

ORIGINAL

FILED
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U.S. COURT OF
FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: November 26, 2003)

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.

ORDER RE MERCK'S "MOTION FOR INFORMATION RE DISCOVERY"

On November 14, 2003, Merck & Co. filed a "Motion for Information re Discovery to Date." I hereby deny that motion, pursuant to 42 U.S.C. § 300aa-12(d)(4)(A), which states that-

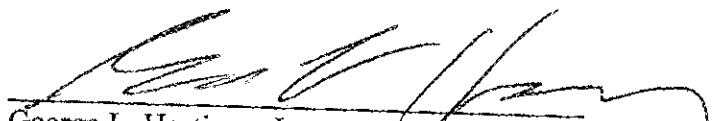
information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

The information that Merck seeks was submitted to me (and to the Petitioners' Steering Committee) by respondent "in a proceeding or a petition"--i.e., in the individual Vaccine Act autism case of *Taylor v. Secretary of HHS*, No. 02-699V. Therefore, neither I nor the Petitioners' Steering Committee may disclose that information to Merck, which is not a party to the *Taylor* proceeding nor to any other Vaccine Act proceeding, without the "express written consent" of respondent.

I note that Merck's argument in favor of its request is logical and persuasive. If I had discretion to disclose the information in question on my own, I would do so. Further, I note at the status conference held on November 25, 2003, the representative of the Petitioners' Steering Committee stated that the Committee would also have no objection to sharing the requested information with Merck. The "person who submitted the information," however, is respondent.

Thus, according to law, that information may not be disclosed to the non-party Merck without respondent's consent.

Accordingly, I must deny Merck's motion, which seeks that I grant Merck access to the information in question, because I am not authorized to do so under the statutory section quoted above. Instead, to gain access, Merck needs to obtain respondent's consent.



George L. Hastings, Jr.
Special Master