the symptoms that Mrs. Vahabi described after Ryan’s first MMR vaccination and prior to the Mojabis’ travel to Iran. Id. at 155-156. Nor did Dr. Armstrong have any recollection of receiving phone calls from the Mojabis during the period of time between Ryan’s MMR vaccination and the Mojabis’ departure for travel. Id. at 155-156. He testified that if he had been informed of Ryan’s alleged symptoms of restlessness and eye-twitching after the receipt of the vaccinations, he would have wanted to see Ryan back at the office. Id. at 181. He also testified that he would have been concerned about shaking and high-pitched crying. Id.

During his testimony, Dr. Armstrong described the procedure for call intake at Kaiser. See id. at 164-167. As he explained, incoming calls were handled according to an algorithm-type script that directed the call handler to take certain action depending on the information provided by the caller.¹⁷ Id. at 140-142. Based on the symptoms described, the call handler would consult the portion of the call algorithm that included the particular symptoms that the parents reported, and the call handler would respond in accordance with the algorithmic protocol. Id. If the call handler felt comfortable

¹⁷ A copy of that script was filed as Court Exhibit 5.

answering the questions posed by the parents, no message would convey to Dr. Armstrong. Id. at 139.

Dr. Armstrong indicated that the absence of telephone call records from the Mojabis after Ryan received the first MMR vaccination and prior to the family's travel to Iran did not mean that the family failed to place any calls to Kaiser. Id. at 156. Rather, the absence of telephone call records could be an indication that the calls were not deemed urgent enough (according to the algorithmic call protocol) to have been drawn to the attention of Dr. Armstrong. Id.

Dr. Armstrong saw Ryan on March 8, 2004 after Mrs. Vahabi's return from Iran with Ryan. Ps' Ex. 4 at 23. During that visit, petitioners provided Dr. Armstrong with their only copy of the records of Ryan's treatment in Iran in January 2004. Tr. I at 35-38. Dr. Armstrong does not recall seeing those records, but stated that such records could have been misfiled.¹⁸ Tr. II at 157-159. He acknowledged during his hearing testimony that certain notes in his records must have been obtained from the provided Iranian records of treatment. Tr. II at 171-172.

The medical records from this visit corroborate Ryan's illness in Iran, describing a rash as "likely roseola," and noting that Ryan had a high fever that lasted for four to five days. The Mojabis expressed some concern that Ryan also may have experienced seizures. Ps' Ex. 4 at 23. Dr. Armstrong's records from this same visit reflect that Ryan had an E. coli infection while he was in Iran. Id. Dr. Armstrong concluded that Ryan also suffered from a possible urinary tract infection. Id.

Dr. Armstrong's testimony during the second conducted fact hearing reflected Dr. Armstrong's recollection of the concerns expressed by Ryan's parents about the noticeable difference in Ryan's behavior and his loss of language. He recalled the first indication of the Mojabis' concern occurred after Ryan was two years old.

A soft-spoken witness, Dr. Armstrong testified credibly.

C. Uncontested Facts

Certain facts are uncontested in this case. Specifically, the parties agree that Ryan received the second and third administrations of the DTaP, Hib, IPV and PCV vaccinations on May 19, 2003, and July 29, 2003, respectively. He also received an

¹⁸ Subsequent efforts by Dr. Armstrong's office to locate those records were unavailing. Court Ex. 3.

influenza (“flu”) vaccination on December 10, 2003. Ps’ Ex. 5 at 1; Tr. I at 9, 76.

During a well-baby visit on December 19, 2003, Dr. Armstrong administered the MMR and hepatitis B vaccinations to Ryan. Ps’ Ex. 5 at 1; Tr. I at 10, 77.

The Mojabis departed San Francisco and flew to Paris on December 27, 2003. Ps’ Ex. 21 at 1. Nine days later, on January 5, 2004, the Mojabis left Paris for Tehran, Iran. Id.

On or about January 6, 2004, Ryan experienced a brief and isolated episode of fever and rash for which his parents sought treatment at Children’s Hospital Medical Center in Tehran. Dr. Goudarzi, one of Ryan’s treating doctors in Tehran, provided petitioners with an affidavit stating that although Ryan had a 104 degree fever and measles-like rash on January 6, 2004, he was not admitted to the hospital and “no records were kept for [him] as an outpatient.” Pet. Ex. 19 at 1. Ryan returned to Children’s Hospital Medical Center on January 7, 2004. At that time, Dr. Allami examined Ryan. Ps’ Ex. 22 at 1; Tr. I at 29-30. Again, Ryan’s condition did not warrant admission to the hospital. Tr. I at 47. Dr. Goudarzi saw Ryan again on January 9, 2004, due to “[p]ersistent high fever.” Pet. Ex. 6 at 1.

Mr. Mojabi left Tehran on January 18, 2004. Ps’ Ex. 21 at 1. Ryan did not see medical personnel again for treatment during the following seven weeks he remained in Iran. Ryan and Mrs. Vahabi returned to San Francisco on February 28, 2004. Ps’ Ex. 21 at 1.

D. The Contested Facts

The parties’ disagree in their submissions of proposed findings on several facts pertaining to the symptoms Ryan experienced immediately following the receipt of his MMR and hepatitis B vaccinations on December 19, 2003. In particular, the parties do not agree on the nature and scope of Ryan’s symptoms during the period of time spanning from December 19, 2003, through the Mojabis’ departure for Paris on December 27, 2003, and during the Mojabis’ stay in Paris.

The parties’ disagreement stems from the lack of corroboration in the medical records of the testimonial account provided by the Mojabis for the time period of interest for petitioners’ Vaccine Table Injury claim. The contested facts are briefly summarized below.

Petitioners assert that on the December 19, 2003, the day that Ryan received the

MMR and Hep B vaccinations, he had screaming episodes, fever, shaking hands, breathing difficulties, and began to be lethargic and floppy later in the evening. Tr. I at 11-13, 15, 17-18, 39-42, 78-79, 82-83. Petitioners further assert that they called Dr. Armstrong and his nurse who told them to give Ryan Tylenol, and to have Ryan rest. Although petitioners contend that Dr. Armstrong's office assured them that this was a normal reaction to the vaccinations, Tr. I at 14-15, 43-44, 80-86, 105-106; Court Exs. 2a & 2b (Tracks 1, 2, & 3); Tr. II at 182, no contemporaneous records exist from Kaiser documenting the existence of any such calls.

Petitioners contend that Ryan's symptoms persisted as they traveled to Paris from San Francisco on December 27, 2003. Tr. I at 16, 80-86; Ps' Ex. 21. In the San Francisco airport, Ryan screamed and cried. Tr. I at 20. On the flight from San Francisco to Paris, Ryan either cried or failed to respond to the activities around him. Tr. I at 20, 87, 107-108. He did not eat well. Tr. I at 62.

In Paris, Ryan's symptoms worsened. He had staring and motionless episodes. His fever increased. He was floppy, was without energy, and developed a rash on his belly. Ps' Ex. 17 at 1-2; Ps' Ex. 25 at 4-6; Tr. I at 22-25, 28, 46, 88-91, 106. Petitioners contend that this reaction was consistent with what Dr. Armstrong told petitioners to expect following an MMR vaccination. Tr. I at 44, 86, 90-91, 110-111; Tr. II at 155-156, 178. Ryan had tremors while in Paris that were similar to those he experienced shortly after his December 19, 2003 vaccination. Tr. I at 113.

Petitioners traveled with Ryan by airplane from Paris on January 5, 2004. Ps' Ex. 21 at 1. Upon arriving in Tehran, in the early morning hours of January 6, 2004, Ryan's mother took him to the hospital. Tr. I at 27. The parties do not dispute that Ryan received medical treatment while in Tehran. Nor do the parties dispute that the symptoms of concern for which Ryan received treatment in Tehran were vomiting, a high fever, and a measles-like rash.

Petitioners contend that Ryan's health finally began to improve a few weeks later, but he never spoke after he turned one year old, noises began bothering him, he started throwing things, he began crying for no reason, and he now hits and bites. Tr. I at 32-35.

Respondent challenges petitioners' oral testimony about Ryan's condition asserting that the documentary evidence that is more contemporaneous to events does not corroborate petitioners' later-given testimony. Respondent asserts that Ryan was not ill or suffering from a fever when he received his MMR and hepatitis B vaccinations on December 19, 2004. See Respondent's Proposed Findings of Fact and Response to Petitioners' Proposed Findings of Fact, ¶ 10 (internal citations omitted).

Respondent further argues that there is no evidence that Ryan was ill between his receipt of the December 19, 2003 vaccinations and his departure for Paris on December 27, 2003. Respondent contends that in contrast with petitioners' testimony at the August 14, 2007 fact hearing, there is no contemporaneous evidence in the record to support a finding that Ryan experienced "screaming episodes, fever, shaking hands, breathing difficulties," lethargy, and floppiness between December 19, 2003, and December 27, 2003. There are no notations in the medical record documenting phone calls from Mr. Mojabi or Mrs. Vahabi to Dr. Armstrong's office. Moreover, Dr. Armstrong stated numerous times in a letter to counsel and at the February 11, 2008 fact hearing that he had no memory of the conversations that petitioners allege they had with him. Id. at ¶ 11.

Respondent asserts that "if the phone calls had actually taken place as Mrs. Vahabi described, they would have been documented in the medical record." Id. Respondent further asserts that as Dr. Armstrong explained during his hearing testimony, calls from parents could be placed to one of two locations. If a parent called the Kaiser Call Center and the call merited a referral to the treating pediatrician, he would receive a paper message. Id. (internal citations omitted). If a parent placed a call to his direct office line, he would field the call if he was available, or a nurse would take the call. Id. Respondent points out that it was Dr. Armstrong's expectation that calls from the Kaiser Call Center concerning a child who was exhibiting screaming, tremors, and a frightened look would be passed on to him, and that a nurse who was told that Ryan had a high temperature five days after the MMR vaccination, did not feel well, and could not control his neck would not tell a parent that this was a normal reaction to the vaccinations. Id. Additionally, Dr. Armstrong reported that if, soon after receipt of a vaccine, he was alerted that a child "slept fitfully, was extremely lethargic, and at times was nearly unconscious with shallow and rapid breathing," his normal practice would be to record it in the medical record. Id.

Respondent notes that the only calls documented in the record between December 19, 2003, and December 27, 2003, were the two calls placed on December 26, 2003, to the Kaiser Call Center. Id. at ¶ 11. Both calls were from the pharmacist the day before the Mojabis traveled abroad, and both calls were accompanied by corresponding written messages to Dr. Armstrong in the medical record. Id.

Respondent points out that nowhere in the contemporaneous records that exist from December 26, 2008, is there any reference to Ryan's screaming episodes, fever, shaking hands, breathing difficulties, lethargy and floppiness. Id. The record reflects that the family was getting standard prescriptions filled prior to their travel, a fact that respondent contends counters petitioners' representations that Ryan's symptoms were still so significant that the family was attempting to cancel their trip. Id.

Moreover, although petitioners asserted in their hearing testimony that upon their return from Iran, they voiced their concerns to Dr. Armstrong about changes in Ryan's behavior, his non-responsiveness, and his loss of language, Dr. Armstrong's testimony during the second conducted fact hearing reflected a different recollection. Dr. Armstrong did recall the concerns expressed by Ryan's parents about the noticeable difference in Ryan's behavior and his loss of language, but he recalled that the first expression of the Mojabis' concern occurred after Ryan was two years old. It is Dr. Armstrong's recollection, rather than the Mojabis, however, that appears to be more consistent with the documented concerns in the contemporaneous medical records.¹⁹ The

¹⁹ On March 8, 2004, Ryan and his parents returned to Dr. Armstrong's office for the first time after their travel to Iran. Ps' Ex. 4 at 23. Dr. Armstrong's notes from that office visit reflect a discussion of the symptoms that Ryan experienced while traveling. See P's Ex. 4. at 23; also see, the discussion in Section A of this opinion. On May 10, 2004, at Ryan's sixteen month well-child visit, Dr. Armstrong completed a Checklist for Autism in Toddlers (CHAT) screen. Ps' Ex. 4 At 25. That CHAT screen indicated that Ryan was interested in other children, pretend play, peek-a-boo, points with index finger, makes eye contact, and brings object for show. Id. On January 25, 2005, Dr. Armstrong examined Ryan for his twenty-four month well-baby check. Ps' Ex. 4 at 31. During the visit, Dr. Armstrong conducted another CHAT screen, and again Ryan positively performed each of the listed behaviors. Id. On May 27, 2005, when Ryan was two years and four months old, his parents took him to the Pediatric Urgent Care Center associated with Kaiser because he had a fever, a cough, and was vomiting. Ps' Ex. 4 at 32-33. Under the assessment portion of the medical records for the visit, the evaluating pediatrician noted a "speech delay" and referred Ryan for an audiology evaluation. Id. at 33. Approximately three months later, on September 3, 2005, Ryan's parents presented him at the emergency room because he had cold symptoms and was not eating. Ps' Ex. 4 at 45-46. Under the abnormal findings portion of the notes from this visit, there is a comment that Ryan is "very indulged." Id. at 46. The medical records from this visit also reflect that Ryan "hit[s] mother frequently" and that there are "behavioral issues." Id. About two weeks later, on September 20, 2005, Ryan made a follow-up visit to Dr. Armstrong. Ps' Ex. 4 at 49-50. Once again, the medical records from this visit reflect that Ryan's parents expressed concerns about Ryan's behavior. Id. at 50. Dr. Armstrong recommended that Ryan's parents attend a parenting class, and his notes indicate that he referred Ryan for an audiometric assessment, and that Ryan had "3-4 words." See id. Within two weeks, on September 29, 2005, Ryan had an audiometric exam. Ps' Ex. 4 at 52. The examiner noted that there was evidence of "delayed expressive language" and that Ryan had only "3-4 words." Id. The examiner concluded that no "hearing loss" was detected. Id. A month later, on October 27, 2005, Ryan was examined by the intake team at the Early Start Program. Id. at 55. The notes from this assessment reflect that Ryan's parents "are concerned that Ryan's development of speech and language appears to be delayed." Id. The notes go on to state that "[Ryan] does not say very many words. Father relates that Ryan seems to have about 10 words that he will sometimes use. [Ryan] no longer uses words that he has previously learned. He is shy with other children and he is not able to adapt to new situations easily. He does not like to have other people come over to visit." Id. On November 7, 2005, Dr. Armstrong examined Ryan again and observed that Ryan had "some aggressive interactions with vocalizations and hitting outbursts." Ps' Ex. 4 at 57.

first documented concern in the medical records regarding Ryan's language development was noted on May 27, 2005, when Ryan was two years and four months old. On that date, Ryan was evaluated at a Kaiser Urgent Care Center for a fever, cough, and vomiting. The assessment of the examining physician was that Ryan had a upper respiratory infection. The doctor also recognized a potential speech delay and referred Ryan to an audiologist. Ryan was diagnosed with autism on December 28, 2005. See Id. at 67.

E. Legal Standard and Analysis

In determining whether a petitioner is entitled to compensation under the Vaccine Program, a special master must consider "all . . . relevant medical or scientific evidence contained in the record," including "any diagnosis, conclusion, medical judgment, or autopsy or coroner's report . . . regarding the nature, causation, and aggravation of the petitioner's illness, disability, injury, condition, or death . . ." § 300aa-13(b)(1)(A). The special master must consider "the record as a whole," § 300aa-13(a)(1), and cannot make a finding of entitlement based on the claims of a petitioner that are not substantiated by medical records or by medical opinion, id. The special master's decision regarding entitlement must include findings of fact and conclusions of law. § 300aa-12(d)(3)(A).

Before addressing the issue of whether petitioner is entitled to Program compensation in this case (a matter not yet ripe for decision, but to be addressed in due course), the undersigned first must resolve the pending factual dispute regarding what symptoms Ryan Mojabi manifested after he received his MMR and hepatitis B vaccinations on December 19, 2003, and when he manifested the alleged symptoms. This ruling is limited to resolving the parties' factual disputes.

In Vaccine Act cases, petitioner must prove, by a preponderance of the evidence, the factual circumstances surrounding his claim. § 300aa-13(a)(1)(A). This evidentiary standard requires that the Special Master "believe that the existence of a fact is more probable than its nonexistence before [she] may find in favor of the party who has the burden to persuade the [special master] of the fact's existence." In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (quoting F. James, *Civil Procedure* 250-51 (1965)).

To resolve the presented fact issues, the undersigned must determine what weight to assign the documentary record, which includes the contemporaneous medical records

created in the United States and in Iran and the phone records from Kaiser Permanente, and what weight to assign the later-given oral testimony that includes certain factual details that are absent from the existing documentary record. The case law instructs that oral testimony that conflicts with contemporaneous documentary evidence generally receives less evidentiary weight. See United States v. United States Gypsum Co., 333 U.S. 364, 396 (1948) (“Where [witness] testimony is in conflict with contemporaneous documents we can give it little weight[.]”); Montgomery Coca-Cola Bottling Co. v. United States, 615 F.2d 1318, 1327 (Ct. Cl. 1980) (“The subjective intent testimony of the plaintiff can only be seriously considered to the extent it is consistent with the objective evidence.”); Cucuras v. Sec’y of Health & Human Servs., 993 F.2d 1525, 1528 (Fed. Cir. 1993) (Conflicting oral testimony is afforded less evidentiary weight than written medical records.).

The usefulness of record evidence in the court’s analysis of a case, however, turns on what is contained in the records. As the United States Claims Court observed:

[T]he absence of a reference to a condition or circumstance is much less significant than a reference which negates the existence of the condition or circumstance. Since medical records typically record only a fraction of all that occurs, the fact that reference to an event is omitted from the medical records may not be very significant.

Murphy v. Secretary of HHS, 23 Cl. Ct. 726, 733 (1991), aff’d, 968 F.2d 1226 (Fed. Cir. 1992), cert. denied sub nom. Murphy v. Sullivan, 113 S. Ct. 463 (1992) (citations omitted). The Federal Circuit has stated that a decision concerning whether to accord greater evidentiary weight to contemporaneous medical records or to later-given oral testimony “is uniquely within the purview of the special master” and will be upheld if rationally determined. Burns v. Sec’y of Health & Human Servs., 3 F.3d 415, 417 (Fed. Cir. 1993).

Here, while the undersigned found petitioners to be earnest in their testimony, it is difficult to reconcile petitioners’ later-recalled account of certain dramatic events following Ryan’s vaccination with the dearth of medical records corroborating their account. A review of the filed medical records suggests that petitioners may have recalled during the fact hearing events of importance that actually occurred later than the time period in question. But, in the absence of other evidence that supports the account

that petitioners provided, the undersigned cannot credit certain parts of the Mojabis' testimony. Specifically, the undersigned cannot credit petitioners' testimony that prior to the family's departure for Paris, Mrs. Vahabi placed numerous calls to Dr. Armstrong's office on Ryan's behalf describing the same type and degree of symptoms that she conveyed to the undersigned during the hearing. There is simply no corroboration of petitioners' testimony in the record. Although the record-keeping practices by Kaiser Permanente have been shown during this proceeding to be disappointingly flawed, the absence of any record of Mrs. Vahabi's calls strongly suggests that either the calls were not placed or, as Dr. Armstrong testified, the call handler did not deem the described symptoms to be of sufficient concern to warrant mention to Dr. Armstrong. Nor does it appear from the documentary record that the frequency of Mrs. Vahabi's alleged calls to Dr. Armstrong's office were sufficient to trigger either a message trail or a responsive call from Dr. Armstrong's office. Additionally, Dr. Armstrong had no recollection of any calls from petitioners during the period between Ryan's vaccination and the family's departure for Paris. Tr. II at 156.

The undersigned also cannot credit petitioners' testimony concerning the severity of Ryan's condition two weeks later while the family visited Mr. Mojabi's family in France. Petitioners' testimony is inconsistent with the prior behavior of petitioners and unsubstantiated by the record that exists. The filed medical records demonstrate that Ryan's parents were very conscientious caretakers who consistently sought medical treatment for relatively minor concerns related to congestion, fussiness from teething, and low-degree fever.²⁰ See Ps' Ex. 4 at 14, 19-20, 27. Ryan's medical records reflect that consistent with the Mojabis' cautious habits, the Mojabis had delayed Ryan's initial hepatitis B vaccination. Ps' Ex. 4 at 2, 12. Moreover, as further evidence of the Mojabis' close attention to matters pertaining to Ryan's health, the undersigned considers Mrs. Vahabi's assertive efforts (after the family returned to the States) to obtain an appointment with Dr. Armstrong sooner than the appointment that Mr. Mojabi had obtained for Ryan even though Ryan appeared well at the time that Mrs. Vahabi placed the call. Court Ex. 2b, Tracks 5 and 6.

Based on the Mojabis' practice of paying careful attention to Ryan's health issues, it is the opinion of the undersigned that had Ryan's parents suspected he was as ill as they now allege, they would more likely than not have sought medical treatment for him while

²⁰ Additionally, Dr. Armstrong recalled seeing Ryan for fever and breathing difficulties when he was nearly 2 years old. Tr. II at 151. Dr. Armstrong did some blood work on Ryan at that time, and the blood work showed a high white cell count, which was suggestive of a bacterial infection. Id. at 151-152.

they were in Paris. But while in Paris, Ryan's parents did not take him to the doctor. Nor have petitioners offered any corroborating evidence that Ryan suffered the described symptoms while they were in Paris.

Mrs. Vahabi testified that she did not seek medical attention for Ryan in Paris because Ryan's temperature was not high and because Dr. Armstrong had personally told her prior to the family's departure that the constellation of symptoms that Ryan exhibited was a perfectly normal reaction to the MMR vaccination. Tr. I at 24; Ps' PFF ¶ 9. There is no documentation of this conversation in the medical record, however, and Dr. Armstrong had no memory of it. Tr. II at 155-156. Moreover, contrary to Mrs. Vahabi's assertions, the symptoms about which Mrs. Vahabi testified were not the same symptoms that Dr. Armstrong described to parents as the type of normal symptoms that could follow a MMR vaccination. Tr. II at 154-155. The undersigned found Dr. Armstrong's testimony on this point more credible than Mrs. Vahabi's.

Considering the record evidence for the relevant time period together with the testimony of the three fact witnesses, the undersigned is not persuaded that following the administration of his first MMR vaccination, Ryan Mojabi exhibited symptoms during the period of time between December 19, 2003, and December 27, 2003, that were as severe as petitioners alleged. Nor is the undersigned persuaded that while in Paris from December 27, 2003, to January 5, 2004, Ryan experienced symptoms of the type of severity that petitioners described at the hearing.

The record, however, does support a finding that Ryan developed a measles-like rash and a high fever for which his parents first sought treatment in Iran on January 6, 2004. Not only did the Mojabis seek treatment for these conditions in Iran, the Mojabis specifically discussed the illness that Ryan experienced while in Iran with Dr. Armstrong upon the family's return to the States. Notably, Dr. Armstrong's records that follow the Mojabis' return from Iran do not include mention of the symptoms alleged to have begun prior to the family's departure from the States and alleged to have persisted during the course of their travel in Paris. Nor do the records include mention of any loss of language or aggressive behavioral changes in Ryan. Rather, Dr. Armstrong's records make mention only of the illness that Ryan experienced while in Iran, an illness for which there were also corroborating records of treatment.

II. Findings of Fact

For the foregoing reasons, the undersigned determines that a preponderance of the evidence supports the following factual findings:

1. Ryan received an influenza vaccination on December 10, 2003.
2. On December 19, 2003, Ryan had a well-child visit with Dr. Armstrong prior to his departure for Iran. At this visit, Ryan received the MMR vaccine and hepatitis B vaccine. He did not have a fever at that time. After the vaccination, Ryan awakened from his nap crying and shaking.
3. On December 27, 2003, the Mojabi family departed San Francisco and flew to Paris.
4. From December 27, 2003 through January 5, 2004, the Mojabis were in Paris. Ryan had episodes of diminished activity, and at times, he appeared listless. Petitioners, however, did not seek medical attention for Ryan during this period of time because his symptoms did not appear to be of the type or severity to warrant medical treatment.
5. On January 5, 2004, the Mojabi family traveled from Paris to Tehran.
6. On January 6, 2004, Dr. Goudarzi examined Ryan at Children's Hospital Medical Center, and determined that Ryan had a fever of 104 and a measles-like rash. Dr. Goudarzi diagnosed Ryan with a febrile convulsion that he stated was probably related to Ryan's receipt of the MMR vaccination on December 19, 2003. He did not admit Ryan to the hospital.
7. On January 7, 2004, Ryan returned to Children's Hospital Medical Center and Dr. Allami examined him. Ryan was not admitted to hospital because Dr. Allami determined that hospitalization was not necessary.
8. On January 9, 2004, Dr. Goudarzi examined Ryan again because of a persistent fever, but he did not admit Ryan to the hospital.

9. On January 18, 2004, Mr. Mojabi left Tehran.
10. On February 28, 2004, Mrs. Vahabi returned to San Francisco with Ryan. During the seven weeks that Mrs. Vahabi remained with Ryan in Tehran after Ryan's visit on January 9, 2004 to Dr. Goudarzi, Mrs. Vahabi did not seek any additional medical treatment for her son.
11. On March 2, 2004, both Mr. Mojabi and Mrs. Vahabi contacted the Kaiser Call Center for a routine appointment because the family was back from Iran. Mr. Mojabi was told that a same-day well-care visit was not available. Mr. Mojabi reported that Ryan had some degree of measles while the family was in Tehran. Based on the audio recordings of these calls that were filed into the record on CD, petitioners no longer seemed distressed about their son's symptoms.
12. On March 8, 2004, Dr. Armstrong evaluated Ryan. The medical records from this visit corroborate Ryan's illness in Iran, describing a rash as "likely roseola," and noting that Ryan had a high fever that lasted for four to five days. The Mojabis expressed concern that Ryan had experienced seizure-type activity. Dr. Armstrong's record from this same visit reflects that Ryan had an E. coli infection while he was in Iran. Dr. Armstrong concluded that Ryan also suffered from a possible urinary tract infection.
13. The first documented concern in the medical records regarding a potential delay in Ryan's language development was noted on May 27, 2005, when Ryan was two years and four months old. Records after that date also reflect changes in Ryan's behavior.

III. Conclusion

The medical significance of the foregoing factual findings remains to be addressed by the parties' respective experts. **On or before Monday, May 11, 2009**, the parties shall contact chambers to schedule a status conference to address further proceedings in this case.

IT IS SO ORDERED.

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