

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
**No. 02-0938V**  
(Not to be published)

\*\*\*\*\*  
\*  
MICHAEL R. RUGGIERO \*  
and JUDITH D. RUGGIERO, \*  
natural parents of \*  
Nicholas Ruggiero, a minor, \*  
\*  
                                Petitioners, \*  
\*  
                                v. \*  
\*  
SECRETARY OF HEALTH AND \*  
HUMAN SERVICES \*  
\*  
                                Respondent. \*  
\*  
\*\*\*\*\*

Filed: April 12, 2011

Dismissal; Failure to Follow Court  
Orders; Failure to Prosecute;  
Insufficient Proof

**DECISION<sup>1</sup>**

On August 5, 2002, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the Program”],<sup>2</sup> on behalf of Nicholas, alleging that various vaccinations injured Nicholas.

Thereafter, petitioners failed to file the required statement of intent to proceed with this claim and an amended petition, as ordered by the undersigned on January 28, 2011. Instead, petitioners’ counsel filed a Status Report advising the court that petitioners have been unresponsive to counsel’s repeated efforts to contact them by mail, by telephone and by e-mail.

---

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

## I. The Omnibus Autism Proceeding

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as “autism” or “autism spectrum disorders” [“ASD”] were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP and will not be repeated here.<sup>3</sup>

Ultimately, the Petitioners’ Steering Committee [“PSC”], an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, rubella vaccine could cause ASDs. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant’s brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC’s first theory rejected the petitioners’ causation theories. *Cedillo*, 2009 WL 331968, *aff’d*, 89 Fed. Cl. 158 (2009), *aff’d*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst*, 2009 WL 332306, *aff’d*, 88 Fed. Cl. 473 (2009), *aff’d*, 604 F.3d 1343 (Fed. Cir. 2010); *Snyder*, 2009 WL 332044, *aff’d*, 88 Fed. Cl. 706 (2009).<sup>4</sup> Decisions in each of the three “test cases” pertaining to the PSC’s second theory also rejected the petitioners’ causation theories, and petitioners in each of the three cases chose not to appeal. *Dwyer*, 2010 WL 892250; *King*, 2010 WL 892296; *Mead*, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded. Petitioners remaining in the OAP must now decide whether to pursue their cases, and submit new evidence on causation, or take other action to exit the Program. The petitioners in this case have failed to inform the court how they intend to proceed.

## II. Failure to Prosecute

It is petitioners’ duty to respond to and comply with court orders. Failure to respond to a court order because petitioners have failed to stay in contact with their attorney is deemed noncompliance with a court order, and noncompliance will not be tolerated. As I reminded petitioners in my order, dated January 28, 2011, failure to follow court orders shall result in dismissal of petitioners’ claim. *Tsekouras v. Sec’y, HHS*, 26 Cl. Ct. 439 (1992), *aff’d per*

---

<sup>3</sup> The Theory 1 cases are *Cedillo v. Sec’y, HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. Sec’y, HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. Sec’y, HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. Sec’y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. Sec’y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec’y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

<sup>4</sup> Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

*curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec’y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b).

### III. Causation

To receive compensation under the Program, petitioners must prove either 1) that Nicholas suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Nicholas suffered an injury that was actually caused by a vaccine. *See* §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Under the Vaccine Act, a special master cannot find a petitioners have proven their case by a preponderance of the evidence based upon “the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” 42 U.S.C. § 300aa-13(a) (2006). Petitioners have failed to file sufficient medical records and evidence in this case. An examination of the record does not support a finding that Nicholas suffered a “Table Injury.” Nor does the record contain a medical opinion or any other persuasive evidence indicating that Nicholas’ autism spectrum disorder was vaccine-caused.

On the record in this case, it is clear that petitioners have failed to demonstrate either that Nicholas suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

/s/ George L. Hastings, Jr.  
George L. Hastings, Jr.  
Special Master