

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 1, 2010

No. 07-453V

MARY BROWNING, mother and next friend of her son, COLIN BRYNILDSON,)	
Petitioner,)	TO BE PUBLISHED
v.)	Motion to redact; Motion to reconsider;
SECRETARY OF HEALTH AND HUMAN SERVICES,)	Motion to redact fee decision; Unredacted entitlement decision; Privacy interest;
Respondent.)	Mercury toxicity; Consolidated cases
)	

ORDER ON MOTION TO REDACT AND ERRATA

On October 5, 2010, I denied Petitioner's motion to redact her name from the fee decision in this case, because her name had already been disclosed in other published decisions related to this case. At a status conference on October 6, 2010, I agreed to entertain Petitioner's oral motion for reconsideration of the decision denying redaction. I allowed Petitioner's counsel seven days to file a proposed redacted version of the decision. On October 14, 2010, Petitioner filed a proposed version of the decision. On October 15, 2010, I convened a status conference with the parties to discuss that proposal.

For the reasons that follow, Petitioner's motion for reconsideration is granted, and I now grant in part and deny in part the motion for redaction.

The Vaccine Act requires that decisions of special masters be disclosed to the public. 42 U.S.C. § 300aa-12(d)(4)(B). Simultaneously, the Act recognizes that those decisions may contain sensitive information, and a petitioner may object to full disclosure of a decision if it contains either confidential commercial information or "medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." § 300aa-12(d)(4)(B). Thus, a special master may redact confidential facts, but other information, such as the special master's reasoning and the parties' legal theories, are a matter of public record and cannot be redacted.

Consistent with the Vaccine Act, the Vaccine Rules provide further for the privacy of the parties.¹ Pursuant to Vaccine Rule 18(a), the court restricts access to the docket to prevent the public from accessing medical records and other sensitive information. The Rules also set forth the procedure for objecting to the inclusion in a decision of sensitive information and requesting redaction:

¹ The Vaccine Rules are located at Appendix B in the Rules of the United States Court of Federal Claims.

[18](b) Decision of the Special Master or Judge.

A decision of the special master or judge will be held for 14 days to afford each party an opportunity to object to the public disclosure 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.

Any objecting party must provide the court with a proposed redacted version of the decision. In the absence of an objection, the entire decision will be made public.

Vaccine Rule 18(b). Accordingly, for a motion to redact to be properly filed, it must: be filed within 14 days of the decision, identify the information that is confidential, and include a proposed version of the redacted decision. I, and other special masters, ordinarily grant properly filed motions to redact. Rather than redact specific facts about a case, the typical practice is to change the petitioner's name and redact the case number.²

The problem here is that Petitioner initially failed to seek redaction of the entitlement decisions in the consolidated cases of Colin's sisters. After the entitlement decisions in those two cases were published, certain details about Petitioner and her family, including Colin's medical history, became public information. More than a month after those decisions were published, Petitioner untimely filed motions to redact. The motions did not contain an explanation for the delay, did not make any attempt to identify sensitive information, did not attempt to show that disclosure would be a clearly unwarranted invasion of privacy or suggest any other justification for redaction, and did not include a proposed version of the redacted decisions. Consequently, I denied those motions. I was sympathetic to Petitioner's request for privacy, and I certainly would have granted redaction of the entitlement decisions had I received timely requests. Regrettably, I could not undo what had been done.³

On September 27, 2010, I issued fee decisions in Colin's case and his twin sisters' cases. Subsequently, Petitioner filed a timely motion to redact Petitioner's name from the fee decision in Colin's case.⁴ Petitioner voluntarily dismissed this case and so no published order

² Case numbers are redacted because, for each petition it receives, the Department of Health & Human Services publishes the petitioner's name and case number in the Federal Register. Such publication is required by the Vaccine Act. § 300aa-12(b)(2).

³ In the electronic era, when third parties disseminate decisions almost immediately upon publication, it is impossible effectively to "un-publish" them.

⁴ Petitioner also filed motions to redact the fee decisions in Colin's sisters' cases. I denied those motions because the information in the girls' fee decisions had previously been disclosed in their entitlement decisions. See Sabella v. Sec'y of Dep't of Health & Human Servs., No. 02-1627V, 2008 WL 4531828, *3 (Fed. Cl. Spec. Mstr. Sept. 23, 2008)) (denying redaction where petitioner's name had been disclosed in a previous order adopting the parties' stipulation).

or decision had issued in this case. However, due to the interrelated nature of Colin's and his sisters' cases, it is not possible to protect Colin's privacy by redacting his name, because Colin's name and details about Colin's case are contained in the decisions in his sisters' cases.

In light of this unusual procedural history, at the status conference on October 6, 2010, I informed Petitioner that I would consider a request to redact confidential medical information about Colin that had not been previously disclosed. I also informed Petitioner that, although the motion for redaction was timely, it was not properly filed because it did not identify any confidential information, show adequate cause for redaction, or include a proposed redacted decision. At that time, I granted Petitioner leave to supplement her motion for reconsideration and for redaction.

On October 14, 2010, Petitioner filed a proposed redacted decision. Petitioner's proposal redacted not just medical facts, but also details regarding the legal theory advanced by counsel. As I discussed with the parties at the status conference on October 15, 2010, I have decided to redact only the information regarding Colin's medical history that was not disclosed in a prior decision. Further, consistent with the requirements of the Vaccine Act, I have decided not to redact medical information that is necessary to comprehend the decision on fees and costs. Further, I have decided not to redact scientific information that does not pertain specifically to Colin. Pursuant to these considerations, I am issuing a redacted version of the fee decision in this case.

Accordingly, Petitioner's motion for reconsideration is **GRANTED**, and her motion to redact is **GRANTED IN PART** and **DENIED IN PART**.

In addition, the redacted decision corrects two typographical errors. The first correction is in the first sentence of the second full paragraph on page 3 of the redacted decision. The word "that" has been change to "than". The second correction is in third sentence of the second full paragraph on page 7 of the redacted decision. The phrase "before receiving to" was change to "before receiving".

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Chief Special Master