

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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LU MARIE GUZMAN-DIAZ and \*
HECTOR ORELLANO-DIAZ, legal \*
representatives of a minor child, \*
JESHUA ORELLANA-GUZMAN \*

No. 09-157V
Special Master Christian J. Moran

Petitioners, \*

Filed: June 30, 2010

v. \*

SECRETARY OF HEALTH \*
AND HUMAN SERVICES, \*

Dismissal for failure to prosecute;
show cause order; measles-mumps-
rubella vaccine (MMR); Hib; autism.

Respondent. \*

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UNPUBLISHED DECISION DISMISSING PETITION\*

Pursuant to Vaccine Rule 21(b) and (c), the petition filed by Ms. Guzman-Diaz and Mr. Orellano-Diaz, on behalf of their minor son, Jeshua Orellana-Guzman ("Jeshua"), on March 12, 2009, is hereby dismissed for failure to prosecute.

On March 12, 2009, petitioners filed a petition on behalf of their minor child, Jeshua Orellano-Guzman, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., alleging that Jeshua suffered from Autism Spectrum Disorder as a result of receiving a

\* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

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, a party 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. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

number of vaccinations including MMR, and HiB on April 6, 2006. No medical records were filed with the petition.

On May 6, 2009, petitioners filed exhibits 1 through 10. Some of the medical records that were filed contained information in Spanish. Petitioners were ordered to locate a translator to translate these records.

On July 20, 2009, petitioners filed a motion to accept the qualifications of a Spanish translator. In a status conference on August 26, 2009, petitioners were ordered to have their translator transcribe approximately 10 pages of medical records from Spanish to English. Once the records were transcribed, petitioners were to send the transcribed records to respondent to verify the accuracy of the translation. In addition, petitioners were ordered to file medical records, the VAERS report and petitioners' affidavits.

On October 26, 2009, petitioners' counsel filed a "Motion to Seek to Be Relieved as Counsel." In support of the motion, petitioners' counsel stated that the costs of translating the records were not within counsel's budget and that there was a possibility that petitioners would not be reimbursed for the costs. In addition, petitioners' counsel stated that he was precluded from stating the actual reasons for the motion for withdrawal due to the rules of professional conduct.

A status conference took place on October 30, 2009. During that status conference, petitioners' attorney withdrew his motion to be relieved as counsel of record and agreed to continue working on the case.

During a January 12, 2010 status conference, petitioners' counsel expressed his inability to communicate with petitioners as they would not return his phone calls and emails. Petitioners' counsel was encouraged to keep detailed records of the efforts made to communicate with petitioners, such as requesting return receipts for written communications.

In a status conference on February 25, 2010, petitioners' counsel stated that he was still unable to communicate with petitioners although written communications showed that petitioners were in receipt of their counsel's letters. Petitioners' counsel indicated that continuing this case without cooperation from his client would be difficult, if not impossible.

The foregoing history was presented in an order dated March 2, 2010. In this same order, petitioners were ordered to show cause why their case should not be dismissed.

Petitioners' counsel filed a response to the order to show cause stating that he spoke with Ms. Guzman-Diaz, who stated that she no longer wished to proceed with this case and that she would not oppose a dismissal of the case.

Because petitioners have failed to comply with the show cause order, this case is DISMISSED pursuant to Vaccine Rule 21 for failure to prosecute. See Tsekouras v. Sec'y of Health & Human Servs., 26 Cl. Ct. 439 (1992), aff'd, 991 F.2d 810 (Fed. Cir. 1993) (table) (affirming special master's dismissal of petition for failure to prosecute).

Therefore, in the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment accordingly.

**IT IS SO ORDERED.**

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Christian J. Moran  
Special Master