

SECTION IX. EXITING THE VACCINE PROGRAM AND FILING A SUBSEQUENT CIVIL ACTION

Subsequent to filing a claim in the Vaccine Program, a petitioner may decide against proceeding further on the merits, or may decide to pursue other civil remedies. There are multiple ways a petitioner may exit the Vaccine Program and conclude the claim.

Chapter 1. Motion for a Dismissal Decision.

If a petitioner does not believe the available evidence can prove entitlement to compensation and wishes to conclude the case, petitioner may file a motion for a dismissal decision. After petitioner files a motion for a dismissal decision, the special master will file a short decision dismissing the case without discussing the evidence submitted, such as medical records or reports. A template for a motion for a dismissal decision is available at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>.

Chapter 2. Motion for a Ruling on the Record.

If a petitioner does not wish to submit any additional evidence or to request an evidentiary hearing, a petitioner may file a motion for a ruling on the record. The special master will rule on the petitioner's claim based on all the records filed.

In the motion, petitioner should specifically identify the evidence in the record on which petitioner relies with reference to the exhibit numbers and specific page numbers, as well as specific statements, diagnoses, and conclusions made by medical professionals that support petitioner's claim. Simply referring to exhibits generally is insufficient. Petitioner should also explain how this information supports petitioner's theory of causation in the absence of an expert medical opinion. A template for a motion for a ruling on the record is available at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>.

Chapter 3. Election to File a Civil Action.

Within 90 days subsequent to the entry of judgment on the special master's decision on entitlement, petitioner may file either an election to file a civil action or an election to accept judgment. § 21(a). An election to file a civil action rejects the Program judgment and must be filed to preserve whatever right petitioner may have to file a civil action in another court. Templates for an election to file a civil action and an election to accept judgment are available at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>.

Chapter 4. Voluntary Dismissals.

A. Voluntary Dismissal before Respondent's Rule 4 Report.

If a petitioner wishes to dismiss his or her claim voluntarily and withdraw from the Vaccine Program and the respondent's report has not yet been filed, petitioner may file a notice of voluntary dismissal. See Vaccine Rule 21(a)(1)(A). A template for a notice of voluntary dismissal is available at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>.

B. Stipulation of Dismissal.

Alternatively, with respondent's consent, petitioner may file a stipulation of dismissal when petitioner wishes to withdraw from the Vaccine Program. The stipulation of dismissal must be signed by petitioner and then sent to respondent's counsel at the Department of Justice for review and signature. See Vaccine Rule 21(a)(1)(B). Typically, respondent's counsel will then file the stipulation with the court. A template stipulation of dismissal is available at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>.

C. Effect of Voluntary Dismissal.

A dismissal pursuant to a notice of dismissal or a stipulation of dismissal is typically without prejudice. However, the special master may in his or her discretion deem the notice or stipulation to operate as a final adjudication on the merits if petitioner has previously dismissed the same claim. See Vaccine Rule 21(a)(2). Subsequent to the filing of the notice or stipulation of dismissal, the special master will file an order concluding proceedings to close petitioner's case, but no decision or judgment will be entered. See Vaccine Rule 21(a)(3). Thus, counsel should be aware that a notice of voluntary withdrawal or a stipulation of dismissal may not suffice to permit a petitioner to pursue a traditional tort remedy in another court.

Chapter 5. Withdrawal in the Absence of a Timely Decision.

When the statutory time period for the special master's submission of a decision expires without the filing of a decision by the special master, a petitioner may elect to withdraw from Program proceedings and pursue a traditional tort remedy. See § 21(b)(1). The statute provides the special master with 240 days in which to file the decision, which may be extended by requests for suspension, up to 420 days from the date of filing the petition. See § 12(g); § 12(d)(3)(C); Vaccine Rule 10(b).

If the special master fails to issue a decision within the statutory time period, the special master will ordinarily issue a formal notice informing petitioner of this fact. See § 12(g); Vaccine Rule 10(d)(1). The petitioner should, within 30 days, file a notice indicating an intent either to continue in the Program or to withdraw. See § 21(b); Vaccine Rule 10(d)(2). If a petitioner elects to withdraw from the Vaccine Program, the

special master will issue an order concluding proceedings. Vaccine Rule 10(d)(3). Templates for these notices may be found at <http://www.uscfc.uscourts.gov/vaccine-sample-filings>. If within 30 days of the formal notice, the petitioner fails to file a notice of intent to withdraw, an intent to remain in the Program is presumed. A notice of intent to withdraw filed more than 30 days after the formal notice is filed may not be effective in preserving whatever rights petitioner may have to file a subsequent civil action.

Counsel should note that if the option to withdraw is selected, a petitioner may be precluded from reentering the Program to seek compensation for damages resulting from the vaccination specified in the petition.

If the special master's decision is timely, but after a motion for review of that decision is filed, the Court of Federal Claims fails to enter judgment on the claim within the statutory time period (see § 21(b)(2) for computation of this period), a petitioner has an identical option to withdraw or continue in the Program. See § 21(b)(2); § 12(g)(2); Vaccine Rule 29.