

OFFICE OF SPECIAL MASTERS

No. 08-739V

Filed: July 22, 2009

NOT TO BE PUBLISHED

MYRON B. GOLDSTIN, *
as Executor of the Estate of *
GORDON K. ROSENBERG, deceased, *

Petitioner, *

V. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Stipulation; Influenza Vaccine; GBS;
Attorney's Fees and Costs

DECISION¹

On July 21, 2009, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that the influenza vaccine received on or about October 18, 2006, caused Mr. Rosenberg to suffer from Guillain Barre Syndrome (GBS), which resulted in Mr. Rosenberg's death. Respondent denies that the influenza vaccine caused Mr. Rosenberg's GBS and/or death. Nonetheless, the parties agreed informally to resolve this matter.

The court hereby **adopts** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded a lump sum of **\$200,000.00** in the form of a check payable to petitioner as executor of the Estate of Gordon K. Rosenberg. See Stipulation, para. 8, filed July 21, 2009. Additionally, petitioner is awarded a lump sum of **\$11,124.00 for attorney's fees and costs** in the form of a

¹ The undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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.*

check payable to petitioner and petitioner's attorney, Edward Kraus. Id. The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

²Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MYRON B. GOLDSTIN, as Executor)	
of the Estate of GORDON K.)	
ROSENBERG, deceased,)	
)	
Petitioner,)	
)	
v.)	No. 08-739V
)	Chief Special Master
)	Gary J. Golkiewicz
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of the Estate of Gordon K. Rosenberg ("Mr. Rosenberg"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Mr. Rosenberg's receipt of trivalent influenza vaccine ("flu vaccine"), which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a)(XIII).

2. Mr. Rosenberg received a flu vaccine on or about October 18, 2006.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the flu vaccine caused Mr.

Rosenberg to suffer from Guillain Barré Syndrome ("GBS"), which resulted in Mr. Rosenberg's death.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of Gordon K. Rosenberg as a result of Mr. Rosenberg's injury and/or death.

6. Respondent denies that flu vaccine caused Mr. Rosenberg's GBS and/or death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

a. A lump sum of **\$200,000.00** in the form of a check payable to petitioner as executor of the Estate of Gordon K. Rosenberg. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of **\$11,124.00** in the form of a check payable to petitioner and petitioner's attorney, Edward Kraus, for attorneys' fees and costs. In compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner personally in proceeding on the petition.

9. Payment made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

10. In return for the payments described in paragraph 8, petitioner does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Gordon K. Rosenberg resulting from, or alleged to have resulted from, the flu vaccine administered on or about October 18, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about October 17, 2008, in the United States Court of Federal Claims as petition No. 08-739V.

11. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

12. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no

agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

13. All rights and obligations of petitioner in his capacity as executor of the Estate of Gordon K. Rosenberg hereunder shall apply equally to petitioner's successors and assigns.

END OF STIPULATION

/