

alleging that Amya was injured by a vaccine or vaccines listed on the Vaccine Injury Table. Petition at 1 (incorporating the Master Autism Petition for Vaccine Compensation in Autism General Order #1).³

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ Autism General Order #1 adopted the Master Autism Petition for Vaccine Compensation for use by petitioners filing claims intended to be part of the Omnibus Autism Proceeding (OAP). By electing to file a Short-Form Autism Petition for Vaccine Compensation petitioners alleged that:

[a]s a direct result of one or more vaccinations covered under the National Vaccine Injury Compensation Program, the vaccinee in question has developed a neurodevelopmental disorder, consisting of an Autism Spectrum Disorder or a similar disorder. This disorder was caused by a measles-mumps-rubella (MMR) vaccination; by the “thimerosal” ingredient in certain Diphtheria-Tetanus-Pertussis (DTP), Diphtheria-Tetanus-acellular Pertussis (DTaP), Hepatitis B, and Hemophilus Influenza Type B(HIB) vaccinations; or by some combination of the two

The petition is being filed within three years after the first symptom of the disorder, or within three years after the first symptom of a vaccine-caused significant aggravation of the disorder. (If the vaccine-related death is alleged, the petition is being filed within two years after the date of death and no later than 48 months after onset of the injury from which death resulted.)

Autism General Order # 1 filed July 3, 2002, Exhibit A, Master Autism Petition for Vaccine Compensation at 2. Autism General Order #1 is published at 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002). Documents filed into the OAP are maintained by the clerk of this court in the file known as the “Autism Master File.” An electronic version of the file is available on the court’s website. Accompanying the electronic version of the file is a docket sheet that identifies all of the documents contained in the file. The complete text of most of the documents in the file is electronically accessible, with the exception of those few documents that must be withheld from the court’s website due either to copyright considerations or to the privacy protection afforded under § 300aa-12(d)(4)(A) of the Act. To access the electronic version of the Autism Master File, visit this court’s website at www.uscfc.uscourts.gov. Select the “Vaccine Info” page, then the “Autism Proceeding” page.

On May 25, 2011, petitioner, who was then represented by counsel, was informed of the outcome of the group of six “test cases” tried as part of the Omnibus Autism Proceedings (OAP). Each of the three special masters who heard the OAP test cases determined that there was no reliable evidence that the vaccines caused autism spectrum disorders (ASDs). May 25, 2011 Order at 1-2.

Petitioner was further informed that although the decisions in the test cases are not binding on other petitioners in the OAP who claim that vaccines can cause ASDs, the outcome of the test cases indicates that unless petitioner offers different evidence or theories not presented in the test cases, her vaccine claim is unlikely to be successful. Id. at 2. Petitioner was ordered to inform the court if she wished to proceed with her claim, and if so, to file an Amended Petition within 30 days, clearly explaining the theory of vaccine causation she was offering in this case.

On June 24, 2011, petitioner’s counsel responded stating that he intended to file a motion to withdraw and that petitioner anticipated pursuing her claim as a pro se petitioner. Petitioner did not file an amended petition.

On August 18, 2011, the undersigned issued an Order to Show Cause directing petitioner to

inform the court **within thirty days** of the date of this Show Cause Order how she wishes to proceed or otherwise indicate, that is show cause, why this case should not be dismissed for failure to prosecute. If petitioner wishes to proceed, petitioner shall file, **within thirty days of the date of this Show Cause Order**, an amended petition that is fully compliant with 42 U.S.C. § 300aa-11(c) and which clearly explains the theory of vaccine causation in this case.

....

Failure to file a response to this Show Cause Order will be interpreted as either a failure to prosecute this claim or as an inability to provide supporting documents for this claim. In either event, the petition shall be dismissed.

Again, petitioner failed to file an amended petition; nor did petitioner file a response to the Order to Show Cause.

On September 2, 2011, petitioner’s counsel moved to withdraw as attorney of record. Counsel reiterated that petitioner intended to proceed with the case representing herself. Motion at 5. The undersigned granted petitioner’s counsel’s motion to withdraw on September 30, 2011. Petitioner is now proceeding in this matter pro se.

In the September 30, 2011 Order, the undersigned directed petitioner to contact chambers no later than October 28, 2011 to schedule a telephonic status conference to discuss her claim. Petitioner was reminded that “failure to follow a court order [would] be interpreted as either a failure to prosecute this claim or as an inability to provide supporting documents for this claim. **In either event, the petition [would] be dismissed.**”

Petitioner has not contacted chambers; nor has she filed an amended petition.

II. The Omnibus Autism Proceeding

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as “autism” or “autism spectrum disorders” [“ASD”] were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP and will not be repeated here.⁴

Ultimately, the Petitioners’ Steering Committee [“PSC”], an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, rubella vaccine could cause ASDs. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury content in thimerosal-containing vaccines could directly affect an infant’s brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC’s first theory rejected the petitioners’ causation theories. Cedillo, 2009 WL 331968, aff’d, 89 Fed. Cl. 158 (2009), aff’d, 617 F.3d 1328 (Fed. Cir. 2010); Hazlehurst, 2009 WL 332306, aff’d,

⁴ The Theory 1 cases are Cedillo v. Sec’y of Health & Human Servs., No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Hazlehurst v. Sec’y of Health & Human Servs., No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Snyder v. Sec’y of Health & Human Servs., No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are Dwyer v. Sec’y of Health & Human Servs., No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); King v. Sec’y of Health & Human Servs., No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); Mead v. Sec’y of Health & Human Servs., No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

88 Fed. Cl. 473 (2009), aff'd, 604 F.3d 1343 (Fed. Cir. 2010); Snyder, 2009 WL 332044, aff'd, 88 Fed. Cl. 706 (2009).⁵ Decisions in each of the three “test cases” pertaining to the PSC’s second theory also rejected the petitioners’ causation theories, and petitioners in each of the three cases chose not to appeal. Dwyer, 2010 WL 892250; King, 2010 WL 892296; Mead, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded.

As stated earlier, petitioner was informed on May 25, 2011 that she must decide whether to pursue her case and submit new evidence on causation, or take other action to exit the Program. The petitioner in this case has failed to inform the court how she intends to proceed.

III. Failure to Prosecute

It is petitioner’s duty to respond to court orders. Failure to respond to a court order is deemed noncompliance with a court order, and noncompliance will not be tolerated. As the undersigned reminded petitioner in both the August 18, 2011 and September 30, 2011 Orders, failure to follow court orders shall result in dismissal of petitioner’s claim. Sapharas v. Sec’y, of Health & Human Servs., 35 Fed. Cl. 503 (1996); Tsekouras v. Sec’y of Health & Human Servs., 26 Cl. Ct. 439 (1992), aff’d per curiam, 991 F.2d 810 (Fed. Cir. 1993); Vaccine Rule 21(b).

This case is DISMISSED for failure to prosecute. The clerk shall enter judgment accordingly.

The Clerk of the Court is directed to convey this order to petitioner by CERTIFIED MAIL, return receipt requested.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Chief Special Master

⁵ Petitioners in Snyder did not appeal the decision of the U.S. Court of Federal Claims.