

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 10-879V
Filed: April 10, 2013**

RACHEL GRAF,	*	
Petitioner,	*	Stipulation; HPV; Seizures; Pulmonary embolism;
	*	Subclavian artery thrombosis; Chronic urticaria;
v.	*	Attorney Fees and Costs
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
Respondent.	*	

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Rachel Graf [“petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on December 22, 2010. Petitioner alleges she suffered seizures, a pulmonary embolism, subclavian artery thrombosis, and chronic urticaria as a result of the human papillomavirus quadrivalent [“HPV”] vaccines she received on July 20, 2007 and December 28, 2007. See Stipulation, filed April 10, 2013, at ¶¶ 2, 4. She further alleges that she experienced residual effects of her injuries for more than six months. *Id.* at ¶4.

Respondent denies that petitioner’s HPV vaccinations caused seizures, a pulmonary embolism, subclavian artery thrombosis, chronic urticaria, or any other injury. Stipulation at ¶ 6. Respondent also denies that petitioner experienced residual effects of any vaccine-related injury for more than six months. *Id.* Nevertheless, the parties have agreed to settle the case. On April 10, 2013, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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.

² 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).

Respondent agrees to pay petitioner:

A lump sum payment of **\$90,000.00** in the form of a check payable to petitioner, which represents compensation for all damages that would be available under § 15(a)

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein.

Additionally, the April 10, 2013 stipulation addressed attorney fees and costs. Pursuant to General Order #9, the stipulation indicates petitioner incurred no personal litigation costs.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to §§ 15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total \$33,656.07³ in the form of a check payable jointly to petitioner and petitioner's counsel of record, Jason W. Whitley, for petitioner's attorney fees and costs.**

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).

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RACHEL GRAF,)	
)	
Petitioner,)	
v.)	No. 10-879V
)	Special Master Vowell
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Rachel Graf, 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 the human papillomavirus quadrivalent (“HPV”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received HPV immunizations on July 20, 2007, and December 28, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that as a result of her HPV vaccine(s), she suffered seizures, a pulmonary embolism, subclavian artery thrombosis, and chronic urticaria. Petitioner further alleges that she experienced the residual effects of her injury(ies) for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her injuries.
6. Respondent denies that petitioner’s HPV vaccine(s) caused seizures, a pulmonary embolism, subclavian artery thrombosis, chronic urticaria, or any other injury, and denies that

petitioner experienced the residual effects of any vaccine-related injury for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that 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 payments:

a. A lump sum of \$90,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of \$33,656.07 in the form of a check payable to petitioner and petitioner's attorney, Jason W. Whitley, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

10. Payments made pursuant to paragraph 8 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).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the HPV vaccination(s) administered on July 20, 2007, and/or December 28, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about December 22, 2010, in the United States Court of Federal Claims as petition No. 10-879V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if 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 voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There

Respectfully submitted,

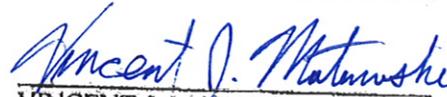
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RACHEL GRAF

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Dated: April 10, 2013