

# ORIGINAL

OFFICE OF SPECIAL MASTERS  
(Filed: October 8, 2009)

FILED  
OCT 8 2009  
OSM  
U.S. COURT OF  
FEDERAL CLAIMS

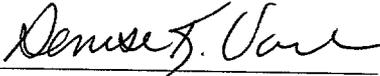
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IN RE: CLAIMS FOR VACCINE INJURIES \*  
RESULTING IN AUTISM SPECTRUM \*  
DISORDER OR A SIMILAR \*  
NEURODEVELOPMENTAL DISORDER \*  
  
VARIOUS PETITIONERS, \*  
  
v. \*  
  
SECRETARY OF HEALTH AND \*  
HUMAN SERVICES, \*  
  
Respondent. \*  
\*\*\*\*\*

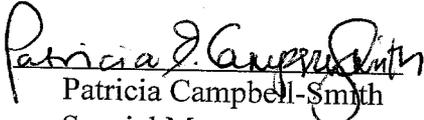
AUTISM MASTER FILE

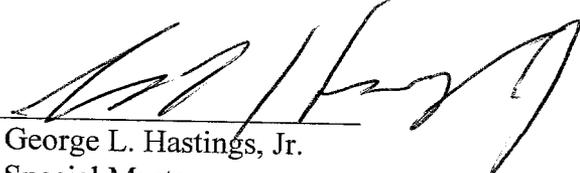
### NOTICE: INFORMATION CONCERNING HOW TO EXIT THE PROGRAM

Members of our office staff often receive inquiries concerning how a petitioner can remove his or her case from the National Vaccine Injury Compensation Program. In response to such inquiries, one of our staff attorneys compiled documents intended to provide information about that topic. Such documents have been discussed informally between Special Master Hastings and attorneys representing the Petitioners' Steering Committee (PSC) and respondent. All agree that the documents provide helpful and accurate information, and copies of the documents have been distributed previously by the PSC representative, Kevin Conway, to other petitioners' counsel active in the Program.

We hereby place updated versions of these documents onto this court's website as part of the Autism Master File, for ease of access by all petitioners' counsel.

  
Denise K. Vowell  
Special Master

  
Patricia Campbell-Smith  
Special Master

  
George L. Hastings, Jr.  
Special Master

## THREE WAYS PETITIONERS CAN EXIT VACCINE PROGRAM

### 1) Opt Out of Vaccine Program after 240-day Notice or 420-day Notice

- See § 300aa-21(b)(1) & (2); See also Vaccine Rule 29.
- Petitioner files a Notice within 30 days after the court issues a 240 or 420 notice indicating that petitioner wishes to withdraw the petition (provided the special master has failed to issue a decision).
- Court issues an Order Concluding Proceedings
- Petitioner preserves the right to file a tort suit. (Note – it appears that petitioners must exercise the right to withdraw within 30 days of receiving the court’s notice, in order to preserve the right to pursue civil litigation.)
- See example of a typical Order Concluding Proceedings, attached as *Sample A*.

### 2) Voluntary Dismissal - Pursuant to Vaccine Rule 21(a)

- Petitioner files a Notice of Dismissal prior to service of Respondent’s Report;  
OR
- Both parties file a signed Stipulation of Dismissal.
- Court Issues an Order Concluding Proceedings for administrative purposes.
- Judgment does not enter.
- It appears that this mechanism to withdraw will **not** allow petitioners to pursue civil litigation.
- See example of typical Order Concluding Proceedings, attached as *Sample B*.

### 3) Motion for Ruling on the Record or Motion for Dismissal Decision

- Petitioners file a Motion requesting a Dismissal Decision (See the Advisory Committee’s proposed template of this Motion, attached as *Sample C*);  
OR
- Petitioners file a Motion for a Ruling on the Record.
- If petitioners have filed no evidence that would show a vaccine-caused injury, the Special Master issues a short dismissal decision. (See example of a Dismissal Decision, attached as *Sample D*.)
- Judgment enters after 30 days.
- Petitioners may reject the judgment and pursue civil litigation. (See § 300aa-21(a)(2)).

Sample A

OFFICE OF SPECIAL MASTERS

\*\*\*\*\*  
 \*  
 JOHN DOE and JANE DOE, \*  
 parents of Child Doe, a minor, \*  
 \*  
 Petitioners, \*  
 \*  
 v. \*  
 \*  
 SECRETARY OF HEALTH AND \*  
 HUMAN SERVICES, \*  
 \*  
 Respondent. \*  
 \*

No. 02-0000V  
Filed: August 23, 2008

ORDER CONCLUDING PROCEEDINGS PURSUANT TO § 300aa-21(b)  
WITHDRAWAL\*

Petitioners have filed a notice to withdraw this petition pursuant to 42 U.S.C. § 300aa-21(b). I have concluded that after a petitioner files such a notice of withdrawal pursuant to 42 U.S.C. § 300aa-21(b), no judgment should be entered. See Hamilton v. Secretary of HHS, No. 02-838V, 2003 WL 23218074, 2003 U.S. Claims LEXIS 401 (Fed. Cl. Spec. Mstr. November 26, 2003). Accordingly, this Order hereby notifies the Clerk of this Court that proceedings “on the merits” of this petition are now concluded, but no judgment “on the merits” should be entered by the Clerk’s office.

George L. Hastings, Jr.  
Special Master

\*The Clerk of this Court is hereby instructed that this Order concludes proceedings “on the merits” of this Vaccine Act petition, but does *not* constitute a “decision.” **The Clerk shall not enter judgment.**

Sample B

OFFICE OF SPECIAL MASTERS

No. 04-0000V

Filed: January 8, 2008

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JOHN DOE and JANE DOE,  
parents of Child Doe, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

\*\*\*\*\*

ORDER CONCLUDING PROCEEDINGS  
PURSUANT TO VACCINE RULE 21(a)

On November 20, 2007, petitioners by motion request the undersigned dismiss the above-captioned case.

Accordingly, pursuant to Vaccine Rule 21 (a), petitioners motion is **granted**, the above-captioned case is hereby **dismissed without prejudice**. The Clerk of the Court is hereby instructed that a **judgment shall not enter** in the instant case pursuant to Vaccine Rule 21(a).

IT IS SO ORDERED.

\_\_\_\_\_  
Gary J. Golkiewicz  
Chief Special Master

Sample C

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

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John Doe,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

No. 00-000V  
Special Master \_\_\_\_\_

\*\*\*\*\*

PETITIONER'S MOTION FOR A DECISION  
DISMISSING HIS PETITION

The petitioner, John Doe ("John"), respectfully moves for a decision by the Special Master dismissing his case. The grounds for this motion are:

1. An investigation of the facts and science supporting his case has demonstrated to John that he will be unable to prove that he is entitled to compensation in the Vaccine Program.
2. In these circumstances, to proceed further would be unreasonable and would waste the resources of the Court, the respondent, and the Vaccine Program.
3. John has been advised by his counsel that a decision by the Special Master dismissing his petition will result in a judgment against him. He has been advised that such a judgment will end all of his rights in the Vaccine Program.

4. John understands that his attorney may apply for fees and costs once his case is dismissed and judgment is entered against him. John further understands that the respondent expressly reserves the right, pursuant to 42 U.S.C. § 300aa-15(e), to question the good faith and reasonable basis of his claim and to oppose, if appropriate, his application for fees and costs. John also understands that if jurisdiction of the Court of Federal Claims has not been established, respondent expressly reserves the right, pursuant to 42 U.S.C. § 16(a)(2) or 16(b), to challenge whether this claim was timely filed and to oppose, if appropriate, his application for fees and costs. The respondent otherwise does not oppose this motion.
5. John does intend to protect his rights to file a civil action in the future. Therefore, pursuant to 42 U.S.C. § 300aa-21(a)(2), he intends to elect to reject the Vaccine Program judgment against him and elect to file a civil action.

Dated: \_\_\_\_\_

s/ \_\_\_\_\_

Petitioner's Counsel



To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioners must prove either 1) that Child Doe suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Child Doe suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Child Doe suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Child Doe’s alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because there are no medical records supporting petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Child Doe suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**<sup>2</sup>

**IT IS SO ORDERED.**

s/ \_\_\_\_\_

Special Master

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<sup>2</sup> The undersigned does not resolve the issue, but notes that respondent contends that petitioner(s) has/have failed to provide evidence establishing that the jurisdictional prerequisites of the Vaccine Act have been met. The undersigned further notes that if petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioner will need to first establish proof of vaccination and the timely filing of their Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys’ fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (1995).