

OFFICE OF SPECIAL MASTERS

JANE DOE/10,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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[REDACTED]V
Special Master Christian J. Moran

Filed: January 4, 2008
Reissued: January 25, 2008

Fact decision; influenza vaccines;
hepatitis A and B vaccines.

Thomas P. Gallagher, Gallagher & Gallagher, Somers Point, N.J., for petitioner;
Traci R. Patton, United States Department of Justice, Washington, D.C., for respondent.

REDACTED FINDINGS OF FACT - NOT TO BE PUBLISHED*

I. Introduction

Jane Doe filed a petition pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 et seq. (2000). Ms. Doe alleges that the flu vaccinations, which were given to her in 1996-2001, caused an adverse effect on her health. Ms. Doe also alleges that the hepatitis A and hepatitis B vaccinations, which were given to her in 2002, caused additional health

* Because this unpublished ruling contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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).

Vaccine Rule 18(b) states all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

problems. This decision resolves certain disputes of fact and will be the predicate for a future determination as to whether Ms. Doe is entitled to compensation for her injuries.

The factual disputes arose because information contained in the record is not consistent. Based upon different histories taken by different practitioners at different times, some medical records contradict other medical records. In addition, Ms. Doe's own affidavit, exhibit S, presented some information that was not contained in medical records created contemporaneously with the events that they describe.

To determine the state of Ms. Doe's health from 1993 until the present, a hearing was held in San Diego, California, on August 23, 2007. See Campbell v. Sec'y of Health & Human Servs., 69 Fed. Cl. 775, 779-80 (2006); Skinner v. Sec'y of Health & Human Servs., 30 Fed. Cl. 402, 410 (1994). At this hearing, Ms. Doe was the only witness.

The Vaccine Act permits a finding of when a first symptom appeared, despite the lack of a notation in a contemporaneous medical record. 42 U.S.C. § 300aa-13(b)(2) (2006). The preponderance of the evidence standard requires that the Special Master "believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [special master] of the fact's existence." In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (*quoting* F. James, Civil Procedure 250-51 (1965)).

In weighing divergent pieces of evidence, contemporaneous written medical records are usually more reliable than oral testimony. Cucuras v. Sec'y of Health & Human Servs., 993 F.2d 1525, 1528 (Fed. Cir. 1993). However, compelling oral testimony may be more persuasive than written records. Campbell, 69 Fed. Cl. at 779 ("like any norm based upon common sense and experience, this rule should not be treated as an absolute and must yield where the factual

predicates for its application are weak or lacking”); Camery v. Sec’y of Health & Human Servs., 42 Fed. Cl. 381, 391 (1998) (this rule “should not be applied inflexibly, because medical records may be incomplete or inaccurate”); Murphy v. Sec’y of Health & Human Servs., 23 Cl. Ct. 726, 733 (1991), aff’d, 968 F.2d 1226 (Fed. Cir. 1992). Whether a contemporaneous medical record or later-given oral testimony is more persuasive is a determination that “is uniquely within the purview of the special master.” Burns v. Sec’y of Health & Human Servs., 3 F.3d 415, 417 (Fed. Cir. 1993).

These criteria provide a basis for evaluating the evidence presented. The evidence includes the testimony presented by Ms. Doe and all the exhibits filed by the parties. After the hearing, the parties filed a Joint Statement of the Issues to be Resolved by the Special Master.

II. Findings of Fact

A. Medical Condition Before Vaccinations

Ms. Doe was born in 1958. The earliest records Ms. Doe filed were created when Ms. Doe was 35 years old. However, retrospective medical records show that when she was in high school, she experienced depression. Exhibit K at 544 (psychiatric notes, dated April 3, 2003).

When she was in her twenties, Ms. Doe began experiencing headaches. Exhibit I at 490. Ms. Doe’s headaches are mentioned frequently in the earliest records. See exhibit A at 2 (report from October 26, 1993), at 59 (Jan. 19, 1994 and Feb. 15, 1994), at 5 (report from July 27, 1996), and at 6 (report from Oct. 22, 1996).

On April 5, 1996, Ms. Doe received a tetanus vaccination. Exhibit C at 342; exhibit A at 4. Ms. Doe states that she had headaches and dizziness approximately one month after this vaccination. Exhibit S (affidavit of Ms. Doe, signed April 7, 2007) at 15; exhibit A at 58. However, Ms. Doe does not claim compensation for this alleged adverse reaction. Tr. 4. The

time for filing a claim based upon this adverse event expired before Ms. Doe filed her petition in 2002. 42 U.S.C. § 300aa-14(b)(3)(A); Goetz v. Sec’y of Health & Human Servs., 45 Fed. Cl. 340 (1999) (discussing statute of limitation for diphtheria, pertussis and tetanus vaccine), aff’d 4 Fed. Appx. 827, Fed. Cir. No. 00-5019 (Jan. 25, 2001) (nonprecedential). Thus, the 1996 tetanus vaccination does not affect Ms. Doe’s claims for compensation due to other vaccinations.

B. Influenza Vaccinations 1996-2001

Ms. Doe seeks compensation for the alleged adverse effects of a series of influenza vaccinations. Amend. Pet., filed April 30, 2007, ¶¶ 10-11. She received the first of her flu vaccinations at Del Mar Medical Clinic on October 22, 1996. Exhibit A at 6. (Ms. Doe’s claim regarding the flu vaccination was filed within the time provided by the statute of limitations because the Vaccine Program first started to offer compensation for adverse effects of the flu vaccines in 2005. 70 Fed. Reg. 19092-93 (April 12, 2005). Ms. Doe amended her petition after this regulatory change to assert that the flu vaccines harmed her.)

Records from a doctor’s visit on the same day that Ms. Doe received the flu vaccine, show that she was complaining of sinus issues, coughing, tightness, and an inability to sleep. She also said her temporomandibular joint (“TMJ”) was “popping”. The doctor diagnosed her with contraction headaches, a cervical sprain, and a temporomandibular joint disorder.

Approximately two weeks later, Ms. Doe returned to the same office and to complain that she was having migraine headaches twice per month. During the visit, Ms. Doe requested a referral to a dentist for problems with her TMJ. Exhibit A at 6.

Ms. Doe saw a dentist, Dr. Jeff Moses, who ordered an MRI to assess Ms. Doe’s TMJ. Exhibit M at 569. After Dr. Moses received the results of the MRI, Ms. Doe had an operation on her TMJ on December 4, 1996. Exhibit I at 490; exhibit B at 266; tr. 55. This operation

improved her migraine problems. Exhibit M at 570 (notes dated May 10, 1997, stating “migraine free [for] 5 months.”); exhibit A at 7 (notes from May 2, 1997, stating “was doing much better after TMJ surgery”).

On May 2, 1997, Ms. Doe saw Dr. Monica Moore of the Del Mar Medical Clinic because she was experiencing back and shoulder pain and migraines during her menstrual period.² Dr. Moore recommended physical therapy and also ordered an MRI of Ms. Doe’s brain. Ms. Doe sought treatment for headaches two more times. Exhibit A at 7 (May 30, 1997), and 55 (June 4, 1997). Her MRI was normal. Exhibit D at 377 (report dated June 7, 1997). A few weeks later, Dr. Jack Schim, a neurologist, stated that Ms. Doe’s severe headaches, blurry vision, numbness, tingling sensations, and stiffness in her back were due to hormonal fluctuations. Exhibit I at 490 (report dated June 18, 1997).

In October 1997, Ms. Doe received another influenza vaccination. A preponderance of the evidence demonstrates that Ms. Doe received this vaccination, although no medical record was created contemporaneously with the vaccination. See exhibit A at 11, 52. Ms. Doe testified that her practice was to receive a flu vaccination each year. Tr. 65-66. As mentioned, exhibit A at 6 shows that Ms. Doe received a flu shot in October 1996. Another record shows that Ms. Doe received other flu vaccinations in October 1999. Exhibit A at 44. In addition, Ms. Doe testified that she also received flu vaccinations in October 2000. Exhibit S at 13. Her annual

² Ms. Doe testified that her symptoms “returned.” It is not at all clear whether Ms. Doe’s headaches in May 1997 were part of the same pathological process that caused her headaches in October 1996. Ms. Doe’s 1997 headaches could have been manifesting a new illness or condition. Considering that headaches can arise from many different conditions, Ms. Doe’s implication that she suffered from one underlying disease process cannot be credited on the existing record. Ms. Doe may obtain an opinion from a person qualified to opine as to whether she had a new problem. See Knudsen v. Sec’y of Health & Human Servs., 35 F.3d 543, 549 (Fed. Cir. 1994) (stating special masters do not diagnose illnesses).

presentation for vaccination establishes that she followed a habit of being vaccinated. See Federal Rule of Evidence 406. Thus, Ms. Doe has established, by a preponderance of the evidence, that she received a flu vaccine in October 1997.

On October 20, 1997, Ms. Doe sought treatment for migraines associated with certain phases of her menstrual cycle. Her doctor prescribed Imitrex and Phrenilin. Exhibit A at 52. When Ms. Doe visited a local pharmacy to fill these prescriptions, she also received a flu vaccination. Tr. 64, 66. On October 29, 1997, she reported pain in her right side and migraines.³

On October 31, 1997, Ms. Doe's doctor reported that she was feeling better. Exhibit A at 11. "Better" implies that Ms. Doe was worse before.

Beginning in approximately early November 1997, Ms. Doe had headaches, blurry vision, and tingling. She also was having pain in her TMJ. She visited Dr. Neville Alleyne, an orthopedic surgeon, on December 5, 1997. Dr. Alleyne believed her migraine headaches were an "atypical presentation of a greater occipital neuralgia emanating at the right C1/2 region." He administered a shot of Demerol. Exhibit H at 449; exhibit S at 14.⁴ When Ms. Doe returned to Dr. Alleyne for follow up care approximately six months later, Ms. Doe reported that the frequency of her headaches had decreased. Due to other problems, she received another shot of Depo-Medrol. Exhibit H at 442.

Between visits to Dr. Alleyne, Ms. Doe saw a neurologist, Dr. Jonathan Schleimer. A prominent problem for which Ms. Doe sought assistance was headaches that had been happening

³ The migraines were on-going for 6 months (or since April 1997).

⁴ Ms. Doe characterizes her headache as an "encephalomyelitis". Exhibit S at 14. However, Dr. Alleyne did not use this term. Exhibit H at 449. Ms. Doe lacks medical training to make a diagnosis. Thus, a preponderance of evidence fails to show that Ms. Doe had an "encephalomyelitis".

for the prior two and a half years (since August 1995). Dr. Schleimer suggested that her headaches were part of a perimenstrual syndrome. Exhibit H at 460 (report dated February 17, 1998).

Ms. Doe associated her migraine headaches with her menstrual cycle in a doctor's visit on June 19, 1998. She reported that progesterone alleviated some of the problems. Exhibit A at 13.

On June 22, 1998, Ms. Doe was involved in a motor vehicle accident. She sought medical treatment because she had tightness in her neck. Exhibit A at 13; tr. 79-80. An x-ray of her cervical spine was normal. Exhibit A at 13. A MRI of her cervical spine, taken on July 31, 1998, was also normal. Exhibit D at 375. A preponderance of the evidence indicates that any problems due to the car accident were temporary and did not aggravate any problems for which Ms. Doe seeks compensation.

One reason for finding that the 1998 car accident did not affect Ms. Doe's health significantly is that she did not seek additional medical attention. The record in this case demonstrates that Ms. Doe often sought medical attention from a variety of medical specialists. Given her ability and willingness to access the health care system, Ms. Doe would have sought medical attention if she were experiencing any problems after the car accident. Her lack of medical visit implies that her health was normal.

The next visit to a health care provider was on September 8, 1998, when she complained about migraines. Exhibit A at 14. The content and tone of the notes from these visits are consistent with previous visits for migraine headaches. Nothing suggests that she was having any new problems due to the car accident.

Ms. Doe was in physical therapy on April 15, 1999, for derangement in her cervical spine and migraines. Ex G at 425. On May 6, 1999, she saw Dr. Moses, a dentist, because of TMJ problems again. Exhibit D at 350. Dr. Moses performed a second surgery on her TMJ about a week later. Exhibit M at 574. Ms. Doe previously had a TMJ operation on December 4, 1996. Exhibit I at 490. By October 1999, Ms. Doe was again complaining about TMJ pain. Exhibit A at 19.

In October 1999, Ms. Doe visited the Del Mar Medical Clinic on two consecutive days. On October 28, 1999, she received another flu vaccination. She also complained about migraine headaches and neck pain. Exhibit A at 44. The following day, she stated that she was having neck and shoulder pain. She also said that she was having pain associated with TMJ. Exhibit A at 19.

A few days later, Ms. Doe returned to the doctor. She said that her problems were headaches, a fever, a sore throat, and trouble with her breathing. Exhibit A at 43. Ms. Doe characterized those problems in her affidavit as an “encephalopathy.” Exhibit S at 13. Ms. Doe’s own characterization has no persuasive value, because she does not have any medical expertise and learned about encephalopathies from the internet. Tr. 110-12.

An “encephalopathy” is defined as “any degenerative disease of the brain.” Dorland’s Illustrated Medical Dictionary (30th ed. 2003) at 610.⁵ Whether Ms. Doe suffered an encephalopathy in October or November 1999 cannot be established. There is no medical evidence supporting this diagnosis. From the end of 1999 through the summer of 2000, Ms. Doe

⁵ To implement the Vaccine Injury Table, a regulation defines “encephalopathy.” 42 C.F.R. § 100.3(b)(2). However, “encephalopathy” is not listed as a condition associated with the influenza vaccine on the Vaccine Injury Table. 70 Fed. Reg. 19092-93 (Apr. 12, 2005) (adding influenza vaccine to the table). Thus, the regulatory definition of encephalopathy does not affect Ms. Doe’s claim for compensation.

continued to have headaches and received prescription for various medications. Exhibit A at 20-23. Regardless of whether they were symptoms of an encephalopathy, Ms. Doe's problems did not last for long. Almost a full year passed without any visits to a medical practitioner.

In October 2000, Ms. Doe received another dose of the influenza vaccination. Exhibit S at 13; tr. 56. Ms. Doe could not locate any record created contemporaneously with this event. However, for the reasons set forth with regard to the 1997 vaccination, a preponderance of the evidence shows that Ms. Doe did receive this vaccination. It appears that Ms. Doe received the vaccination on October 12, 2000. Exhibit S at 13.

On October 14, 2000, Ms. Doe saw a doctor at the office where she received her primary care. Ms. Doe was having migraines, nausea, and pain on left side of her neck. Exhibit A at 23; exhibit S at 13. Ms. Doe also averred that she had an "encephalopathy." Exhibit S at 13. Ms. Doe's own characterization of her condition is rejected for the reasons explained above. See note 4, above, and associated text.

For her chronic migraine headaches, Ms. Doe sought attention from a neurologist, Dr. Benjamin Frishberg. He prescribed additional medications for her. Exhibit I at 484 (report, dated October 25, 2000).

Five months passed uneventfully. Then, in March of 2001, Ms. Doe reported to a local emergency room because of a migraine headache. Exhibit C at 323 (report dated March 25, 2001). She saw Dr. Frishberg again on April 3, 2001. Exhibit I at 476. She also reported having migraines twice in July 2001. Exhibit A at 25; exhibit C at 296.

Ms. Doe received another flu vaccination on December 5, 2001. Exhibit A at 26. This vaccination appears to be the final time she received the flu vaccination. In her affidavit, Ms. Doe stated that after this vaccination, her headaches worsened and she also developed insomnia

and nausea. Exhibit S at 12. However, no contemporaneously created medical record indicates that she saw a medical practitioner for any problem. Therefore, a preponderance of the evidence establishes that Ms. Doe's headaches did not worsen and that she did not develop insomnia or nausea after the December 2001 flu vaccination. Cucuras, 993 F.2d at 1528.

Following this vaccination, Ms. Doe traveled to South Africa. Her trip to South Africa, at the end of 2001, apparently prompted her to receive the hepatitis A and hepatitis B vaccinations. Ms. Doe has sought compensation for the adverse effects of these vaccinations. Amend. Pet. at ¶¶ 3-9. The chronology of events associated with these vaccines is presented in the next section.

C. Hepatitis A and Hepatitis B Vaccinations in 2002

On January 25, 2002, Ms. Doe went to visit Dr. Seymour Meyers for the first time. She said that after her trip to South Africa, she was having an increase in migraines. Dr. Meyers gave her a vaccination against hepatitis A and also the first dose of the vaccination against hepatitis B. Exhibit P at 17, 26.

Ms. Doe saw Dr. Meyers again on February 25, 2002.⁶ His office notes state that the reason for this appointment was "hepatitis immunizations (migraine)." Exhibit P at 4. Although this statement could be more clear, it appears that Ms. Doe was complaining that she was having migraines and also was scheduled to receive the second dose of the hepatitis B vaccine. See exhibit P at 16. (By way of contrast, this statement does not indicate that the hepatitis

⁶ Ms. Doe filed her petition on February 8, 2005. For any claims based upon the hepatitis B vaccine, the statute of limitations precludes consideration of conditions that were manifest before February 8, 2002. 42 U.S.C. § 300aa-16(a)(2).

However, because the hepatitis A vaccine was added to the Vaccine Injury Table at a later date, the statute of limitations does not prevent Ms. Doe from claiming a reaction before February 8, 2002. 42 U.S.C. § 300aa-16(b); 69 Fed. Reg. 69945 (Dec. 1, 2004) (announcing coverage of hepatitis A vaccine).

vaccinations were causing migraines.) At this visit, Ms. Doe received her second dose of the hepatitis B vaccine. Exhibit P at 4, 16, 26.

A headache prompted Ms. Doe to visit another emergency clinic on March 2, 2002. This headache was also occurring while Ms. Doe was menstruating. Ms. Doe also was having somatic dysfunction and a neuropathy. Exhibit A at 36. “Somatic dysfunction” means that her body is not acting properly. See Dorland’s at 1721. A neuropathy is a disruption in the peripheral nervous system. Dorland’s at 1257.

A month later, Ms. Doe reported that she was again having a neuropathy. She was also having vision problems in both eyes, which the doctor assessed as part of migraines. Exhibit A at 27 (report dated April 9, 2002). Ms. Doe’s affidavit elaborates that the vision problem was photophobia. Exhibit S at 8.

On July 10, 2002, Ms. Doe returned to Dr. Meyers because she had an ankle problem. Ms. Doe did not report any other problems during this visit. Ms. Doe also received the third dose of the hepatitis B vaccine. Exhibit P at 13.

Both in her affidavit and in her oral testimony, Ms. Doe stated that on July 10, 2002, she had difficulty breathing and lost consciousness briefly. Exhibit S at 9; tr. 145-48; see also exhibit T (affidavit of Richard Doe, dated April 7, 2007). Ms. Doe’s account did not appear in any medical record and she acknowledged that she did not seek medical attention. Ms. Doe characterized this event as an episode of anaphylaxis.

Ms. Doe’s statement that she had “anaphylaxis” is not reliable. Ms. Doe lacks any training and experience in diagnosing medical conditions. Her use of the term “anaphylaxis” does not constitute evidence on which an award of compensation may be made. 42 U.S.C. § 300aa-13(a).

Furthermore, Ms. Doe's statement that she lost consciousness is not credible. If Ms. Doe had, in fact, lost consciousness, her husband would have taken her to a hospital. Ms. Doe's history demonstrates she often went to a local clinic, saw specialists regularly, and also went to an emergency room on several occasions. The symptoms prompting these visits were usually relatively mild (headaches being a common example). Because Ms. Doe sought medical treatment for small events, it is reasonable to expect that she would have sought medical attention for a more severe problem, such as loss of consciousness.⁷

The next significant visit was with Dr. Meyers on August 28, 2002. Ms. Doe reported that she was having neck, shoulder, and hip pain. She did not note that she reacted adversely to the hepatitis B vaccine. Exhibit P at 11.

For the first time, Ms. Doe saw a rheumatologist, Dr. Adrian Jaffer, on October 21, 2002. During this initial evaluation, Ms. Doe stated that she had widespread, long-lasting body pain. Her musculoskeletal problems were actually worse than her migraines, which she was also having. In both the initial visit and in a follow-up visit, Dr. Jaffer was concerned that Ms. Doe was depressed. He recommended that she see a psychiatrist. Exhibit J at 499, 504. However, during the third visit, Dr. Jaffer thought that her problem could be attention deficit disorder. Exhibit J at 505 (report dated December 12, 2002).

On January 30, 2003, Ms. Doe saw Dr. Meyers once more. She complained about pain and insomnia. Dr. Meyers believed that her condition could include fibromyalgia. Dr. Meyers's notes also indicate that Ms. Doe blamed her health problems on the hepatitis B vaccine. Exhibit

⁷ Ms. Doe may seek the opinion of a doctor as to whether her condition - as found in this decision - constitutes anaphylaxis. See 42 C.F.R. § 100.3(b)(1) (defining anaphylaxis).

P at 10. This reference appears to be the first time that anyone associated any of Ms. Doe's health problems with a vaccine.

Ms. Doe's belief is also reflected in the notes from another visit to Dr. Jaffer on February 25, 2003. Dr. Jaffer recounts that "She thinks most of her problems were worsened after a hepatitis B vaccine." She was chronically ill with fatigue, fibromyalgia and headaches. Exhibit J at 505.

Following this visit, Ms. Doe saw various doctors over the next six months. Information is available from the record. No disputes of fact arise and these visits do not appear to be consequential in determining whether Ms. Doe had an adverse reaction to any vaccine.

The next significant visit was on August 15, 2003, when Ms. Doe saw Dr. Richard Wolf. In the intake questionnaire for Dr. Wolf, Ms. Doe indicated that she had a reaction to the hepatitis B vaccine. Exhibit B at 92. Dr. Wolf considered whether Ms. Doe had fibromyalgia syndrome. Exhibit B at 94, 97. Ms. Doe, thereafter, saw Dr. Wolf about every 30 days.

Dr. Wolf's treatment of Ms. Doe is important because, according to Ms. Doe, he was the first doctor to connect her ill health with the hepatitis B vaccine. Tr. 16-17, 30, 104, 153. Dr. Wolf's written reports, however, are more ambiguous. He stated "Poss Hep B Rxtn — ? to mercury." Ex B at 97 (notes dated Aug. 15, 2003). Another report says "Hep B rxtn [reaction] - clearly a feasibility. No obv western tx." Exhibit B at 110 (report dated November 4, 2003). Dr. Wolf also wrote "Hep B rxtn [reaction] - pursue, dictate letter on her behalf." Exhibit B at 114 (report dated December 2, 2003). These reports indicate that Dr. Wolf considered it possible that Ms. Doe reacted adversely to the hepatitis B vaccine. However, they do not state this possibility with sufficient certainty that they are evidence that the vaccine caused any health

problems for Ms. Doe. Van Epps v. Sec’y of Health & Human Servs., 26 Cl. Ct. 650, 654 (1992).

A similar uncertainty appears in the next report written by Dr. Meyers. He stated that Ms. Doe “still thinks she had an adverse reaction to hepatitis B shot + is going to file a complaint to vaccine court.” Dr. Meyers’s response was “I think it may.” Exhibit P at 6 (report, dated December 4, 2003). But, the word “may” does not advance Ms. Doe’s case because it is so indefinite that Dr. Meyers fails to express any opinion. Van Epps.

Over the next half year, Ms. Doe continued to see many doctors, including a monthly visit with Dr. Wolf. Ms. Doe had an occipital nerve block, exhibit B at 239; an MRI, exhibit E at 385; and was the subject of a sleep study, exhibit B at 245. Ms. Doe also explored the possibility that she had rheumatoid arthritis. Exhibit B at 194, 205, 252. One rheumatologist, Dr. Frank Nolan, who evaluated Ms. Doe for rheumatoid arthritis, found no evidence of that disease. He also stated “I do not feel that there is any evidence to suggest her Tetanus or Hepatitis vaccinations have caused the somatic complaints.” Exhibit B at 255 (report dated July 21, 2004).

In the summer of 2004, Ms. Doe had a series of different tests ordered by doctors in different specialties. These objective tests did not reveal any problems. An EMG was normal. Exhibit B at 222, 259; exhibit N at 581. MRIs of her spine were basically normal. Exhibit B at 206-07, 220. Hematology tests were mostly normal. Exhibit A at 30.

Eventually, Ms. Doe started treatment with another neurologist, Dr. Victor Hogen. Following her first visit on March 7, 2005, Dr. Hogen reported that Ms. Doe had an “immune related peripheral neuropathy and an immune related encephalomyelitis.” Exhibit E at 382. Dr. Hogen’s report is short and does not explain what started the immune problems. Merely

describing a disease as “immune related” is not the same as saying the disease is “vaccine related.” Both viral infections and vaccinations stimulate the immune system.

Ms. Doe again saw Dr. Alleyne, an orthopaedist, on March 14, 2005. He also believed that she had a peripheral neuropathy, which “seems to be temporally related to her immunizations.” He asked that a neurologist confirm that she has a peripheral neuropathy. Exhibit H at 434.

Ms. Doe filed few records of treatment after 2005. These records probably have limited usefulness in determining whether the various vaccinations, which Ms. Doe received between 1996 and 2002, caused her health problems.

During the hearing, Ms. Doe stated that her health currently fluctuates. Tr. 166, 170-72, 176. She believes she has lyme disease, attention deficit disorder, and fibromyalgia.

III. Resolution Of Questions Proposed By The Parties

In accordance with orders issued on September 24 and October 22, 2007, the parties jointly submitted a statement of issues requiring resolution. The preceding statement of facts allows the following answers to these issues.

1. Before Ms. Doe received the hepatitis A and hepatitis B vaccinations in January 2002, Ms. Doe suffered from the following symptoms:
 - a. she experienced depression while in high school.
 - b. frequent migraines headaches, usually associated with her menstrual cycle. See Question 7.
 - c. she sometimes had respiratory symptoms associated with either allergies or common cold.
 - d. inability to sleep.
 - e. TMJ disorder (twice).
 - f. blurry vision. Ex I at 490.
 - g. neck problems due to a car accident that resolved.
 - h. muscle pain, especially in her neck.

2. After Ms. Doe received the hepatitis A and hepatitis B vaccinations in January 2002, Ms. Doe suffered from the following symptoms that she did not suffer before the vaccinations:
 - a. vision trouble (photophobia) in April 2002. Exhibit A at 27, exhibit S at 8;
 - b. peripheral neuropathy and encephalomyelitis in March 2005. Exhibit E at 382;
 - c. ankle problem in July 2002. Exhibit P at 13;
 - d. difficulty breathing in July 2002. Exhibit S at 9; tr 145-48,
 - e. fibromyalgia in January 2003. Exhibit P at 10.
3. The times when the new symptoms arose are given in the previous paragraph.
4. Ms. Doe received flu vaccinations on October 22, 1996; October 20, 1997; October 28, 1999; on an unspecified date in October 2000; and December 5, 2001.
5. Before Ms. Doe received a flu vaccination in October 1996, she suffered from the following problems:
 - a. she experienced depression while in high school.
 - b. frequent migraines headaches, usually associated with her menstrual cycle. See Question 7.
 - c. she sometimes had respiratory symptoms associated with either allergies or common cold.
6. After Ms. Doe received flu vaccinations, she had the following problems:
 - a. See response to Question 1.
7. Ms. Doe suffered migraines around the time of her menses. Almost all (if not all) of the migraines occurred concurrent with her menstrual cycle. Exhibit A at 59 (notes dated Feb. 15, 1994, stating “migraines since age 15 [that] seem[] to cycle on monthly hormonal clock”), 7 (notes dated May 2, 1997, stating “Usually gets [headaches] at time of period”), exhibit M at 491 (report from Dr. Schim, dated June 18, 1997, stating “a history of headaches consistent with catamenial migraine prominently triggered by hormonal fluctuations”); Exhibit A at 9 (notes dated Sep. 3, 1997, stating headaches “3 [days] before ovulating and [at] onset of menses”), 52 (notes dated Oct. 22, 1997, stating headaches “are during mid-cycle and beginning of period”), exhibit H at 460 (report from Dr. Schleimer, dated Feb. 17, 1998, stating “Over the last two and one-half years she has had more persistent headaches. She would describe the headaches as occurring on a monthly basis. . . . They are usually perimenstrual, though occasionally are around the time of her ovulation.”); exhibit A at 13 (notes dated June 19, 1998, stating headaches “Again associated [with] period.”), at 16 (notes dated April 17, 1999, stating “[i]s getting a migraine at least once a [month] with menses and sometimes more often”); exhibit I at 484-85 (report from Dr. Frishberg, dated October 25, 2000).

Other migraines were not described as being associated with Ms. Doe’s menstrual cycle. E.g. exhibit A at 50 (Feb. 24, 1998), at 36 (Mar. 2, 2002).

8. Ms. Doe's migraines did not change after she received the hepatitis A and hepatitis B vaccinations.
9. In January and February 1994, Ms. Doe had severe headaches, body aches, fatigue/tiredness, and blind spots in her vision. Exhibit A at 59. No evidence was located to support a finding that Ms. Doe had stiffness in her neck, soreness in her neck, or anxiety in January and/or February 1994.
10. Ms. Doe suffered from depression before 1996.
11. No evidence about Ms. Doe's current mental health was submitted. Thus, whether Ms. Doe suffers from depression today is not determined. However, Dr. Schleimer, a neurologist, suspected that Ms. Doe had depression on July 23, 2004. Exhibit N at 581.
12. How a temporomandibular joint (TMJ) disorder affected, if at all, Ms. Doe's symptoms is not clear. Ms. Doe suspected that she had a TMJ disorder. She also had an operation on her TMJ. She reported improvement with her headaches after the operation. However, the headaches returned. Therefore, stating whether the TMJ caused or affected Ms. Doe's symptoms is not possible. Testimony from qualified experts on this topic would be helpful.
13. After Ms. Doe's TMJ disorder was treated, her symptoms, such as her headaches, waxed and waned. For the reasons stated in the previous paragraph, stating whether treatment for Ms. Doe's TMJ disorder caused any improvement is not possible.
14. Ms. Doe complained of migraine headaches in 1993. In 1993, Ms. Doe complained of "headaches." Exhibit A at 60 (notes dated Nov. 16, 1993). Another note indicates that Ms. Doe had "migraines since age 15." Exhibit A at 59 (note dated Feb. 15, 1994).

In 1993, Ms. Doe was diagnosed as having sinusitis. Exhibit A at 60 (notes dated Nov. 5, 1993 and Nov. 16, 1993). Some of her symptoms were like the flu. Id.; see also exhibit A at 3.

However, no evidence was located to support a finding that she had muscle pain in 1993.
15. Ms. Doe's June 23, 1998 car accident caused a pain in her neck. This pain was transient. At worst, she had an increased frequency in migraine headaches for the remainder of the summer. Tr. 79-80, 86.
16. Before October 28, 1999, the date on which Ms. Doe received a flu vaccination, Ms. Doe had migraine headaches and neck pain. Exhibit A at 9 (Sept. 3, 1997).
17. This question appears to contain a grammatical error, making it uncomprehensible. The intended question appears to be asked as question 19, below.

18. The existing record does not support a finding that Ms. Doe had an anaphylactic reaction, as that term is defined in 42 C.F.R. § 100.3(b)(1), on July 10, 2002.
19. After the July 10, 2002 hepatitis B vaccination, Ms. Doe suffered from the following problems that she had not suffered before the vaccination. See response to Question 2.
20. The time when the new symptoms arose is given in the response to Question 2.
21. No treating physicians have stated that a vaccine caused an injury to Ms. Doe. The following doctors provide some information. However, for various reasons, these statements fall short of establishing causation.
 - a. Dr. Wolf made several statements that indicate that it was possible that Ms. Doe had a reaction to the hepatitis B vaccine. Recognizing a possibility, however, is not the same as expressing an opinion that Ms. Doe actually had a reaction to the vaccine. Van Epps v. Sec’y of Health & Human Servs., 26 Cl. Ct. 650, 654 (1992). Examples of Dr. Wolf’s reports include:
 - i. “Poss Hep B Rxtn — ? to mercury.” Exhibit B at 97 (notes dated Aug. 15, 2003).
 - ii. “Hep B rxtn - clearly a feasibility. No obv western tx.” Exhibit B at 110 (report dated November 4, 2003).
 - iii. “Hep B rxtn - pursue, dictate letter on her behalf.” Exhibit B at 114 (report dated December 2, 2003).
 - iv. “Poss Hep B Rxtn - explored entire [history] of event. ? ADEM or MDEM, for all immuiz etc. Will try + help her sequence + relate details + see if assoc[iation] exists.” Exhibit B at 163-64 (notes dated February 18, 2005).
 - b. Dr. Meyers stated that Ms. Doe “still thinks she had an adverse reaction to hepatitis B shot + is going to file a complaint to vaccine court.” Dr. Meyers responded by saying “I think it may.” Exhibit P at 6 (report dated December 4, 2003). But, the word “may” does not advance Ms. Doe’s case because it is so indefinite that Dr. Meyers fails to express any opinion. Van Epps.
 - c. Dr. Hogen reported that Ms. Doe had an “immune related peripheral neuropathy and an immune related encephalomyelitis.” Exhibit E at 382 (March 7, 2005). Dr. Hogen’s report does not explain what started the immune problems. He does not mention the hepatitis B vaccine. If Dr. Hogen believed that the hepatitis B vaccinations caused her peripheral neuropathy or her encephalomyelitis, then he would have included this fact in his report.
 - d. Dr. Alleyne, an orthopaedist, stated that Ms. Doe had a peripheral neuropathy, which “seems to be temporally related to her immunizations.” Exhibit H at 434. However, a temporal relationship by itself does not show a causative relationship. Grant v. Sec’y of Health & Human Servs., 956 F.2d 1144, 1148 (Fed. Cir. 1992).

22. Whether Ms. Doe experienced a reaction to the tetanus vaccine in 1996 is not relevant. She cannot seek compensation due to the expiration of the time provided for filing a claim.
23. It is not clear what symptoms Ms. Doe claims are related to her influenza vaccination. Ms. Doe does not claim any compensation for her tetanus vaccination.
24. Ms. Doe testified that in 2006, she was diagnosed as having Lyme disease. Tr. 170-71. Before determining that Ms. Doe actually had Lyme disease, Ms. Doe should provide reports from the doctors who diagnosed her.

The parties are instructed to call Shana Siesser, at (202) 357-6358, to schedule the next status conference.

IT IS SO ORDERED.

Christian J. Moran
Special Master