

GUIDANCE TO PETITIONERS ON HOW TO EXIT THE VACCINE PROGRAM

The Omnibus Autism Proceeding (OAP) test cases have concluded and it is now time to decide if you wish to continue your claim in the Vaccine Program. Some petitioners have chosen to continue and will receive instructions from the court on what is required at each step of their case. For a variety of reasons, other petitioners will not want to continue and will exit the Vaccine Program. This information is for people who do not want to continue their claim.

There are different ways to exit the Vaccine Program and the different ways have different consequences. An important consequence is whether you preserve whatever right you may have to file your claim in another court.

I. Ways to Exit the Vaccine Program

Most people have three options available to them on how to exit. Only two of those options may permit you to bring a lawsuit in another court.

A. Preserves Possible Right to File a Civil Suit

If you think you might want to file your claim in another court after the conclusion of your Vaccine Program case, you should either file a Motion for a Dismissal Decision or a Motion for a Ruling on the Record.

1. Motion for a Dismissal Decision

If you believe you will not be able to prove your case in this court, but may want to file your case in another court, you could file a “Motion for a Dismissal Decision.” You can follow the example attached as Sample A.

After you file a Motion for a Dismissal Decision, the Special Master will file a short decision dismissing your case without discussing any of the evidence submitted, such as medical records, diagnosis, or treatment.

Thirty days after the Special Master files the dismissal decision, judgment will be entered in your case. A Vaccine Program judgment cannot be used against you in any other legal proceeding.

In order to preserve whatever right you may have to file a civil action in another court, you must then file an “Election to File a Civil Action” which rejects the judgment from this court within 90 days of the date the judgment was filed. You can follow the example attached as Sample B.

2. Motion for a Ruling on the Record

If you want the Special Master to rule on your case based on the records you have filed and you do not want to submit any additional evidence, you should file a “Motion for a Ruling on the Record.” You should point out specifically in your Motion for a Ruling on the Record any medical records you believe support your case. You can follow the example attached as Sample C.

If you file a Motion for a Ruling on the Record, the Special Master will review the evidence filed in your case and will make a ruling specific to your case which may discuss the evidence filed, including diagnosis, treatment, and the opinions of medical professionals.¹ If the Special Master finds that you have not demonstrated entitlement to compensation under the Vaccine Act, your case will be dismissed. Thirty days after the Special Master files the dismissal decision judgment will enter in your case.

In order to preserve whatever right you may have to file a civil action in another court you must then file an Election to File a Civil Action which rejects the judgment from this court within 90 days of the date the judgment was filed. You can follow the example attached as Sample B.²

B. The next option may not permit you to file a civil claim in another court after your Vaccine Program case closes.

1. Stipulation of Dismissal

****do not use if you want to file a civil action****

If you think you might want to file a civil action, do not use this option. Although we cannot predict how another court might rule, it appears that a stipulation of dismissal

¹ Please note that the Vaccine Act requires substantiation that the vaccines caused the claimed injuries by either medical records or a medical opinion. If it is clear that the medical records do not establish a causal link between the vaccine and claimed injuries, and no supportive medical opinion was filed in the case, the Special Master's Ruling on the Record will not discuss in detail the medical evidence in the case, but will dismiss the case for lack of proof. See 42 U.S.C. § 300aa-13(a)(1).

² The difference between a Motion for a Dismissal Decision and a Motion for a Ruling on the Record is that if you file a Motion for a Dismissal Decision the Special Master will issue a decision dismissing your case without further review. If you file a Motion for a Ruling on the Record, the Special Master will review your entire file and issue a Ruling or Decision indicating whether or not you have proven your case. You should file a Motion for a Dismissal Decision only if you believe you cannot prove your case in this court.

will not permit you to file a civil action in another court. However, if you know you do not want to file a civil action and you do not want a judgment dismissing your case to be filed, you should choose this option. While a Vaccine Program judgment cannot be used against you for any other purpose, some people, for various reasons, do not want a court judgment to be filed in their name. For example, some prospective employers may require disclosure of any judgment filed in the employee's name.

If you decide you want to exit the Vaccine Program this way you may contact the court or respondent's counsel and a "Stipulation of Dismissal" will be provided to you for your review and signature. You must then send the Stipulation of Dismissal to respondent's counsel at the Department of Justice for review and signature. Respondent's counsel will then file the Stipulation and the Special Master will issue an Order Concluding Proceedings. Your case will then be closed. No judgment will enter. See Vaccine Rule 21(a). An example of a Stipulation of Dismissal is attached as Sample D.

II. Other Ways to Exit the Vaccine Program

****These options typically only apply early in your case****

The following options to exit apply only in the first few months after you file your Petition. Thus, these options are no longer available to most people with a pending claim in the OAP. The first option will allow you potentially to file a lawsuit in another court, the second option will not allow you to file suit in another court.

A. Withdrawal Pursuant to a 240 Day Order

The Vaccine Act provides that a Special Master should issue a decision within 240 days of the date a Petition for Vaccine Compensation is filed. If the Special Master has not made a decision in your case after 240 days, the Special Master will issue a "240 Day Order" advising you of that failure and you will have the option to withdraw your Petition from the Vaccine Program. 42 U.S.C. § 300aa-12(g). If you wish to exit the Program at that time, you must file a "Notice to Withdraw Petition" no later than 30 days after you receive the Special Master's 240 Day Order. 42 U.S.C. § 300aa-21(b). See Example E. An Order Concluding Proceedings will enter, which closes your case. No judgment will enter and any right you may have to file a civil action will be preserved. As noted above, this only works if you exercise this option within thirty days of the 240 Day Order being filed in your case.

B. Notice of Voluntary Dismissal

****do not use if you want to file a civil action****

If you think you might want to file a civil action do not use this option. This option

does not appear to allow you to file a civil action once your case is closed. In most cases this option is only available for the first 90 days after you file your case. Once respondent files the “Respondent’s Report” you may no longer use this option to exit the Vaccine Program. See Vaccine Rule 21(a). The Respondent generally files the Respondent’s Report within 90 days after the filing of a petition. If the Respondent’s Report has not been filed in your case, and you no longer wish to proceed with your case file a “Notice of Voluntary Dismissal.” See Example F. The Special Master will file an Order Concluding Proceedings to close your case. No judgment will enter.

III. Conclusion

This guidance is intended to assist you. It reflects the understanding of the Office of Special Masters (OSM) concerning the procedures that apply. **The OSM cannot give you legal advice**, but the special masters understand that for many people who filed claims in the OAP, the decision about what to do next presents difficult and bewildering choices. If you have any questions concerning the matters addressed in this guidance, please contact the OSM staff attorneys or chambers. For guidance regarding filing you may contact the Clerk of Court’s Office at 202-357-6406.

- ★ **For a list of Vaccine Program attorneys, see**
<http://www.uscfc.uscourts.gov/vaccine-attorney-referral-list>

- ★ In using the samples appearing below, you must substitute the name of the petitioners for “John Doe” and the name of the child for “Jane Doe.” You must also include the case number specific to your case for “No. 00-000V.”

Sample A

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

John Doe, Parent of Jane Doe, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 00-000V
Special Master _____

**PETITIONER’S MOTION FOR A DECISION
DISMISSING HIS PETITION**

The petitioner, John Doe (“John”), respectfully moves for a decision by the Special Master dismissing his case. The grounds for this motion are:

1. An investigation of the facts and science supporting his case has demonstrated to John that he will be unable to prove that he is entitled to compensation in the Vaccine Program.
2. In these circumstances, to proceed further would be unreasonable and would waste the resources of the Court, the respondent, and the Vaccine Program.
3. John understands that a decision by the Special Master dismissing his petition will result in a judgment against him. He has been advised that such a judgment will end all of his

rights in the Vaccine Program.

4. John understands that he may apply for costs once his case is dismissed and judgment is entered against him. John further understands that the respondent expressly reserves the right, pursuant to 42 U.S.C. § 300aa-15(e), to question the good faith and reasonable basis of his claim and to oppose, if appropriate, his application for costs. John also understands that if the timely filing of his Petition has not been established, respondent expressly reserves the right, pursuant to 42 U.S.C. § 16(a)(2) or 16(b), to challenge whether this claim was timely filed and to oppose, if appropriate, his application for fees and costs. The respondent otherwise does not oppose this motion.
5. John does intend to protect his rights to file a civil action in the future. Therefore, pursuant to 42 U.S.C. § 300aa-21(a)(2), he intends to elect to reject the Vaccine Program judgment against him and elect to file a civil action.

Dated: _____

s/ _____

Certificate of Service: I hereby certify that a true and correct copy of the foregoing pleading was sent by first class US Mail to the following address on January 1, 2010.

U.S. Department of Justice
Vaccine Litigation
Torts Branch/Civil Division
P.O. Box 146
Ben Franklin Station
Washington, D.C. 20044-0146

Sample B

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

John Doe, Parent of Jane Doe, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 00-000V
Special Master _____

NOTICE OF ELECTION TO FILE A CIVIL ACTION

The petitioner, John Doe, hereby elects, pursuant to 42 U.S.C. § 300aa-21(a), to reject the Judgment entered in the above captioned matter and to file a civil action.

Dated: _____

s/ _____

Certificate of Service: I hereby certify that a true and correct copy of the foregoing pleading was sent by first class US Mail to the following address on January 1, 2010.

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Washington, D.C. 20044-0146

Sample C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

John Doe, Parent of Jane Doe, a Minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 00-000V
Special Master _____

PETITIONER’S MOTION FOR A RULING ON THE RECORD

The petitioner, John Doe, respectfully moves for a Ruling on the Record as it now stands in his case by the Special Master.

The following records support a ruling in favor of petitioner:

Petitioner’s Exhibit___ (List all medical records/exhibits in detail that support your case.)

Dated: _____

s/ _____

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Washington, D.C. 20044-0146

Sample D

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

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John Doe, Parent of Jane Doe, a Minor, *
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* No. 00-000V
* Special Master _____
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* Petitioner, *
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* v. *
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* SECRETARY OF HEALTH AND *
* HUMAN SERVICES, *
*
* Respondent. *
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JOINT STIPULATION OF DISMISSAL

It is hereby stipulated by and between the parties, the following matters:

1. On DATE, petitioner filed a "Short-Form Autism Petition for Vaccine Compensation."
See generally Autism General Order # 1, 2002 WL 31696785, at *4 (Fed. Cl. Spec. Mstr. July 3, 2002).
2. To date, petitioner has submitted no evidence or has not submitted sufficient evidence establishing that the jurisdictional prerequisites of the Act have been met. 42 U.S.C. § 300aa-11(c); Vaccine Rule 2.
3. The parties hereby stipulate that this action shall be dismissed.

Dated: _____

s/ _____

s/ _____

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Vaccine Litigation
Torts Branch/Civil Division
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Washington, D.C. 20044-0146

Sample E

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

John Doe, Parent of Jane Doe, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 00-000V
Special Master _____

NOTICE TO WITHDRAW PETITION

The petitioner, John Doe, hereby gives Notice, pursuant to 42 U.S.C. § 300aa-21(b), to withdraw his petition filed in the above-captioned matter.

Dated: _____

s/ _____

Certificate of Service: I hereby certify that a true and correct copy of the foregoing pleading was sent by first class US Mail to the following address on January 1, 2010.

U.S. Department of Justice
Vaccine Litigation
Torts Branch/Civil Division
P.O. Box 146
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Washington, D.C. 20044-0146

Sample F

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

John Doe, Parent of Jane Doe, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 00-000V
Special Master _____

PETITIONER’S NOTICE OF VOLUNTARY DISMISSAL

The petitioner, John Doe, pursuant to Vaccine Rule 21(a) hereby gives notice of his
voluntary dismissal of the above-captioned matter.

Dated: _____

s/ _____

Certificate of Service: I hereby certify that a true and correct copy of the foregoing pleading was
sent by first class US Mail to the following address on January 1, 2010.

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