

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MICHAEL A. NICOLINO, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 08-695V
Special Master Christian J. Moran

Filed: August 24, 2009

Stipulation; tetanus and diphtheria, vaccine, brachial neuritis.

UNPUBLISHED DECISION¹

Charles J. Cochran, Jr., Esq., Attorney at Law, Suffield, OH, for Petitioner;
Debra A. Filteau Begley, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On August 18, 2009, the parties filed a joint stipulation concerning the petition for compensation filed by Michael A. Nicolino which alleged that the tetanus and diphtheria (“Td”) vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Mr. Nicolino received on October 6, 2006, caused him to sustain the first symptom of the onset of brachial neuritis and its residual effects within the time period set forth in the Vaccine Injury Table.

Respondent denies that the petitioner has established by a preponderance of the evidence that Mr. Nicolino suffered a vaccine-related injury.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

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 lump sum payment of \$80,000.00 in the form of a check payable to the petitioner. This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 08-695V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

Case Conceded February 17, 2009

MICHAEL A. NICOLINO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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No. 08-695V
SPECIAL MASTER
CHRISTIAN J. MORAN

AUG 18 2009

STIPULATION

The parties hereby stipulate to the following matters:

1. Michael A. Nicolino ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of a tetanus and diphtheria ("Td") vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a Td vaccination on October 6, 2006.
3. The vaccine was administered within the United States.
4. Petitioner sustained the first symptom or manifestation of the onset of brachial neuritis within the time period set forth in the Table. He experienced the residual effects of his brachial neuritis for more than six months after his vaccination.
5. Petitioner represents that there has been no prior award or settlement of a civil

action for damages as a result of his condition.

6. There is not a preponderance of the evidence demonstrating that petitioner's condition is due to a factor unrelated to his October 6, 2006, Td immunization.

7. Accordingly, petitioner is entitled to compensation under the terms of the Vaccine Program. Therefore, 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 petitioner has 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 lump sum of \$80,000.00 in the form of a check payable to petitioner.
This amount represents compensation for all damages available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has 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. Payments 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner 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)

11. In return for the payments described in paragraph 8 (and any amounts awarded pursuant to paragraph 9), petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to, or death of, petitioner resulting from, or alleged to have resulted from, the Td vaccination administered on October 6, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about September 30, 2008, in the United States Court of Federal Claims as petition No. 08-695V.

12. If petitioner should die prior to receiving any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event 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 null and void at the sole discretion of either party.

14. This Stipulation expresses a full and complete 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.

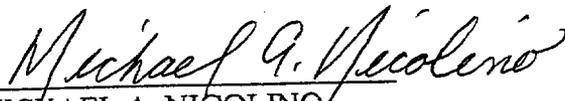
15. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns.

END OF STIPULATION

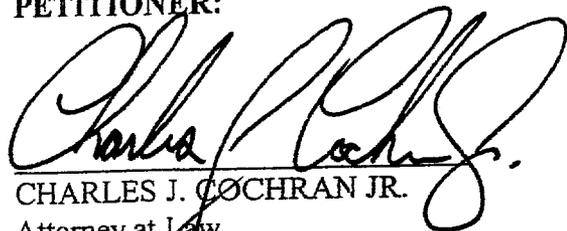
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Respectfully submitted,

PETITIONER:


MICHAEL A. NICOLINO

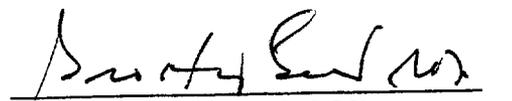
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Dated: 8/18/09