

2008 WL 5082997

Only the Westlaw citation is currently available.

United States Court of Federal
Claims, Office of the Special Masters.

Sarah MOYER, by and through
Rachel and Joel Moyer, as parents
and natural guardians, Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES, Respondent.

No. 08-0463V. | Nov. 13, 2008.¹

PUBLISHED ORDER²

RICHARD B. ABELL, Special Master.

*1 The Court conducted a status conference in the above-captioned case on 27 October 2008, at the request of Respondent. Respondent initiated the status conference due to a dispute regarding access allowed to Respondent's life care planner as the parties develop information pertaining to damages apportionable in this case.

Petitioners had requested audio recording of all conversations with Sarah's health care providers to which Respondent's life care planner is a party, and wished to preclude Respondent's life care planner from communicating *ex parte* with those providers. Respondent sought Petitioners' release enabling Respondent's life care planner to communicate with the medical providers.

The Court first expressed its hopeful desire that fairness, equity and professional etiquette should govern all interactions between Counsel, their agents, those medical providers, and even the Petitioners themselves. As practical applications of that etiquette, notice should be provided to opposing counsel's life care planner of scheduled consultations with medical providers, and agreed-upon scheduling should be followed once set (barring unforeseeable exigence). Participants should appear on time: neither early, such that *ex parte* communications are possible, nor late, such that the other participants are held up.

The Court **ordered** Petitioners to grant Laura Fox, Respondent's life care planner, a release to discuss with Sarah's medical providers Sarah's past, current, and future care needs; provided that Petitioners' life care planner is included in those discussions as well. That is to say, no agent of Respondent may engage in *ex parte* communication with Sarah, her treating medical providers, or Petitioners themselves.³

Also, the Court **ruled** that **no recording** of these joint communications is necessary; however, the option of audio recording remains permissible, provided that it is stipulated to by both parties and is used merely in aid of calculating damages by the life care planner. Certainly, any such **recording** will be **inadmissible** in this case on the issue of damages.

Likewise, site visits are standard operating procedure in determining damages apportionable to a petition, as a means of evaluating the health condition and needs of an injured party. **Non-intrusive examination, performed in tandem with both life care planners, is appropriate as part of the site visit process. The Court overruled Petitioners' objection to direct evaluation, inasmuch as Petitioners have placed Sarah's health care status and needs at issue, as a dispute regarding the damages available under § 15 of the Vaccine Act.**

Wherefore, by the statutory authority granted to the Court by § 12 of the Vaccine Act, the Court **orders** Petitioners to **submit to non-intrusive site visit evaluation** of both life care planners, via **Rule 35(a) of the Court of Federal Claims**, upon the motion of Respondent made under Vaccine Rule 7(b). **Again, the Court stresses professional courtesy and interpersonal etiquette as watchwords throughout this process.**

*2 The previously-scheduled **status conference** is still scheduled to commence on **12 January 2009 at 10:00 AM (EST)**. Any obstacles encountered in the interim may be directed to my law clerk, Isaiah Kalinowski, Esq., at (202) 357-6351.

IT IS SO ORDERED.

Footnotes

- 1 This Order was originally filed on 28 October 2008 as an unpublished Order.
- 2 This Order will be published and posted to the Court of Federal Claims website. Therefore, Petitioners are reminded that, pursuant to [42 U.S.C. § 300aa-12\(d\)\(4\)](#) and Vaccine Rule 18(b), they have 14 days from the date of this Order within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” may be made available to the public per the E-Government Act of 2002, [Pub.L. No. 107-347](#), [116 Stat. 2899](#), 2913 (Dec. 17, 2002).
- 3 Respondent moved for a similar limitation to be placed on Petitioner's life care planner, that she engage in no *ex parte* communication with medical providers. The Court **denied** that motion as it would amount to a violation of Petitioners' attorney-client and doctor-patient privileges.