

This case became part of a group of cases in which all petitioners alleged that thimerosal in pediatric vaccines caused, contributed to, or triggered the death of a vaccinee. On November 23, 2010, Special Master Abell issued a decision denying entitlement in Kolakowski v. Secretary of Department of Health & Human Services, No. 99-625V, 2010 WL 5672753 (Fed. Cl. Spec. Mstr. Nov. 23, 2010), the test case in the group. Special Master Abell found that the petitioners failed to prove that thimerosal-containing vaccines can cause death in infant vaccinees and that they failed to prove thimerosal-containing vaccines caused Thomas Kolakowski's death. The decision was not appealed.

On September 27, 2011, Petitioner was ordered to file an amended petition identifying an alternative theory of causation in light of Kolakowski. On November 21, 2011, Petitioner moved for a decision dismissing her petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation under the Act.

To receive compensation under the Program, Petitioner must prove either that 1) Nicholas suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) Nicholas suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A)-(B) and 11(c)(1). Under the Vaccine Act, a special master cannot find that a petitioner has proven his case based upon "the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 13(a). An examination of the record did not uncover any evidence that Nicholas suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that his alleged injury was vaccine-caused. See Kolakowski.

Accordingly, it is clear from the record in this case that Petitioner has failed to demonstrate either that Nicholas suffered a "Table Injury" or that his injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master