

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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ELIZABETH PERRONG,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Respondent.

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\*  
\* No. 04-1659  
\* Special Master Christian J. Moran  
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\* Filed: January 5, 2007  
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\* Dismissal; failure to prosecute;  
\* hepatitis B; autoimmune disease  
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**UN PUBLISHED DECISION DISMISSING PETITION<sup>1</sup>**

Pursuant to Vaccine Rule 21(b) and (c), Elizabeth Perrong’s petition, filed November 5, 2004, is hereby dismissed for failure to prosecute.

Ms. Perrong filed a petition on November 5, 2004, pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 *et seq.*, alleging that she received hepatitis B vaccine on November 21, 2001, and subsequently suffered an autoimmune disorder. By an order issued on January 13, 2005, the case was stayed at the request of the petitioner. The case was reassigned to the present special master on February 8, 2006. No medical records had been filed by that time.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

Vaccine Rule 18(b) states that 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.

On March 24, 2006, a collective status conference was held in a group of cases involving an allegation of injury due to the Hepatitis B vaccine. At that conference, the undersigned special master determined that the case should proceed and ordered Ms. Perrong to submit medical records by April 24, 2006. The undersigned special master also ordered Ms. Perrong to file an affidavit and an amended petition clarifying her claim by May 24, 2006.

On April 27, 2006, petitioner submitted exhibits 1-12. These exhibits contain the bulk of Ms. Perrong's medical records. These records prompted the Court to request clarifying information from Ms. Perrong. Specifically, she was ordered to address the following:

1. Does petitioner claim that she suffered from systemic lupus erythematosus?
- 2.
3. If petitioner claims to have suffered from systemic lupus erythematosus, when did a doctor first diagnosis this condition? Compare Exhibit 2 at 2-3 (report of Dr. Thomas Harrington, rheumatologist, dated January 30, 2002) (stating that subacute cutaneous lupus was a possible diagnosis) with Exhibit 5 at 9 (report of Dr. Thomas Boran, dated March 4, 2002) (stating that petitioner "recently found out she has lupus").
4. Does petitioner claim that her receipt of a third hepatitis B booster vaccination on November 21, 2001, caused her systemic lupus erythematosus?
5. Does petitioner claim that she suffered from an auto-immune thyroid problem? See Exhibit 2 at 39 (report of Dr. Harrington, dated October 20, 2003).
6. If petitioner claims to have suffered from an auto-immune thyroid problem, when did a doctor first diagnosis this condition? Compare Exhibit 2 at 28 (report of Dr. Paul L Sutton, Allergy and Immunology, dated April 30, 2003) (stating that petitioner "has no thyroid disease") with Exhibit 8 at 12-13 (report of Rehan Admad and Mary Lathrop, dated August 8, 2003) (stating that patient was seen for an evaluation of her hypothyroidism).
7. Does petitioner claim that her receipt of a third hepatitis B booster vaccination on November 21, 2001, caused her thyroid problem?

Order, filed May 11, 2006.

On May 23, 2006, Ms. Perrong filed a motion for extension of time. In it, Ms. Perrong's counsel states that he is working with petitioner to collect updated medical records and to prepare

an affidavit in compliance with the special master's March 28, 2006 order. Ms. Perrong requested an additional 60 days to file the documents.

On June 1, 2006, the court issued an order granting Ms. Perrong's motion. In this order, the special master noted that Ms. Perrong failed to set forth any reason as to why she was requesting additional time. The order also stated that "further motions for enlargements of time will be granted only for a showing of unusual circumstances." See June 1, 2006 Order. Ms. Perrong was ordered to file an affidavit and an amended petition by July 31, 2006.

On June 7, 2006, a status conference was held to clarify Ms. Perrong's responsibilities in responding to the undersigned special master's orders of May 11, 2006 and June 1, 2006. After this discussion, Ms. Perrong was still required to file an amended petition responding to the questions set forth in the May 11, 2006 order.

On July 31, 2006, the date her amended petition was due, Ms. Perrong's attorney filed a motion for enlargement of time. In the motion, petitioner's counsel states that he has been unable to comply with the special master's order because he had difficulty contacting Ms. Perrong and was unable to obtain the necessary information and updated medical records. He requested an additional 30 days to file the documents in compliance with the court's March 28, 2006, May 11, 2006, June 1, 2006 and June 7, 2006 orders.

On August 1, 2006, the special master issued an order granting the motion and giving Ms. Perrong 30 additional days to file the affidavit and amended petition.

On or about September 8, 2006, Ms. Perrong's counsel contacted the undersigned special master to set up a status conference. A status conference was set for September 18, 2006. During that conference, Ms. Perrong's counsel explained that he was having difficulties contacting Ms. Perrong and continued to be unable to comply with the special master's request.

On September 29, 2006, this court issued an order to show cause why this petition should not be dismissed for failure to prosecute. The September 29, 2006 order directed Ms. Perrong to respond by November 27, 2006. To date, the court has received no response. Accordingly, this petition 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.**

S/ Christian J. Moran

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Christian J. Moran  
Special Master