

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

(Filed: February 26, 2003)

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IN RE: CLAIMS FOR VACCINE INJURIES \*  
RESULTING IN AUTISM SPECTRUM \*  
DISORDER OR A SIMILAR \*  
NEURODEVELOPMENTAL DISORDER \* AUTISM MASTER FILE  
\*  
VARIOUS PETITIONERS, \*  
\*  
v. \*  
\*  
SECRETARY OF HEALTH AND \*  
HUMAN SERVICES, \*  
\*  
Respondent. \*  
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### AUTISM UPDATE AND ORDER—FEBRUARY 26, 2003

This Update describes a number of recent developments in the Omnibus Autism Proceeding that have occurred since the last Update dated January 14, 2003. I note that counsel for both parties and I have continued to work diligently on the Proceeding during that time period. Status conferences were held on January 23, January 31, February 7, and February 24, 2003,<sup>1</sup> while counsel were also working extensively with one another in between these conferences, in order to keep the Proceeding moving forward.

#### *A. Petitioners' Steering Committee*

The Petitioners' Steering Committee has significantly expanded. The attorneys who constituted the original Committee have made extensive efforts to involve additional attorneys in the Omnibus Autism Proceeding. In January, a telephonic conference call, among original Committee members and other counsel who have filed autism cases in this court, involved

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<sup>1</sup>Counsel participating in those conferences were Jeffrey Thompson and Ghada Anis for petitioners, Vincent Matanoski and Mark Raby for respondent. A number of other petitioners' counsel also participated in the status conference held on January 31, 2003.

approximately 70 attorneys. On February 1, 2003, approximately 30 attorneys participated in an in-person conference in Washington, D.C. A number of counsel have been added to the Petitioners' Steering Committee. That committee will soon provide to me a list of its expanded membership.

### ***B. Issue of "formal notices"***

At the status conferences held on January 31 and February 7, 2003, we discussed the topics of the "formal notices" issued pursuant to 42 U.S.C. § 300aa-12(g), and the motions for "suspension of proceedings" available pursuant to 42 U.S.C. § 300aa-12(d)(3)(C). In between those conferences, the members of the Petitioners' Steering Committee discussed these topics among themselves.

At the February 7 conference, petitioners' counsel represented that those petitioners' counsel who participated in the discussions had requested that when one of their cases reached the 240-day limit of 42 U.S.C. § 300aa-12(d)(3)(A)(ii), the special master should *presume* that the petitioner moves for a suspension of proceedings pursuant to 42 U.S.C. § 300aa-12(d)(3)(C) of *up to 180 days*, with the understanding that at any time during the 180-day suspension period the petitioner could *withdraw* the motion for suspension of proceedings, and the special master would thereupon end the suspension of proceedings and issue the formal notice required by 42 U.S.C. § 300aa-12(g). Under this procedure, the special master would file in each case an order confirming the making and granting of the motion for suspension of proceedings. If the 180-day suspension period were to run its course without the petitioner withdrawing the motion for suspension, then the special master would issue the formal notice pursuant to 42 U.S.C. § 300aa-12(g) at the end of the 180-day period.

I agree that this procedure would be an efficient way to implement the statutory provisions contained at 42 U.S.C. § 300aa-12(d)(3) and (g), while minimizing the burden on the office of the Clerk of this court. I appreciate the cooperation of the Steering Committee in devising this proposal in response to my concerns about minimizing the paperwork burden. I will implement this procedure immediately.

Accordingly, my office staff is compiling a list of those petitioners' counsel who desire to automatically make the suspension motion in their cases at the end of the 240-day period. In other autism cases not involving such counsel, toward the end of the 240-day period my staff will contact the petitioner's counsel, or petitioner appearing *pro se*, to see if the petitioner wishes to move for a suspension of proceedings.

### ***C. Discovery***

As indicated in my previous Autism Updates, a tremendous amount of work has been done by counsel for both parties concerning the petitioners' extensive discovery requests. I will not reiterate developments covered in my previous updates, but I will summarize below our progress and certain new developments in the discovery area.

1. Much material responsive to the petitioners' extensive Requests for Production was made available to petitioners during the fall of 2002 via various government web sites, and petitioners' counsel have analyzed that data. Extensive additional material has been supplied to petitioners over the last several weeks, in large batches produced on December 23, January 6, January 21, January 22, and January 27. At this point, the respondent has now complied with most, though not all, of the petitioners' Requests for Production.

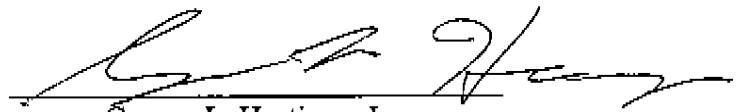
2. One category of documents requested, pursuant to petitioners' Requests for Production Nos. 10 and 12, involves vaccine license applications. In this area, efforts to produce material are proceeding more slowly, due in part to the massive amount of material involved (more than 400,000 pages of material potentially relevant to those requests have been identified so far), and in part to the fact that funds for the relevant agency for the current fiscal year were not appropriated until just a few days ago. The process of production of that material has begun, but has thus far moved more slowly than had been anticipated. Opposing counsel are working to determine how best to speed the production of this material.

3. As previously indicated, the parties have been in disagreement concerning the issue of production of materials relating to certain ongoing and proposed studies. An evidentiary hearing concerning that issue had been scheduled for January 31, 2003. However, the parties have engaged in efforts to resolve that issue, and jointly requested postponement of the scheduled hearing. They will soon inform me as to whether those efforts have been successful.

4. Because the *first round* of discovery in this Proceeding is not yet complete, the parties have jointly requested that we postpone certain deadlines for the potential *second round* of discovery, which was to have begun this month, pursuant to the Master Scheduling Order that was attached to the Autism General Order #1 filed on July 3, 2002. Those deadlines are hereby postponed by 60 days each, with the goal being that the second round of discovery can be shortened from its current projected duration, so that the entire discovery process can still be completed by the scheduled date.

5. Finally, I again state my impression that all parties involved have been working very hard on these discovery issues. It appears that a massive effort involving a number of government agencies has taken place, in an effort to provide a thorough response to the discovery requests. I continue to perceive that both sides are acting very diligently, and in good faith. I note that in those areas where discovery is not yet complete, opposing counsel continue to work amicably with each other with the goal of completing production cooperatively. The parties have not yet reached an impasse concerning any issue that they have needed to present to me for formal resolution, although I am ready if they need me to do so. My role in the discovery process thus far, rather, has mainly been to work informally with the parties to foster their cooperative efforts. I extend my thanks to all counsel involved for their tremendous efforts, as well as their cooperative attitudes, in these difficult matters. I further note that

all counsel, as well as myself, are doing everything in our power to expeditiously conclude discovery matters so that we can comply with the projected schedule for conclusion of the Omnibus Autism Proceeding.

A handwritten signature in black ink, appearing to read "George L. Hastings, Jr.", written over a horizontal line.

George L. Hastings, Jr.  
Special Master