

OFFICE OF SPECIAL MASTERS

(Filed: November 9, 2005)

JOSEPH A. THURMOND and)
CAROLYN K. THURMOND,)
parents and natural guardian of their daughter,)
SARAH ROSE THURMOND,)
))
Petitioners,)
))
v.)
))
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
))
Respondent.)

No. 03-0425V
DO NOT PUBLISH

DECISION¹

Petitioners, Joseph A. Thurmond and Carolyn Thurmond (Mr. Thurmond and Ms. Thurmond or the Thurmonds), as natural guardians of their daughter, Sarah Rose Thurmond (Sarah), seek compensation under the National Vaccine Injury Compensation Program (Program).² The Thurmonds filed their Program petition on February 24, 2003. *See* Petition (Pet.). They maintain that Sarah “suffers a neurological disorder[,] including a seizure disorder[,] related to a hepatitis B and hemophilus influenzae type-B combined vaccine” that she received on February 15, 2002. Status Report, filed May 23, 2005, at 1; *see also* Pet. ¶¶ 2-3.

¹ 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Respondent denies that the Thurmonds are entitled to Program compensation. *See generally* Respondent's Report and Motion to Dismiss (Report), filed November 2, 2005. Respondent asserts that the Thurmonds have not adduced sufficient evidence to establish a presumptive causation claim afforded by the Vaccine Injury Table (Table), 42 C.F.R. § 100.3(a)(VII). *See* Report at 2. In addition, respondent asserts that the Thurmonds have not adduced sufficient evidence to establish an actual causation claim. *See* Report at 14.

The Thurmonds seek now a ruling on the record. *See* Status Report, filed October 31, 2005.

Congress prohibited special masters from awarding compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 300aa-13(a). Numerous cases construe § 300aa-13(a). The cases reason uniformly that "special masters are not medical doctors, and, therefore, cannot make medical conclusions or opinions based upon facts alone." *Raley v. Secretary of HHS*, No. 91-0732V, 1998 WL 681467, at *9 (Fed. Cl. Spec. Mstr. Aug. 31, 1998); *see also Camery v. Secretary of HHS*, 42 Fed. Cl. 381, 389 (1998).

The special master has canvassed completely the record. He agrees fundamentally with respondent's assessment of the case in respondent's Report. In particular, he determines that Sarah's medical records alone do not reflect an independent basis for him to conclude more likely than not that Sarah suffered an injury listed in the Table for hepatitis B vaccine, within the period listed in the Table, following her February 15, 2002 hepatitis B vaccination. And, he determines that Sarah's medical records alone do not reflect an independent basis for him to conclude more likely than not that Sarah's February 15, 2002 hepatitis B and hemophilus influenzae type-B combined vaccine caused actually Sarah's condition. Thus, the Thurmonds require necessarily a medical expert's opinion to establish either a *prima facie* Table case or a *prima facie* actual causation case. However, despite adequate opportunity to adduce a medical expert's opinion, *see, e.g., Thurmond v. Secretary of HHS*, No. 03-0425V, Order of the Special Master (Fed. Cl. Spec. Mstr. Apr. 22, 2005); *Thurmond v. Secretary of HHS*, No. 03-0425V, Order of the Special Master (Fed. Cl. Spec. Mstr. July 14, 2005); *Thurmond v. Secretary of HHS*, No. 03-0425V, Order of the Special Master (Fed. Cl. Spec. Mstr. Aug. 22, 2005); *Thurmond v. Secretary of HHS*, No. 03-0425V, Order of the Special Master (Fed. Cl. Spec. Mstr. Sept. 22, 2005), the Thurmonds have not obtained a medical expert's opinion that supports the petition. As a consequence, the special master is constrained to conclude that the Thurmonds are not entitled to Program compensation.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

The clerk of court shall send the Thurmonds' copy of this decision to the Thurmonds by overnight express delivery.

John F. Edwards
Special Master