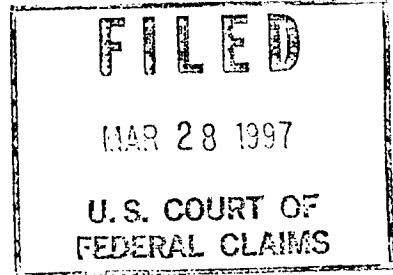


In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 90-3944V
Filed: March 28, 1997



* * * * *

LARRY and DEBORAH LEVY, as
Legal Guardians and Next Friends of
STERLING LEVY, a minor,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES

Respondent.

* * * * *

UNPUBLISHED

H. Baker Kurrus, Little Rock, Arkansas, for petitioners.

Claudia Barnes, Department of Justice, Washington, D.C., for respondent.

DECISION ON ENTITLEMENT

Petitioners filed a Petition for compensation alleging that their son, Sterling, suffered disabilities as a result of DPT vaccine administered on June 26, 1987. More specifically, petitioners allege that within 72 hours after receiving her vaccine, Sterling "suffered the first symptoms and manifestations of onset of residual seizure disorder and encephalopathy." Petition at 2. Respondent contested petitioners' claims arguing primarily that the medical records do not support petitioners' allegations. Respondent's Report filed August 14, 1995.

To resolve the factual and medical issues presented in this case, the court conducted an evidentiary hearing on September 24, 1996, in Little Rock, Arkansas. Thereafter, the parties filed post-hearing arguments; petitioners filed on November 21, 1996, and respondent filed on November

20, 1996. The record is now complete with regard to the issue of petitioners' right to compensation. The court after considering the entire record concludes that petitioners are not entitled to compensation under the Act. The court's reasoning is set forth below.

Background

Petitioners recognized this case as "peculiar and challenging." Pet. PH Mem at 12. Petitioners understood the challenges and complications presented by "the fact that contemporaneous professional medical observation of Sterling's condition was not obtained." Pet. Response filed Mar. 1, 1995, at 2. The court, however, sees this case quite differently. The primary issues presented are whether the factual allegations are believable in light of the contemporaneous medical records and, if petitioners' allegations are found to be credible, what is the medical significance to be attached to those facts. Stated another way, what are the facts of the case, the medical records or petitioners' affidavits and testimony, and do those facts support a finding of the onset of a Table injury within three days following vaccination. Contrary to petitioners' observation, this court sees these issues as common to vaccine cases. The challenge presented is to weigh the evidence to render a just result.

Factual Information

Medical Records

For the most part, the information contained in the medical records is not disputed. Sterling was born on February 25, 1987, in Little Rock Arkansas. There is no indication or allegation of problems with Ms. Levy's pregnancy and delivery. Sterling was seen for a variety of childhood illnesses but otherwise appeared to be developing normally.

¹ Pet. Ex. 4, 19.

¹In retrospect, some physicians noted possible early developmental problems. See Ex. 7 at 32; Ex. 8 at 3. Petitioners contested these notations through their testimony, even though they were the source of the doctors' information. In any event, the court need not resolve this dispute given the court's resolution of this case.

² Petitioners submitted records at different times and using the same exhibit numbers. Thus, the court will cite the records submitted with the Petition as "Pet. Ex. ___"; records

(continued...)

² Sterling received his first DPT immunization on May 1, 1987. Ex. 4 at 1. There is no indication of any reaction to this first immunization. Sterling received his second DPT immunization on June 26, 1987, at roughly the age of four months. Ex. 4 at 6. There is no indication in this record, or any contemporaneous medical record of any reaction to this second vaccination within the following 72 hours.

The first medical record indicating any medical problems is a pediatric visit occurring roughly 15 days after vaccination, on July 11, 1987, wherein the following complaint is noted: "Sm lump 1 cm x 1cm on ant. portion of anterior fontanel, 'Jittery' in upper extremities, 'Bobs' head frequently, [two or three illegible words]." Pet. Ex. 5 at 1; Vol 1, Ex. 5 at 1. However, Dr. Stone diagnosed no neurological abnormalities. The next entry is for a phone call that occurred at 11 am on July 29, 1987. Sterling was reported to have "staring spells [for] 5-6 days." Id. Dr. Stone examined Sterling later that day and had Sterling admitted to St. Vincent's Infirmary for a neurologic examination.

The history given by Ms. Levy at the time of admission indicates as follows:

Mom states noted bump on anterior area of head around June 21st. Seizures started ? 2 weeks ago starting as funny eye movements becoming [illegible word] arm & leg involvement arching, crying associated [with] seizures and unaroused sleeping periods. . . .

Vol 1, Ex. 7 at 26. Sterling was discharged on August 4 with a principal diagnosis of "seizure disorder; infantile spasms." Id. at 2. The next medical record is of a August 11 visit with Dr. Collie wherein he notes that he discussed "DPT & 2 wk interim [after] shot of sx." Vol 1, ex. 5 at 2.

²(...continued)

submitted with petitioners' Response to the Preliminary Review as "Vol I, Ex. ___" and Vol II, Ex. ___." In addition, pages within petitioners' exhibits were not numbered, thus the page references are the court's numbering of petitioners' submissions. Some records were filed twice and thus can be found in several different exhibits..

Subsequent histories are consistent in placing the onset of Sterling's medical problems at a minimum of one week following vaccination. For example, Dr. Prensky, in a history taken a mere seven months prior to the parents' affidavits prepared for this case, states in pertinent part that:

At 4 ½ months of age, about a week to 10 days after his second DPT shot (which was not associated with any significant fever) he developed some head nodding that subsequently developed into classical 'salaam like' infantile spasms.

Pet. Ex. 18 at 1. Likewise, at a visit with a Developmental Pediatrician on September 30, 1987, Ms. Levy informed Dr. Hoffman that "Sterling is a 7-month-old boy who was presumed to be developing normally when, at age 4 ½ months, he began exhibiting behaviors that were subsequently diagnosed as infantile spasms." Vol 1, Ex. 8 at 2. Thankfully, Sterling's seizures have stopped, however, Sterling is developmentally delayed.

Petitioners' Allegations

Petitioners do not contest the information contained in the medical records, but essentially contend that the records do not contain the entire factual story. To complete the story, Mr. and Ms. Levy each filed separate affidavits and testified at the hearing. The affidavits and testimony are not entirely consistent. The court will explore the parents' information seriatim.

Ms. Levy's first affidavit, Pet. Ex. 19 (resubmitted at Vol II, Ex. 24), provides in pertinent part that in the three days following vaccination, Sterling lost motor skills, was lethargic and extremely fussy. Sterling lost head control and began to "bob and weave." Ms. Levy stated that day care personnel reported Sterling having "extreme fits" in the days immediately following the vaccination. Ms. Levy stated that Sterling's "condition worsened, gradually increasing in severity" from the day of vaccination until she took him to Dr. Stone on July 11.

In a second affidavit addressing statements made in Respondent's Report, Ms. Levy stated that:

"When we brought Sterling to Dr. Stone on July 11, 1987, Sterling had been exhibiting these behaviors [head bobs and jittery extremities] for many days and, in

fact, had not been normal since his DPT immunization on June 26, 1987. I recall that Sterling had a slight fever and was crying extensively immediately after the vaccination.

Petitioners' Supplemental Filing filed February 16, 1996.

In her testimony, Ms. Levy stated that she took Sterling in for his second DPT on June 26, but due to the passage of time could not recall the time of day. Tr. at 63. That evening, she stated that he did not cry excessively, but he did wake up that night crying "loudly." This was a "little bit" or "slightly" unusual for him to wake during the night. Tr. at 64. She said that Sterling was "hot", was crying loudly and was "quite upset." Tr. at 65. She gave him Tylenol and it took quite awhile to get Sterling back to sleep. Id.

The next day, Ms. Levy stated that Sterling became "fussy", like he was teething. Tr. at 67. However, it was not until Sterling began exhibiting motor skill problems that Ms. Levy took him to the doctor. It started subtly, his head "kind of bobbing a little bit" and continued to where he could not hold his head up. Ms. Levy could not pinpoint a date when this problem began, stating that it started "days and days and days" before the July 11 doctor's visit. Tr. at 68. Ms. Levy stated that the fussiness began right after the shot, got progressively worse, and then Sterling's head began to bob. Tr. at 70. "It was continuous. The fussiness just got worse and worse, and then the jitteriness started and the head bobbing . . . got worse as time went on. Tr. at 70.

Mr. Levy's affidavit, Pet. Ex. 20, provides in pertinent part that:

Immediately after his second DPT vaccine on June 26, 1987, Sterling dramatically changed. Within three days of that shot, he lost control of his head, which began to bob and weave. He became fussy and irritable. . . .

5. Both Deborah and I work and Sterling was in a day care five days a week, eight hours a day, during this period of time. It was reported to us by the day care employees that Sterling had extreme fits in the days immediately following June 26, 1987.

Mr. Levy testified that he remembers Sterling being fussy and feverish following the June 26 vaccination. Tr. at 15. He stated that he believes that Sterling attended the day care the following day. Tr. at 16. Mr. Levy does not recall the day care workers suggesting that Sterling see a doctor. Tr. at 17. When asked about the "next several days", Mr. Levy replied that "as time went on, it seemed like he began to lose head control." Tr. at 17. Mr. Levy described this loss of head control as "subtle", "easing on" until Sterling was "limp like a noodle." Tr. at 20. At this point, on July 11, Sterling went to see Dr. Stone. Dr. Stone found no neurological problems. Tr. at 20-21; Pet. Ex. 5 at 1.

When asked to recall specific behaviors following the vaccination, Mr. Levy recounted a trip to Memphis on a weekend following the shot when Sterling started screaming. He stated that "we thought he was cutting teeth." Tr. at 24. Ms. Levy gave similar testimony regarding the belief that Sterling was cutting teeth, but occurring immediately after the shot. Tr. At 67. Regarding the 72 hour period following the vaccination, Mr. Levy stated that Sterling was fussy and from that point "he just started going down." Tr. at 28. Regarding the head bobbing and jitteriness, it was a subtle onset with a progressive worsening. Tr. at 30-31. Mr. Levy could not pinpoint a date of onset, but recalled a trip to Sam's wholesale store where he noticed Sterling's lack of head control. Mr. Levy stated that this trip "probably" took place the "next or the weekend after" the shot. Tr. at 32.

Medical Testimony

The parties proffered the testimony of medical experts in support of their respective cases. Petitioners presented Dr. John H. Bornhofen, a child neurologist, Tr. at 142, and respondent presented Dr. Steven L. Linder, who is Board certified in pediatrics and neurology, with a special competence in child neurology. Tr. at 199. Dr. Bornhofen submitted four affidavits in this case. This unusual number of affidavits was necessary because Dr. Bornhofen's statements were less than clear. However, Dr. Bornhofen clarified his opinions through his testimony. Dr. Bornhofen's opinion was that Sterling suffered an encephalopathy following his vaccination. Tr. at 146. This encephalopathy had its onset with the fussiness which occurred within the critical three day period, Tr. at 152, then became progressively worse until the loss of head control began. Tr. at 152. Dr. Bornhofen recognized that the first symptoms were not "pronounced," but was relying on the fact that Sterling was "never really normal" following the vaccination. Tr. at 157. Dr. Bornhofen explained that following the DPT, Sterling suffered an encephalopathy which then caused the onset

of infantile spasms latter seen in Sterling. Tr. at 151, 159, 173. Dr. Bornhofen conceded that his opinion hinged on a steady progression of worsening in Sterling following the vaccination, Tr. at 184, and that their are “gaps” in the medical history of this case. Tr. at 188.

Dr. Linder testified that Sterling did not suffer an acute encephalopathy following his vaccination. Tr. at 202. Dr. Linder pointed out that 50% of children are fussy and feverish following vaccination. Tr. at 202. Dr. Bornhofen agreed. Tr. at 175-76. Actually, Dr. Linder agreed to a great extent with Dr. Bornhofen in that Dr. Linder saw the head bobbing as an indicator of the onset of an encephalopathy progressing into the infantile spasms. Tr. at 212. What Dr. Linder disagreed with was Dr. Bornhofen’s reliance on the fussiness as the onset of a chronic encephalopathy. Tr. at 210. Dr. Linder stated that symptoms of loss of tone, unresponsiveness, not reaching out, and being withdrawn would signal the onset of an encephalopathy. Tr. at 210-211. However, he also stated that “the parents say about these things, is that the children are different . . .” Tr. at 210. The court has heard similar testimony from other experts and the court sees this as the key to Dr. Bornhofen’s testimony as well.

DISCUSSION

Dr. Bornhofen struggled with the facts in this case. This is clearly seen in the four affidavits he submitted and in his testimony. However, Dr. Bornhofen was willing to render an opinion based upon what he interpreted to be a progressive deterioration, no matter how subtle or slight, in Sterling’s condition coupled with the fact that Sterling was “never really normal following the shot.” Tr. at 157.

In the final analysis, the court does not discern a major gulf between the experts. The court summarized the differences between the experts at the close of the hearing. Tr. at 242-43. If the court accepts the families’ testimony that Sterling was never the same child beginning within three days following vaccination and continuing thereafter, the court reads Dr. Linder’s testimony as essentially supportive of a finding in petitioners’ favor. However, if the court finds the facts as respondent and Dr. Linder suggest, that is that Sterling’s worsening began at the earliest 7-10 days following vaccination, neither Dr. Bornhofen’s nor Dr. Linder’s testimony would support petitioners’ claims. Thus, the court sees the factual determination as the critical first step in deciding this case.

In resolving the factual questions in this case, it is clear to the court that Sterling “reacted” to the vaccination. However, reactions are quite common. See Longitudinal Study of Adverse Reactions Following Diphtheria-Tetanus-Pertussis Vaccine in Infancy, Long, Pediatrics, Vol. 85 No. 3, March, 1990; nature and Rates of Adverse Reactions Associated with DTP and DT Immunizations in Infants and Children, Cody and Baraff, Pediatrics Vol. 68 No. 5, November 1981; see also Tr. at 175-76, 202. The problem presented in this case, and presented in numerous cases filed under this Program, is the severity of the symptoms, were they symptoms of a “normal” reaction or did the symptoms manifest a Table injury. Confronted with a similar situation, Judge Andewelt stated in pertinent part that:

But petitioner simply places too much weight on the individual symptoms that Shanelle exhibited, such as lethargy, during the post-vaccine period. Proof that Shanelle experienced certain symptoms that are commonly experienced by patients who suffer from an HHC does not necessarily mean that Shanelle experienced an HHC. Particular medical symptoms frequently can indicate a variety of medical conditions.

Raspberry v. Secretary of DHHS, 33 Fed. Cl. 420, 422-23 (1995). It follows that to determine a correct diagnosis from a set of symptoms requires clear, specific descriptions of those symptoms. Therein lies the problem in this case. Not only are descriptions absent from the contemporaneous medical records, gaps that Dr. Bornhofen freely admitted troubled him, but petitioners’ effort to fill those gaps vague, contradictory and ultimately unpersuasive.

First and foremost is the fact that the medical records do not support petitioners’ contentions. Beginning with Dr. Stone’s examination on July 11, while the head bobbing is noted, there is no mention of an extremely fussy, crying child. There is also no indication of the parents complaining of a distressed or abnormally behaving child. In fact, the notations indicate that Sterling was seen as normal at that visit. Pet, Ex. 5 at 1. The doctor’s notations of normalcy stand in stark contrast to the father’s description of Sterling on this date as “limp like a noodle,” Tr. At 20, or a “jelly type child.” Tr. at 47-48.

The next history on note was taken by Dr. Hoffman, a developmental Pediatrician, on September 30, 1987. The history was provided by the mother. Pet. Vol I, Ex. 8 at 2; Tr. at 116.

This is a detailed history taken during the course of a detailed examination. Tr. at 117. The first item of note is that Sterling “was presumed to be developing normally when, at age 4 ½ months, he began exhibiting behaviors that were subsequently diagnosed as infantile spasms.” Pet. Vol I, Ex. 8 at 2. The court asked Ms. Levy about this history, noting that 4 ½ months was about the date of the July 11 doctor’s visit. Ms. Levy simply replied that “I’m sure I told him that if it’s in the record.” Tr. at 118. Most meaningful to the court, however, was the Developmental History contained on the second page. There is absolutely no mention of any behavior problems; no fussiness, no crying, no progressive deterioration to the point of being a “jelly child”. There is also no mention of any connection or of timing of onset with the immunization, despite the fact that Ms. Levy testified that she drew a correlation between the DPT and Sterling’s problems as of the July 28 hospitalization. Tr. at 105-06. In fact, Ms. Levy’s history given to Dr. Hoffman indicates a latter onset point, at 4 ½ months or roughly July 11. Even Dr. Hoffman noted that Sterling’s “[d]evelopmental history is somewhat confusing.” In any event, this visit, this history, was the logical opportunity to discuss Sterling’s development, the positives and the negatives. While head control problems and infantile spasms are mentioned, there is no mentioning of the progressive deterioration following vaccination that petitioners allege today. Dr. Bornhofen had no explanation for this “gap” in the record. Ms. Levy’s explanation that Dr. Hoffman did not ask her those questions, Tr. at 119, or failed to write the information down, Tr. at 121, stretches any reasonable bounds of credulity. As Dr. Linder testified, taking a thorough history is a particular aspect of a Developmental Pediatrician’s job. Tr. at 204-05.

Lastly, Dr. Prensky took a history as stated in a letter dated February 21, 1990. Pet, Ex. 18 at 1. This history is a mere eight months prior to the parents’ signing of their first affidavits. However, the information was not consistent. Dr. Prensky states that Sterling was “developing normally and at 4 ½ months . . . he was rolling from his abdomen to his back and was smiling. . . . At 4 ½ months of age, about a week to 10 days after his second DPT shot (which was not associated with any significant fever) he developed some head nodding that subsequently developed into classical ‘salaam like’ infantile spasms.” Again, there is no mention of the continual and progressive deterioration which allegedly began the day after vaccination and continued unabated until the onset of the head nodding and infantile spasms.

It is well settled that consistent medical records are given weight over the conflicting oral testimony offered after the fact. See Murphy v. Secretary of DHHS, No. 90-882V (Cl. Ct. Spec.

Mstr. April 25, 1991), sustained, 23 Cl. Ct. 726 (Cl. Ct. 1991), aff'd, 968 F.2d 1226 (Fed. Cir. 1992), cert. den., 113 S. Ct. 463 (1992). The Federal Circuit, when faced with this issue, stated that:

Medical records, in general, warrant consideration as trustworthy evidence. The records contain information supplied to or by health professionals to facilitate diagnosis and treatment of medial conditions. With proper treatment hanging in the balance, accuracy has an extra premium.

Cucuras v. Secretary of DHHS, 993 F.2d 1525, 1528 (Fed. Cir. 1993).

On the other hand, the case law also recognizes the reality that medical records may be incomplete or inaccurate. Clear, consistent, and cogent testimony can overcome contradictory medical records. See Stevens v. DHHS, No. 90-221V (Cl. Ct. Spec. Mstr., Dec. 21, 1990). Yet, in the present case, the testimonial evidence presented was neither clear enough nor consistent enough to overcome the contemporaneous medical records.

The information contained in the medical records is consistent and relatively complete. Petitioners have offered no reasonable justification or explanation for the absence of a medical history that is consistent or supportive of the allegations presented in this case. The court does not blindly adopt the information contained in the medical records. The court paid close attention to the testimony looking for a credible explanation. However, the court found instead untrustworthy testimony that could not be relied upon. Some specific reasons, but by no means a complete catalogue, for this conclusion are given below.

To begin with, the parents' affidavits conflicted with their testimony. Both reported in their affidavits that Sterling's head bobbing began within the three days following vaccination. Pet., Exs. 19 and 20. However, both testified that they could not recall when the head bobbing began. Tr. at 31-32, 38, 69, and 104. Both affidavits stated that day care workers reported that Sterling exhibited "extreme fits in the days immediately following June 26, 1987." Again, the testimony was quite different. When asked, Mr. Levy stated that "I don't recall anything in terms of a 'fit.' You know, I don't even recall that, to be honest with you." Tr. at 36. Ms. Levy stated that "[t]hey told me he was crying, but you know, I don't remember having a specific conversation, except for Miss Wanda,

about extreme fits.” Tr. at 101. On cross-examination, Ms. Levy stated that she thinks she was describing fussiness and crying. Tr. at 103.

The entire day care issue presented a microcosm of the problems with this case. Sterling stayed in a day care at Ms. Levy’s workplace. Tr. at 79. She stated that she sometimes worked weekends but stated that she probably worked Monday-Thursday the week following the vaccination. Tr. at 102. She nursed Sterling everyday at the day care and recalled no day care personnel expressing concern about Sterling until July 10. Tr. at 79-80. Later on cross-examination, Ms. Levy stated that the day care workers reported fussiness and not eating well following vaccination, “[t]hey reported that to me a lot.” Tr. at 102. However, Wanda Herring submitted an affidavit in this case wherein she states that she recalls Sterling having head control problems and mentioning this to Ms. Levy but that she “never saw Sterling experience a seizure, staring spell, or extreme fit.” Res. Ex. F. Ms. Carol Lawrence, the Director of the Day Care, submitted an affidavit in which she stated that “I never witnessed Sterling experience a seizure, staring spell, or extreme fit, and I was never informed of any such activity by other day care center employees.” Res. Ex. E. In addition, Ms. Lawrence testified before the court. Ms. Lawrence stated that she does not recall a period of extreme fussiness, Tr. at 126, but more importantly, if the child appears abnormal the standard procedure is to contact the parents. Tr. at 128-30. It must be remembered that Dr. Bornhofen’s opinion is premised on Sterling not being normal from the point of vaccination to the onset of the head bobbing. As seen here, not only was Sterling well enough to be taken to the day care, the day care personnel had no recollection of any such activity and, at the time in question, had not acted in response to a sick child by contacting the parents. As in the case as a whole, the parents’ testimony regarding this issue conflicted with the care givers’ information, conflicted with the actual care given to Sterling and was not supported by any contemporaneous documentation.

Ms. Lawrence did state that they watched Sterling for a “lack of head control that other children of his age” showed for two to two and one half weeks. Tr. at 125. This period was between when Sterling was 4-6 months of age. Tr. at 135. While petitioners emphasize this testimony to support their factual scenario, it is crystal clear to the court that this testimony is unreliable due to Ms. Lawrence’s uncertainty about the timing. The critical measuring point is whether the conversation took place before or after Ms. Levy talked to the doctor about the head control. Since Ms. Levy discussed the head control at the July 11 appointment, 2 to 2 ½ weeks prior would place Ms. Lawrence’s observations at about the time of the DPT. However, Ms. Lawrence was anything

but clear on this point. She first stated that her conversation with Ms. Levy took place after the doctor's visit, thus making it impossible to gauge the temporal relationship with the vaccination. Tr. at 126. On cross-examination, she stated that Ms. Levy indicated that she would "check with her physician," meaning that the doctor's visit had not yet taken place. Tr. at 133. This inconsistency was brought to her attention immediately, to which she replied "I'm not real clear on that." Id.; see also Tr. at 136-37. Contrary to petitioners' arguments, Ms. Lawrence's unreliable observations about the timing of the head bobbing provide no substantiation for petitioners' allegations since it is unclear when the observations took place.

In the final analysis, the court found little reason to give the parents' testimony any weight. Their testimony conflicted with the medical records (Sterling was "limp like a noodle", Tr. At 20, whereas Dr. Stone found him to be normal, Tr. At 20-21; Pet. Ex. 5 at 1), conflicted with their own affidavits, conflicted with the testimony and affidavits of the day care personnel, was uncertain (on numerous occasions testimony was changed on cross-examination or re-direct) and was unreliable.

There were numerous uncertainties and contradictions in the parents' testimony that rendered it unreliable. For example, on the critical factual issue of the severity of Sterling's "fussiness," Ms. Levy testified that "[i]t was continuous. The fussiness just got worse and worse." Tr. At 70. However, in response to the court's questions concerning how such a fussy child could be placed in a day care, Ms. Levy stated first that the "fussiness subsided somewhat" over the two week period prior to the first doctor's visit and second that if he had been crying constantly the day care would have contacted her. Tr. At 110. No such contact was made. Another example is where Ms. Levy stated that Sterling could be consoled during the 72 hour period or otherwise they would have taken Sterling to the doctor. Tr. At 106. A mere three pages later, in response to the court, Ms. Levy stated that she "couldn't get him to calm down," Tr. At 109.

While some may find the court to be overly picky in its review of the testimony, it must be borne in mind that causation requires a finding of onset within a narrow window of time. In addition, a number of years have passed since the events in question took place. Add to this mix is the fact that the allegations were not reported or recorded by medical professionals, that Sterling was well enough to be placed in the day care and to be taken on a trip to Memphis, and that the day care providers did not recall or report this sick child. Thus, as case law has logically pointed out, a

careful review of the reliability of witness testimony presented at trial must take place. That is what this court has done. Unfortunately for petitioners, the court does not find the testimony credible.

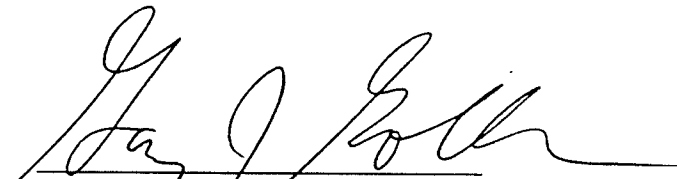
Dr. Bornhofen's opinions, both as to the Table injury and causation in-fact were premised upon factual evidence provided by the parents. This information concerned Sterling's alleged abnormal behavior following vaccination and continuing up to the onset of his head bobbing. Without this factual information provided by the parents, Dr. Bornhofen's opinion fails as unsupported since the medical records do not record the parents' allegations. As stated above, the court rejects the parents' testimony as not credible. Thus it follows that Dr. Bornhofen's opinions fail as well. Accordingly, petitioners' claim must be denied as unsupported by either medical records or expert opinion.

One last comment that the court feels compelled to make, the court was not impressed with the quality or substance of Dr. Bornhofen's testimony. Dr. Bornhofen appeared to have a set conclusion in mind and was willing to stretch any statement, symptom or event to meet his pre-determined result. Dr. Bornhofen recognized the inconsistencies and contradictions in the facts of this case, but simply avoided direct questions regarding how he reconciled the factual discrepancies. Instead, Dr. Bornhofen relied upon vague, general assertions in support of his opinion. In contrast,

Dr. Linder's testimony was clear, cogent and highly persuasive. As stated earlier in this opinion, this case turned primarily on the court's factual determinations. However, to the extent that any disagreement existed between the experts, the court finds Dr. Linder to be far and away the more credible expert.

CONCLUSION

The court finds that the medical records present the facts in this case. Since the court rejected the parents' testimony, Dr. Bornhofen's opinion has no factual predicate and therefore must be rejected. This leaves petitioners' claim unsupported by either medical records or medical opinion. Accordingly, petitioners' claim must be dismissed. The Clerk is directed to enter judgment consistent with this decision.

A handwritten signature in black ink, appearing to read "Gary J. Golkiewicz", written over a horizontal line.

Gary J. Golkiewicz
Chief Special Master