

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-497V

September 9, 2008

HOWARD McLAUGHLIN and DOMINIANA *
McLAUGHLIN, parents of AARON AGRIPINO *
G. McLAUGHLIN, *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

Autism; thimerosal;
significant aggravation

ORDER¹

¹ Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

On May 8, 2008, the undersigned issued an Order to petitioners to file proof of significant aggravation of their son Aaron's autistic like disorder in the form of a medical expert report, giving them a deadline of July 14, 2008.

Petitioners requested an extension of time to refile medical records by September 2, 2008, which the undersigned granted in an Order dated August 20, 2008.

On August 29, 2008, petitioners filed a Reply to the Order, making two assertions: (1) Aaron suffered from a mitochondrial disorder and oxygen depletion disorder which a later vaccination significantly aggravated, leading to autistic like symptoms (somewhat similar to the Hannah Poling case that respondent agreed to compensate); and (2) the vaccinations which Aaron received caused him mercury poisoning from thimerosal or ethyl mercury (which is the subject matter of the second round of autism cases in the Omnibus Autism Proceeding, the first round of cases having to do with MMR and autism).

Instead of a medical expert report in support of their assertions, petitioners attach to their Reply a medical article by D.S. Baskin, et al., entitled "Thimerosal Induces DNA Breaks, Caspase-3 Activation, Membrane Damage, and Cell Death in Cultured Human Neurons and Fibroblasts," published in *74 Toxicological Sciences* (2003), available on the internet.

A medical article without a medical expert's interpretation of it and application of its findings to Aaron's case does not assist the undersigned to rule in support of petitioners' second assertion that thimerosal caused Aaron's autistic like symptoms. The cells upon which the authors conducted their experiment were cortical tissue removed from a patient who was undergoing surgery for intractable seizures and normal neonatal human foreskin. Attachment, p. 2. There is no reason for the undersigned to correlate with Aaron's brain the findings in the

article that the authors relate to the brain cells of a person with a seizure disorder and to cells of a newborn's foreskin.

The authors state that the amounts of thimerosal they used in their study were less than four times higher than the amount of thimerosal used in vaccines. Attachment, p. 8. The undersigned has no idea what is the biologic effect, if any, of using almost four times higher the amount of thimerosal in the study versus using almost one-fourth the amount of thimerosal in vaccines. The authors themselves do not know the answer to this question and suggest "that additional research is necessary to estimate the effects of prolonged exposure to thimerosal in lower doses." *Id.* The authors also state that results of using thimerosal differ not only based on the amount of thimerosal exposure but also based on the amount of time of exposure, and they state "additional research is needed to more fully delineate the dose- and time-dependent toxicity of thimerosal in sub-micro-molar concentrations" *Id.*

With the authors' suggestion that further research is needed, their conclusions do not prove that Aaron's exposure to thimerosal-containing vaccines constituted either a sufficient amount of thimerosal or a sufficient time of exposure to thimerosal to cause his autistic like symptoms. This article does not assist petitioners in proving their allegation that thimerosal-containing vaccines caused Aaron's autistic like symptoms.

Petitioners have still not proved their assertion of significant aggravation. They have not filed a medical report in support of their assertion of significant aggravation of Aaron's autistic like disorder, claiming that no doctor would risk criticism from the medical community by providing such a report. Reply, p. 5.

Petitioners may continue pro se or they may seek an attorney to represent them. If petitioners would like to have a list of attorneys admitted to the United States Court of Federal Claims who are familiar with vaccine litigation, they may telephone the undersigned's law clerk Michael Lang at (202) 357-6356 and request the list be sent to them.

Petitioners should be aware that the Omnibus Autism Proceeding has still not culminated in a decision on whether thimerosal-containing vaccines cause in fact autism or autistic like symptoms. Petitioners have not provided any evidence that Aaron has a mitochondrial disorder or an oxygen depletion disorder.

Petitioners state in their Reply that they would have withdrawn their petition had they known three months ago when 240 days passed that the case would be transferred from the former special master who had the case to another special master. Petitioners express an interest in suing civilly. Reply, p. 6. Petitioners have the option to file a notice of dismissal at any time and the undersigned will issue a decision which will be followed by a judgment. Within 90 days of the date of the filing of judgment, under the Vaccine Act, 42 U.S.C. §300aa-21(a)(2), petitioners may file an election to file a civil action in state or federal court for damages for Aaron's illness.

Petitioners shall file a Status Report by October 10, 2008 stating what they intend to do.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master