

I. BACKGROUND

The caption of petitioners' claim currently reads "Joann Mostovoy and Vadim Mostovoy[,] in their own right and as best friends of their son[,] Victor Jared Mostovoy." Pet'rs' Mot. to Amend, Mar. 21, 2012, at 1. Petitioners' motion to amend the caption arises out of their concern that a published decision addressing their vaccine claim will attract public attention and thus, compromise their privacy. Id.

Petitioners' claim has been designated as the lead test case on a novel theory of vaccine-related autism. Id. Petitioners' theory is that the use of human cell lines in the manufacture of MMR vaccines causes a DNA transfer that leads to the development of autism in vaccinees. Id. As the lead claimants, petitioners expect public scrutiny and broad attention to any issued decision on their claim. Id. Anticipating this possibility and desiring to protect their privacy, petitioners have filed a motion to amend the caption to conceal their actual identities. Id. Petitioners propose as the amended caption, "Mr. and Mrs. Jon Doe[,] in their own right and as best friends of their son[,] Jon Doe, Jr." Id.

Respondent has filed a timely response to petitioners' motion, objecting to the request. Resp't's Resp., Apr. 9, 2012. Respondent argues that the motion to amend is both "premature and overbroad." Id. at 1. Respondent observes that the Vaccine Act affords confidential protection to all filings in vaccine cases. See id. (citing 42 U.S.C. § 300aa-12(d)(4) for the proposition that information submitted in a vaccine proceeding cannot be disclosed without the consent of the party who submitted the information). It is not until a decision issues does information pertaining to a vaccine claim become publicly available. Accordingly, respondent asserts that petitioners' privacy concerns do not become ripe until a decision in this case is ready for publication. Resp't's Resp. at 1. Respondent contends that although petitioners' motion is styled as a motion to amend, petitioners' motion is effectively one for redaction, and because no decision is ripe for issuance, respondent objects to such request. Id.

II. STANDARD OF REVIEW

Rule 17 of the Rules of the United States Court of Federal Claims (RCFC) identifies those parties who may bring suit against the United States. RCFC 17. Rule 17 also sets forth seven classes of persons who are legally eligible to bring suit on behalf of another. See RCFC 17(a)(1). Among the classes of appropriate representatives are guardians desiring to bring suit on behalf of a minor (defined as a person under the age of 18). RCFC 17(a)(i).

Rule 16 of the Vaccine Rules addresses the manner in which the captions of vaccine cases are to be styled. Vaccine R. 16(a). Rule 16 now permits a petition to be filed on behalf of a minor using the minor's initials.² Vaccine R. 16(b).

During the pendency of a vaccine claim, all information submitted by petitioners, including what is contained in the petition and any documents supporting petitioners' claim, is maintained out of public view. See Vaccine Act, 42 U.S.C. § 300aa-12(d)(4). By statute, such information "may not be disclosed to a person who is not a party to the proceeding without express written consent" from the one who submitted the information. Id. Moreover, should a decision issue on a vaccine claim, the Vaccine Act and the Vaccine Rules require the deciding special master to afford the parties a 14-day period of time within which to object to the publication of certain information qualifying for redaction under the Act. See 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine R. 18(b).

III. DISCUSSION

As discussed more fully below, petitioners have moved to amend on improper grounds and have sought redaction prematurely. However, consistent with the Vaccine Rules, the case caption can be amended to substitute the initials of the minor child's name in the place of his full name. See Vaccine R. 16(b).

A. Petitioners Move to Amend on Improper Grounds

Amendments to case captions may be made to allow the proper parties in interest to be identified correctly. See RCFC 17(c) (outlining proper parties who are eligible to bring a suit on behalf of a minor). A motion to amend is appropriate where a change occurs that requires a modification to the name of a party identified in the case caption. Such changes might include a minor reaching the age of majority (at 18 years), the death of the petitioner, or a legal name change (occasioned by either marriage or divorce). See RCFC 17(c) (showing parties able to bring suit on behalf of a minor); see also Vaccine R. 16(b) (allowing a caption to be modified to include only the minor's initials).

A motion to amend is also appropriate if the caption contains an error that requires correction. Errors requiring correction might include misspelled or transposed names. When errors are present, the parties have the right to amend the caption to represent individuals correctly. See U.S. v. Edwards, 241 F.R.D. 146, 149 (E.D.N.Y. 2007) (allowing plaintiff to amend the caption to reflect correct

² The Vaccine Rules were amended in July of 2011, permitting the use of a minor's initials in the captions of filings. Vaccine Rules Comm. Notes (2011 Amend) (Rule 16).

legal name); see also Bhatti v. Bd. of Immigration Appeals, 210 F.App'x 135 (2d Cir. 2006) (ordering the change of the caption to reflect the petitioner's name).

Petitioners here have moved to amend the caption to read, "Mr. and Mrs. Jon Doe[,] in their own right and as best friends of their son[,] Jon Doe, Jr." Pet'rs' Mot. to Amend at 1. Currently, the caption includes the full names of both parents and their minor son. See id. Persuaded that their claim has the potential to attract significant public attention, petitioners seek an amendment of the caption to protect their privacy by invoking anonymity. Id.

Because petitioners seek the proposed amendment out of privacy concerns, and not to reflect a legal name change or correct an error, the motion to amend is sought on improper grounds.

B. If Construed as a Motion to Redact, Petitioners' Motion is Premature

The Vaccine Act permits a party to request redaction of information from a decision when the disclosure of such would constitute a "clearly unwarranted invasion of privacy." 42 U.S.C. § 300aa-12(d)(4)(B)(ii); see also Langland v. Sec'y of Health & Human Servs., No. 07-36V, 2011 WL 802695, at * 1 (Fed. Cl. Spec. Mstr. Feb. 3, 2011). Petitioners are afforded 14 days to object to the disclosure of such information in issued decisions on vaccine claims. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine R. 18(b). If no decision has been issued, the information submitted by the parties concerning the vaccine claim remains available only to the special master or judge to whom the case is assigned, and to the parties. See Vaccine R. 18(a). A motion to redact is premature if no decision has issued for publication. See id. (establishing that information is confined to the parties involved unless published by the Court).

Although styled as a motion to amend, petitioners' motion appears intended to serve as a motion for redaction. But because no decision has issued yet, such motion is premature.

C. Consistent with the Recently Amended Vaccine Rules, the Case Caption Can Be Amended to Include the Minor's Initials, and Not His Full Name

For consistency with the E-Government Act and the RCFC, the Vaccine Rules now permit the names of minors and their birthdates to be redacted from vaccine case captions. Langland, 2011 WL 802695, at*1; Vaccine R. 16.

Construing petitioners' motion to amend as one for the substitution of the minor's initials in the caption, the undersigned **GRANTS** this limited relief. RCFC 5.2(a) (allowing for the redaction of a minor's name to show only his initials); Vaccine R. 16. The caption of the case should now include the initials "J.M." instead of the minor's full name.

IV. CONCLUSION

For the foregoing reasons, petitioners' motion to amend is construed as a motion to amend the case caption to substitute the minor's initials in place of the minor's full name. The undersigned **GRANTS** this relief, but **DENIES** the requested anonymity for the minor's parents. Accordingly, the undersigned **GRANTS IN PART, AND DENIES IN PART** petitioners' Motion to Amend.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master