

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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AMY BISHOP and \*  
JONATHAN TYLER BISHOP, as the \*  
Parents and Natural Guardians of \*  
REED BISHOP, an Infant, \*

No. 12-219V  
Special Master Christian J. Moran

Petitioners, \*

Filed: September 20, 2013

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Stipulation; diphtheria-tetanus-acellular  
pertussis (“DTaP”); haemophilus  
influenza type B (“Hib”); opsoclonus-  
myoclonus syndrome (“OMS”).

Respondent. \*

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Mark T. Sadaka, Englewood, NJ, for Petitioner;  
Voris Edward Johnson, U.S. Department of Justice, Washington, D.C., for Respondent.

### UNPUBLISHED DECISION<sup>1</sup>

On September 19, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Amy Bishop and Jonathan Tyler Bishop, on behalf of their son, Reed Bishop, on April 4, 2012. In their petition, petitioners alleged that the diphtheria-tetanus-acellular pertussis (“DTaP”) and haemophilus influenza type B (“Hib”) vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a), and which Reed received on July 16, 2010, caused him to suffer opsoclonus-myoclonus syndrome (“OMS”). Petitioners further allege that Reed suffered the residual effects of this injury for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Reed’s behalf as a result of his condition.

Respondent denies that the DTaP and Hib vaccines caused Reed to suffer OMS or any other injury.

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum of \$43,284.83, in the form of a check payable to petitioners, Amy Bishop and Jonathan Tyler Bishop, as guardians of Reed's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and,**
- B. A lump sum payment of \$11,715.17, representing compensation for satisfaction of the State of Mississippi Medicaid lien, in the form of a check payable jointly to petitioners and**

**Mississippi Division of Medicaid  
Walter Sillers Building  
Suite 1000  
550 High Street  
Jackson, Mississippi 39201-1399  
Attn: Henderson Junius  
Re: Reed W. Bishop, Medicaid I.D. No. 741 26 3092**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 12-219V according to this decision and the attached stipulation.<sup>2</sup>

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> Pursuant 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.



of this injury for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Reed as a result of his condition.

6. Respondent denies that the DTaP and/or Hib vaccines caused Reed to suffer OMS or any other injury.

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 petitioners have 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 \$43,284.83, in the form of a check payable to petitioners as guardians of Reed's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and,
- b. A lump sum payment of \$11,715.17, representing compensation for satisfaction of the State of Mississippi Medicaid lien, in the form of a check payable jointly to petitioners and

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9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioners have filed both a proper and timely election to receive compensation pursuant to 42

U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

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

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Reed as contemplated by a strict construction of 42 U.S.C. §300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians of Reed's estate under the laws of the State of Mississippi. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians of Reed's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians

of the estate of Reed Bishop at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Reed Bishop upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of Reed, on behalf of themselves, Reed, and his heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Reed resulting from, or alleged to have resulted from, DTaP and Hib vaccinations administered on July 16, 2010, as alleged by petitioners in a petition for vaccine compensation filed on or about April 4, 2012, in the United States Court of Federal Claims as petition No. 12-219V.

15. If Reed should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. 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.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. 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. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Reed suffered OMS or any other injury as a result of his July 16, 2010, DTaP and Hib vaccinations.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Reed Bishop.

END OF STIPULATION

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Respectfully submitted,

**PETITIONERS:**

  
AMY BISHOP

  
JONATHAN TYLER BISHOP

**ATTORNEY OF RECORD FOR  
PETITIONERS:**



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Dated: 9/19/13