GUIDELINES FOR PRACTICE
UNDER THE
NATIONAL VACCINE INJURY COMPENSATION PROGRAM

The Office of Special Masters
United States Court of Federal Claims
Revised November 2004

www.uscfc.uscourts.gov

TABLE OF CONTENTS

I. INTRODUCTION

These Guidelines are intended to facilitate the prompt and efficient resolution of claims submitted under the National Vaccine Injury Compensation Program (hereinafter "the Program"). The following explanation of the conduct of proceedings under the Program – with specific examples provided in the **Attachments** located at the end of these Guidelines – should assist petitioners in drafting clear and complete vaccine petitions and assist respondent in evaluating the merits of the petition. Consequently, the special masters will be able to resolve the claims fairly and expeditiously within the statutorily-mandated time period.

Practitioners are cautioned that these Guidelines represent a practical explanation of how to proceed under the Program. The Guidelines are **not** a substitute for the statute[1] and the local rules of practice (consisting of the Vaccine Rules of the United States Court of Federal Claims, codified in Appendix B to the Rules of the United States Court of Federal Claims).

Also, the Guidelines are not the exclusive method of practice. The statute, court rules, and case precedent allow wide latitude for handling individual cases. Practitioners are encouraged to suggest creative ways of resolving their cases in the most efficient manner. Crucial to any such proposal is ensuring fairness to each party and creating a complete and orderly record for decision.

Finally, three recent developments in Program practice are worthy of special mention.

A. Administrative Changes to the Vaccine Injury Table

One key feature of the Program is that an injury that falls within the "Vaccine Injury Table" is **presumed** to be vaccine-caused and the claim is compensable, unless the record affirmatively demonstrates that such injury was caused by some other cause. § 11(c)(1)(C)(i); § 13(a)(1)(B). The statute contains a Vaccine Injury Table at § 14(a). **However, that Table contained at § 14(a) is not applicable to Program petitions filed after March 10, 1995.** Pursuant to § 14(c) and § 14(e)(2) of the Vaccine Act, the Secretary of Health and Human Services may amend the Vaccine Injury Table by adding or deleting injuries, changing the time periods within which onset of a Table injury must occur, or by adding additional vaccines and "Table Injuries" for such vaccines. The Secretary may also define or redefine the covered injuries through the Qualifications and Aids to Interpretation. In accordance with the Secretary's statutory authority, the Secretary made the first revisions to the Vaccine Injury Table, effective March 10, 1995. Additional revisions have since been made. These revisions are explained in

[1]The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 et seq. (Supp. 2000). In these Guidelines, for ease of reference, "42 U.S.C. § 300aa" will be omitted from all statutory references. Therefore, for example, a reference to "§ 11(a)(5)" or "Section 11(a)(5)" is a reference to 42 U.S.C. § 300aa-11(a)(5).

Attachment 8 to these Guidelines. (Note: The Secretary of Health and Human Services could issue additional modifications to the Vaccine Injury Table. For more information, see the Department of Health and Human Service's website at www.hrsa.gov/osp/vicp.) Petitioners are primarily responsible for educating themselves about which Vaccine Injury Table applies to their respective circumstances. Petitioners should refer to the HHS's website for information on the applicable Vaccine Injury Table. Petitioners may also download the latest administratively-amended version of the Vaccine Injury Table at 42 C.F.R. § 100.3 from Lexis/Nexis or Westlaw.

B. Autism Cases

In the Spring of 2002, the special masters began receiving a large number of petitions alleging that vaccines have caused a child's "autism" disorder or a similar disorder. The Office of Special Masters, working with petitioners' counsel and respondent's counsel, developed a special procedure for dealing with claims of this type, known as the **Omnibus Autism Proceeding**. A special file in the Office of the Clerk of the U.S. Court of Federal Claims, known as the Autism Master File, contains documents related to these autism claims. On July 3, 2002, the Office of Special Masters issued **Autism General Order #1**, 2002 WL 31696785, 2002 U.S. Claims LEXIS 365, explaining the Omnibus Autism Proceeding. That document, along with most of the Autism Master File, may be found on the court's website, www.uscfc.uscourts.gov. Persons with Program claims or potential Program claims involving autism or similar disorders should read Autism General Order #1.

C. *Special Warning Concerning Hazard of "Voluntary Dismissal"!!!*

Once a Program petition is filed, a petitioner has two ways of leaving the Program while preserving the possibility of filing a civil action against a vaccine manufacturer or administrator on account of the same injury. See 42 U.S.C. § 300aa-11(a)(2)(A). First, a petitioner may choose to withdraw from the Program after notice that the statutory time for a decision has elapsed, pursuant to 42 U.S.C. § 300aa-21(b). Second, a petitioner may leave the Program following entry of "judgment" pursuant to a final "decision" by the special master, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Another way of leaving the Program is when a petitioner voluntarily dismisses his own claim, either unilaterally or via stipulation with respondent. **However, utilizing voluntary dismissal to leave the Program will not result in a "judgment," and therefore it apparently will *not* preserve that petitioner's right to file a tort suit against a vaccine manufacturer or administrator**. See *Hamilton v. Secretary of HHS*, No. 02-838V, 2003 WL 23218074 (Fed. Cl. Spec. Mstr. Nov. 26, 2003); *Robinson v. Secretary of HHS*, No. 04-0041V (Fed. Cl. Spec. Mstr. Nov. 3, 2004) (published citation not yet available). **Petitioners should beware of this potential hazard, which has ensnared petitioners in the past**. See *Robinson*. If a petitioner or counsel has doubt about how to exit the Program, he or she may request a status conference with the special master. Such a conference should be requested *before* a notice of voluntary dismissal is filed.

II. PETITIONS AND ACCOMPANYING RECORDS

This Program is based on the premise that the initial submission – the petition and

accompanying documents – will contain petitioner's case-in-chief. The ability of respondent to provide a complete case (see Section IV infra) and the special master to issue a decision within the statutory deadline hinges on the completeness of the petition. To assist petitioners in meeting the statutory filing requirements, some practical observations are offered below.

A. Content of the Petition

The petition's required contents are set forth in Vaccine Rule 2(d)(1). A model petition is set forth at **Attachment 1** to these Guidelines. The model is based on factual assumptions that may or may not apply to a particular case. Petitioners should adapt this model to the factual circumstances of their case.

The petition should provide respondent and the special master clear, complete notice of the **specific nature** of petitioner's claim, so as to permit a detailed evaluation thereof. Unlike pleadings in many civil actions, the petition should not be a formalistic document that merely tracks the statutory language, designed to "preserve" all possible claims or arguments. For example, a petition **should not** allege all possible "Table Injuries" (i.e., injuries falling within the Vaccine Injury Table contained at 42 C.F.R. § 100.3(a)), but only those for which a reasonable supporting case exists. (If the evidence unexpectedly turns out to support an alternative theory of proof, leave to amend the petition will be liberally granted.)

Specifically, each petition must contain:

1. An introductory statement containing a concise and explicit theory of recovery under the Act.

2. Separately numbered paragraphs setting out each distinct factual allegation supporting the petitioner's claim, including:

    a. Injured party's name and date of birth.

    b. Type of vaccine received, and date and location of vaccine administration. § 11(c)(1)(A); § 11(c)(1)(B)(i)(I). If the vaccine was not received in the United States, fulfillment of conditions of § 11(c)(1)(B)(i)(II) or (III) must be alleged. In the instance of an oral polio vaccine allegedly contracted from a vaccine recipient, facts of vaccination and contraction must be alleged. § 11(c)(1)(B)(ii).

    c. Exact injury claimed. § 11(c)(1)(C). If an injury within the Vaccine Injury Table is alleged, this must be stated. If alleging a non-Table injury caused by a vaccine, the reason for believing that a causal relationship exists must be stated.

d. Date and, if appropriate, time of day of the first symptom or onset of injury or condition following the vaccine's administration. 42 C.F.R. § 100.3(a).

e. Fact-specific description of the claimed symptoms. 42 C.F.R. § 100.3(b).

f. In a death case, an allegation that the deceased died from the administration of the vaccine or as a consequence of a Table Injury. § 11(c)(1)(C)(i); § 11(c)(1)(D)(ii).

g. In an injury case,

(i) The extent and nature of the injury; and

(ii) A representation that the injured party has suffered residual effects or complications for more than 6 months, or died from the administration of the vaccine, or suffered an injury from the vaccine which resulted in inpatient hospitalization and surgical intervention. § 11(c)(1)(D).

h. In a case alleging that the vaccine "significantly aggravated" a pre-existing condition, the extent and nature of the pre-vaccination condition or impairment.

i. Brief description of the injured party's condition prior to the administration of the vaccine.

j. If filed on behalf of a deceased person, or if filed by someone other than the injured person or a parent of an injured minor, an explanation of the authority to file the petition in a representative capacity. § 11(b)(1)(A).

k. Statement concerning the existence and disposition of any prior civil action relating to the vaccination. § 11(a)(5); § 11(a)(6).

l. Statement whether any award or settlement with respect to the vaccine-related injury has been previously collected by the injured person or by anyone else on that person's behalf. § 11(a)(7); § 11(c)(1)(E).

3. A brief statement of the relief requested. In a death case, the request will ordinarily be for $250,000 plus attorney's fees and litigation costs. In an injury case, the petitioner should defer the request until entitlement to compensation has been resolved and the special master, after discussing the matter with the parties, sets a schedule for the submission of such information. See Section XI, infra; § 11(e).

4. The petition must be signed by the petitioner *pro se* or, if the petitioner is represented by counsel, by **one** attorney who is admitted to the Bar of the U.S. Court of Federal Claims **at the time the petition is filed**. That attorney will be designated "counsel of record" for petitioner(s), and his or her signature must appear on all subsequent filings; there can be only one counsel of record. (Note: To obtain admission to the U.S. Court of Federal Claims Bar, see Rules of the United States Court of Federal Claims ("RCFC") (revised May 1, 2002), Appendix of Forms, Form 1 ("Admission Instructions" and the accompanying admission form). The Rules of the United States Court of Federal Claims can be accessed through the court's website at www.uscfc.uscourts.gov.)

B. Documents that Must Accompany the Petition

1. Complete Set of Records Required

The petition **must** be accompanied by **all** medical and related records potentially relevant to the issue of whether petitioner is entitled to an award. This early filing of evidence is necessary to decide the case within the statutorily-mandated time frame.

Accordingly, it is important that petitioner's counsel assemble a **complete** set of records **before** filing the petition. The statute at § 11(c) explicitly sets forth the required documents, as does Vaccine Rule 2(e). The scope of the requirements is, intentionally, very broad. Counsel should include all medically-related records that **might possibly** shed light on the question of causation. Indeed, in the typical case where the vaccine recipient was an infant when vaccinated, the petition should include **all** medical records relating to the pregnancy and resulting delivery, as well as records pertaining to the infant's entire lifetime prior to the vaccination, including those of "well baby" visits. In addition, the petition must contain in every case all records pertaining to the vaccination itself and all post-vaccination medical examination and treatment records of the individual.

In short, if there is any doubt whether a record falls within the above description, it should be included.

2. Emergency Records

If the vaccinated individual required emergency attention in the form of ambulance service or emergency squad treatment, all records relating to such incident should be obtained and forwarded with the petition. This includes records of the ambulance service, emergency medical technicians, police department, fire department, "911" telephone records – in short, **any** records of any organization that was contacted or responded to the emergency situation.

3. Affidavits

Under the statute, an affidavit must accompany the petition. Vaccine Rule 2(e)(1)(A) clarifies this statutory requirement. The rule states that when a "petitioner's claim does not rely on medical records alone, but is based in any part on the observations or testimony of any persons, the substance of each person's proposed testimony in the form of an affidavit executed by the affiant must accompany the petition." Most cases will require affidavits because petitioners rely upon the diagnosis of an expert medical witness as part of their proof. In such cases, the petition is to be accompanied by an affidavit setting forth the expert's opinion and the basis for the expert's reasoning. The expert opinion should address the facts and circumstances surrounding the vaccinee's individual case and provide a reference to the medical records that the expert relied upon in reaching his or her medical opinion. Similarly, if the expert will be relying upon **symptoms** of the injured party described by the parents, or others, the petition must contain affidavits of such witnesses, setting forth fully the substance of what each witness observed. Finally, the testimony of any other factual witness should be set forth in an affidavit.

The need for detailed affidavits is clear: for respondent to conduct an in-depth evaluation of the petition, respondent's medical experts must have an accurate description of the **substance** of the petitioner's case. Moreover, this requirement may work to petitioner's benefit, inasmuch as respondent may be able to concede the entitlement issue if presented with petitioner's full case at the outset. (Additionally, the court often frowns upon evidence introduced once proceedings are underway if that evidence was available at the time the petition was filed.)

The petitioner's affidavit must also confirm all of the allegations set forth in the petition, such as the fact, location, and type of vaccination; disposition of any prior civil action; and representative capacity if the petition is not brought by the injured person in his or her own capacity.

4. Autopsy Slides, X-ray, MRI, and CT Scan Films, etc.

In some cases, autopsy slides, films of X-rays, MRIs, or CT scans, and similar items of medical evidence not in paper form, will be relevant. Such items may be impossible, or highly expensive, to "copy." If so, these items need **not** be submitted with the **petition**, but rather the fact that such items are in the petitioner's possession should be clearly communicated within the petition. In these circumstances, respondent should determine as quickly as possible whether respondent will need such items in evaluating petitioner's claim, and if necessary, contact and advise petitioner's counsel as soon as possible. **Petitioner's counsel should provide the items forthwith (directly to respondent, not the court), so as not to delay the proceedings.** (Such items are presumed relevant; absent an extraordinary reason, the items should be forwarded.) Respondent is charged with taking due care of the items while the items are in respondent's possession. (Later, if necessary, special provisions can be made for supplying such items to the special master – check directly with the special master's office.)

5. Additional Documentation

All allegations made in the petition must be supported by documentary evidence. Therefore, the following should be included with the petition:

a. If the petition is brought in a representative capacity by someone other than the parents of a minor, evidence supportive of that capacity.

b. Copy of court records regarding the final disposition of any related prior civil action.

6. Organization of Documents

The documents submitted with each petition must be organized into separately numbered exhibits. (E.g., Ex.1 might be the birth certificate, Ex. 2 the pediatric records, Ex. 3 a set of records of a particular hospitalization, etc.) Exhibits should be numbered in logical order (preferably chronologically). Each exhibit of more than one page must be paginated (hand-printed pagination is sufficient), and pagination of each exhibit should be independent (e.g., Ex. 1 shall have pages 1 through 10, then Ex. 2 shall have pages 1 through 5, etc.). Exhibits should then be assembled into bound volumes, with a tab for each exhibit. Each volume should be given a separate Roman numeral (I, II, III, etc.), and must have the caption of the case on its cover or first page. Each petition must be accompanied by a table of contents listing each exhibit. **Care should also be taken that documents are photocopied in legible form.** Petitioner bears the burden of proving the case – illegible photocopies add nothing to the evidentiary record.

7. Unavailable Documents

If after diligent efforts, required records are not obtainable, their absence shall be explained **by affidavit**. § 11(c)(2).

C. Cover Sheet

As is the case with all complaints or petitions filed in the U.S. Court of Federal Claims, each petition must be accompanied by a U.S. Court of Federal Claims "Cover Sheet." The Cover Sheet can be found through the U.S. Court of Federal Claims website (www.uscfc.uscourts.gov), attached to the Rules of the United States Court of Federal Claims (revised May 1, 2002) at Appendix of Forms, Form 2. The Cover Sheet is used to input data into the court's main computer. The form is basically self-explanatory, but following are some tips. As to the "Agency Identification Code," write in "HHS." As to the "Amount Claimed," in a death case, put down $250,000; otherwise put "to be determined." As to the "Nature of suit code," depending on whether your case involves a death or an injury, and the type of vaccination involved, pick the appropriate three-digit code.

III. EVALUATION OF THE PETITION'S COMPLETENESS

In light of the strong need for a completely documented petition, attention will be focused on early evaluation of the contents of a petition. Under Vaccine Rule 4(a), respondent must review immediately the petition's contents. If deficiencies in the petition are perceived, respondent should contact petitioner's counsel immediately, and petitioner should supply any requested records **as soon as possible**. If petitioner has doubts about the relevance of requested records, petitioner should keep in mind that the standard used for determining relevance will ordinarily be a quite liberal one, i.e., whether the requested records **might** shed light upon any issues relating to petitioner's claim. Moreover, petitioner should also keep in mind that it may be quicker and more efficient to simply provide the requested records that the petitioner finds to be of dubious relevance, rather than delay the case while the special master resolves a relevance dispute. Nevertheless, in the rare case where the parties cannot resolve by themselves a relevance dispute, they may contact the special master's office to request a ruling.

IV. RESPONDENT'S REPORT

Under Vaccine Rule 4(b), respondent shall file a "report," rather than an answer, within 90 days of the filing of a petition. As is the case with the petition, respondent's report is **not** intended to be a formalistic legal document designed to "preserve" defenses or arguments. Rather, the report should be a straightforward statement of respondent's analysis of petitioner's claim, designed to give both petitioner and the special master full notice of, and an opportunity to evaluate, the details of respondent's position. (As is the case with petitions, there is no need for formalistic pleading, because in the event that the evidence develops in an unanticipated direction, liberal leave will be granted to amend respondent's position.)

The report should identify any "legal" or other nonmedical impediments to petitioner's claim. Otherwise, the report may consist entirely of respondent's expert's medical analysis of petitioner's claim.

Several additional points are in order. First, if petitioner filed an expert report in support of the claim, respondent's Rule 4 report shall include a medical expert's response. If respondent believes an expert's response is not warranted, respondent must schedule a conference call with the court **prior** to the Rule 4 due date to get a court ruling on the matter. Note: It is recognized that respondent's expert may be in a difficult position to respond to an expert opinion that relies heavily on the injured party's symptoms as described in affidavits, rather than solely upon medical records. In such situations, respondent's report should point out any ways in which the affidavit testimony is believed to be inherently implausible or inconsistent with the medical records. Also, it may be helpful for respondent's expert to give a hypothetical opinion **assuming** the affidavit testimony to be credible. This will **not** in any way constitute an admission by respondent as to the accuracy or relevance of the affidavit testimony, but may be helpful **if** the special master should decide to accept the affidavit testimony as accurate.

Second, respondent, like petitioner, may wish to submit documents as evidence along with the report. As is the case with petitioner, such documents may include articles from medical literature. All documents submitted should be organized like those of petitioner – see Section II(B)(6) above – but respondent's exhibits should be given letters instead of numbers (e.g., Ex. A, Ex. B, etc.).

Finally, due to the strict statutory time limits, the respondent should not request extensions of the deadline for the respondent's report except in the most extraordinary circumstances. The one major exception to this rule is that if the absence of important medical records makes a thorough evaluation of petitioner's claim impossible, it is reasonable for respondent to promptly so notify petitioner, and then to seek an extension of time for the respondent's report until such time as petitioner supplies the outstanding records.

V. ROLE OF THE SPECIAL MASTER GENERALLY

The special master's role is somewhat different from that of an adjudicator in traditional litigation. The special master will be more actively involved in the early stages of proceedings than is usually the case with a judge in a traditional civil proceeding, e.g., identifying and assisting a party in obtaining information, making tentative findings where appropriate (see Section VI, infra), asking the parties to clarify their positions, and working actively with the parties to develop a streamlined method for resolving each particular case. Further, in recognition of Congress's intent that the special masters be more "inquisitorial" than in typical litigation, the special master will question witnesses where appropriate, ask for more documents when such a need is determined, and keep the parties informed at all stages concerning what further proof is necessary to prove their cases. In unusual instances, special masters may hire their own expert witnesses to resolve difficult medical issues, or suggest the hiring of a neutral medical expert to render an opinion on a medical dispute.

In general, however, the parties are responsible for the traditional tasks of identifying and developing information supporting or opposing an award, securing and presenting fact witnesses and expert testimony, and meeting their respective burdens of proof.

To assist the parties in resolving disputes, the special masters provide alternative dispute resolution ("ADR") services, which can often greatly reduce the time and expense of litigation. See Section X, infra. ADR is a term widely used to describe methods and techniques of facilitating settlement of disputes without resort to formal court proceedings. Generally, ADR methods assist the parties in understanding the strengths and weaknesses of their case as well as their opponent's, in assessing their chances of prevailing in formal litigation, and in viewing their case objectively from different perspectives. Entry into any type of ADR proceeding is always purely voluntary on the parties' part. However, ADR is an excellent way to resolve Vaccine Program cases and has proven highly successful in many instances. The ADR techniques available in vaccine cases and the role of the special masters in facilitating the process are thoroughly discussed in the Chief Special Master's General Order #11, filed February 8, 2001,

and appended to these Guidelines as **Attachment 7**.

Finally, through his duties as the chief administrator of the Office of Special Masters, the Chief Special Master has, in the past, issued several General Orders which continue to apply to pending and newly-filed petitions. These include General Order #9, filed July 24, 1995, which addresses petitioner's Application for Fees and Costs, and, as mentioned above, General Order #11, filed February 8, 2001, which discusses the alternative dispute resolution techniques available in vaccine cases. The parties should familiarize themselves with these General Orders, which are appended hereto as **Attachment 6** ("General Order #9") and **Attachment 7** ("General Order #11"). The court has also issued recently the first General Order in the autism cases, Autism General Order #1, filed July 3, 2002. That document may be downloaded from the Office of Special Masters' button (or icon) at the court's website, www.uscfc.uscourts.gov, at which these Guidelines appear. The Chief Special Master will post additional General Orders at the website as they are issued.

VI. "RULE 5 CONFERENCE": INFORMAL REVIEW BY THE SPECIAL MASTER

Under the Program, claim resolution will be more expeditious and less formal than under traditional litigation. To this end, Vaccine Rule 5 sets forth a procedure that should speed and simplify the decision-making process. Under the Rule, the special master, after reviewing the petition and respondent's report, conducts an informal conference (either in person or by telephone) at which the special master (1) gives each party an opportunity to address the other's position, (2) states a tentative view as to the merits of the case, and (3) establishes with the parties what issues remain to be addressed and the most efficient means for deciding those issues.

The success of the "Rule 5 conference" depends upon the completeness of the petition and respondent's report. For that reason, it is essential that each party develop fully its case **before** filing the petition or report, and set forth **fully and completely** the substance of its case therein. Information cannot be withheld or acquired later to be supplied at subsequent stages of the proceedings. The benefits from this early, full discussion of the case's substance include:

- early notice of any deficiencies in the case in time to rectify such deficiencies;
- a third party's view of the merits of the case, possibly fostering settlement;
- if settlement is not possible, an opportunity to narrow the issues through stipulation;
- if further proceedings are necessary, a discussion of the nature and timing of such proceedings; and
- where appropriate, a final decision.

Please note, however, that any tentative conclusions noted by the special master at the Rule 5 conference are just that – **tentative**, as well as "off the record." The special master's comments will not have any official status and cannot be "relied upon" in any formal sense. Additional evidence, argument, or further consideration by the special master may change the special master's view of the case.

VII. STATUS CONFERENCES

As stated in Vaccine Rule 6, the special master will conduct status conferences from time to time in order to expedite the processing of the case. Normally, these conferences will be conducted by telephone. The first such conference will usually be held within 45 days of the filing of the petition, to resolve any issues concerning the completeness of the petition. The second will usually be held within the 30-day period subsequent to the filing of the respondent's report (the "Rule 5 conference"). Additional status conferences will be held from time to time as is necessary to facilitate the processing of the case.

These conferences will be conducted informally and are intended to **assist** practitioners and special masters, not burden them. For example, if an attorney associated with a petitioner's attorney of record is actually more familiar with the particulars of the case, it is acceptable to have that associate represent the petitioner at a conference. Also, at such conferences, counsel for both parties will have the opportunity to propose procedures by which to process the case most efficiently. Counsel are encouraged to make use of these opportunities, and to feel free to suggest creative ways to expedite a case. Opposing counsel are also urged to consult with each other outside of status conferences, thus enabling them to jointly propose procedures or stipulate to portions of the case.

Counsel are also invited to use status conferences to make the special master aware of developments in the case, or to ask questions about procedures in vaccine cases. Either party may request a status conference at any time by telephoning the special master's office.

VIII. DISCOVERY

As stated in Vaccine Rule 7, there is no discovery as a matter of right in a vaccine proceeding. Because the petition and respondent's report are expected to fully disclose the substance of each party's case, there is much less need for discovery than in traditional litigation. Moreover, when one party does perceive a need for further information, such information should be disclosed quickly and informally without need for formal discovery procedures.

If a party finds informal discovery insufficient, however, formal discovery may be sought either by a written motion or at a telephonic conference. This should be done at the earliest possible point in the proceeding. The moving party must demonstrate why informal discovery was not sufficient. In response to such a request, the special master may, in the exercise of his discretion, order some form of discovery – e.g., that documents be made available. Depositions

and written interrogatories are not routinely used, but may be permitted in some circumstances. In many situations, a clear and comprehensive written report by an expert can obviate the need for a deposition of that expert, and, when appropriate, a special master may order the preparation or amplification of such a report in lieu of permitting a deposition. Should a subpoena prove necessary, the moving party will precisely identify the records sought, the custodian, and the location of the records. An Order specifying the allowed scope of discovery will then be issued, and the movant should then utilize the sample subpoena form included as Form 7A in the Appendix of Forms, attached to the Rules of the United States Court of Federal Claims (revised May 1, 2002) (see www.uscfc.uscourts.gov). The moving party should attach the special master's Order to the subpoena before service to show that it has been authorized by the court.

Any ordered discovery will be closely supervised by the special master in accordance with the exercise of the special master's discretion.

IX. PROCEDURES FOR TAKING EVIDENCE AND ARGUMENT

As Vaccine Rule 8 makes clear, the special masters are not bound by formal Rules of Evidence. The special masters will devise procedures for the taking of evidence and argument based on the circumstances of a given case. Counsel are encouraged to be creative and to take the initiative in suggesting ways in which the record can be constructed quickly and less expensively. Counsel's creative efforts are limited only by the necessity of ensuring fairness to both parties and creating a complete and orderly record.

As explained above, the primary documentary evidence of a party should be attached to the petition or respondent's report. Further documents, however, may be submitted from time-to-time thereafter. All such documents, **including** affidavits and expert reports, should be given exhibit numbers (or letters, by respondent) **consecutive** to those exhibits already submitted, including those submitted with the petition or report. (E.g., if Exs. 1 through 12 were submitted with a petition, further documents submitted by petitioner, even those submitted at a hearing, should be numbered Ex. 13, Ex. 14, etc.). **Each page of each exhibit must also be numbered;** the numbering should be done prior to copying the documents for filing, so that each copy has identical page numbers. Each complete set of documents to be filed is to be bound together in a permanent fashion, i.e., stapled, velo-bound, etc., with a tab at the beginning of each exhibit if more than one exhibit is being filed. Attached should be a simple "Notice of Filing Document," and a "Certificate of Service," examples of which are at **Attachments 1 and 2** located at the end of these Guidelines. (Note: For all documents filed **after** the petition, if the total document is more than 50 pages long, only an original and **one** copy, not two copies, need be filed. See Vaccine Rule 17(d).)

Clearly, extensive evidence can be presented without the need for an evidentiary hearing. Documents will ordinarily **not** be subject to formal authentication procedures, unless there is some particular reason to doubt their authenticity. Factual testimony, and even opinion testimony, may be presented in affidavit or sworn declaration form. In addition, a party may

present videotaped testimony if so desired.

If an evidentiary hearing is necessary, several options are available. Witnesses may testify "in person" at a hearing held in Washington, D.C., or elsewhere at the special master's discretion. (If multiple witnesses reside at a single location, ordinarily the special master will hold the hearing at or near that location. The site for a hearing will be chosen with a view to the maximum convenience for all involved and the minimum overall cost to the Program.) Alternatively, oral testimony may be taken via telephone conference call, by video-conferencing, or by videotape. (It is also possible to mix these procedures – e.g., for some witnesses to appear "in person" and others by telephone.)

The special master will ordinarily accept a party's evidence in the form desired by the party. A caveat is in order, however, with respect to the **weight** to be given different types of evidence. Both factual testimony and opinion testimony will in most circumstances be more valuable and credible if the declarant is available for questioning and explanation of the testimony. For example, if the diagnosis of a certain "Table Injury" is dependent solely upon eye-witness accounts regarding symptoms displayed by the vaccine recipient, the credibility of such testimony becomes paramount, and thus in order to make a convincing case, a petitioner should make every effort to present the oral testimony of such witnesses. Similarly, the value of expert witness testimony in many cases – especially where two experts draw contrasting conclusions from the same facts – may depend on the ability of the expert to explain and answer questions concerning that expert's opinion.

Two other points concerning oral testimony are worthy of note. First, while a witness testifying orally will always be subject to questioning by the special master, questioning of a witness by opposing counsel will not be a matter of right, but will be within the special master's discretion. While ordinarily some such questioning will be permitted, the special master will prohibit abusive, irrelevant, or repetitive examination. Therefore, questions must be germane to the merits of the case and further the development of the record.

Second, the issue of the qualification of an expert witness normally should not be a topic at the hearing. The *curriculum vitae* of an expert shall be provided to opposing counsel early in the proceedings, and any challenge to an expert's qualifications can thus be raised in a prehearing filing and resolved at a prehearing conference. Arguments concerning the weight to be given to an expert's testimony may be made before the special master.

X. SETTLEMENTS AND ALTERNATIVE DISPUTE RESOLUTION

In some cases in which the respondent does not concede that the petitioner is entitled to a Program award, nevertheless the respondent may be willing to enter into "litigative risk" settlement negotiations. That is, the respondent may be willing, without formally conceding entitlement, to agree to some type of award, depending on the strength of the petitioner's case. After receiving the respondent's initial position on the claim, or at any time until the special

master rules upon the issue of entitlement, a petitioner should feel free to initiate settlement discussions with respondent's counsel.

In addition, if the parties are not able to reach settlement on their own, assistance is available from the Office of Special Masters. In many Program cases, the parties have utilized **Alternative Dispute Resolution** ("ADR") techniques to reach settlement. ADR is a term widely used to describe methods and techniques of facilitating settlement of disputes without resort to formal court proceedings. Generally, ADR methods assist the parties in understanding the strengths and weaknesses of their case as well as their opponent's, in assessing their chances of prevailing in formal litigation, and in viewing their case objectively from different perspectives. Entry into any type of ADR proceeding is always purely voluntary on the parties' part. However, ADR is an excellent way to resolve Program cases and has proven highly successful in many instances. The ADR techniques available in vaccine cases and the role of the special masters in facilitating the process are thoroughly discussed in the Chief Special Master's General Order #11, filed February 8, 2001, and appended to the Guidelines as **Attachment 7**.

XI. INJURY CASES: THE AMOUNT OF COMPENSATION

Upon finding a right to compensation under the Program, the amount of such compensation must be determined. Where the vaccine recipient is deceased, a determination of entitlement essentially ends the inquiry because the amount of the award in such cases is set by the statute at $250,000. § 15(a)(2). But when the recipient has been injured and needs further care and treatment, the amount of the award becomes a more complicated issue.

Pursuant to the December 1989 amendments to the Vaccine Act, documentation concerning the amount of the award in an injury case is **not** submitted with the petition. § 11(e). Once entitlement has been found, the special master will set a schedule for the submission of information on the issue of the amount of compensation – often referred to as the "damages" issue. In most cases petitioner will need as a central piece of evidence a "life care plan," which is a professionally-prepared report detailing what treatment and care the injured party will need for the rest of his or her life and the estimated cost thereof. But while the services of a "life care planner" will be necessary in many cases, the testimony of an economist or similar expert to determine the amount of money necessary to fund any given life care plan will in most cases be **unnecessary**. A large body of case law has been developed in this area, and each special master has already, in past vaccine cases, heard testimony from many economic experts as to appropriate future inflation rates, growth rates, discount rates, etc. Accordingly, petitioners' counsel are advised against expending funds on such an expert without first consulting with the special master at a status conference.

The special masters have devised a detailed Damages Order to guide the parties in resolving the compensation issue. This Order discusses the necessary proof, different methods for resolving the issue, and the applicable schedule. Strict adherence to this Order will speed case resolution and therefore payment to the petitioner.

In addition, the Vaccine Litigation Group of the Torts Branch of the U.S. Department of Justice has prepared a publication entitled "*Steps to Streamlining Damages Under the Vaccine Program*." While petitioners' counsel must keep in mind, of course, that this publication represents the views only of **one party** to the vaccine compensation process, and does **not** necessarily reflect the views of the **special masters**, this publication may be helpful to petitioners' counsel inexperienced in Program cases, by providing an overview of the damages phase of proceedings from respondent's perspective. A copy may be obtained by contacting the Department of Justice attorney assigned to the case, after the Program petition is filed.

A. Vaccinations Prior to October 1, 1988

Petitioners and their counsel should recognize that if the vaccination in question took place prior to October 1, 1988, the compensation available under the Program does **not** include any compensation for expenses incurred before the date of the U.S. Court of Federal Claims judgment in the Program case. Compensation includes the estimated cost for **future** care and treatment of the injured person, without dollar limitation (§ 15(a)(1)(A)), **plus** up to a **total** of $30,000 for the combined elements of (1) pain and suffering, (2) lost earnings, and (3) reasonable attorneys' fees and other litigation costs (§ 15(b)).

B. Vaccinations On or After October 1, 1988

For cases in which the vaccination took place on or after October 1, 1988, the available compensation is greater. While future care (§ 15(a)(1)(A)) will in many cases be the largest item, compensation may also include expenses incurred up to the date of judgment (§ 15(a)(1)(B)); an award for pain and suffering up to $250,000 (§ 15(a)(4)); compensation for lost earnings, without cap (§15(a)(3)); and an award for reasonable attorneys' fees and costs, without cap (§ 15(e)).

C. Life Care Plans

Care should be taken to select a knowledgeable professional experienced in preparing comprehensive life care plans. The treating physician may **not** always be qualified to prepare such a comprehensive plan (although such physician's prognosis may be a crucial starting point for the life care planner). A good life care plan must be very specific. For example, if the injured party will need a particular type of therapy, the number of hours needed per month or week, the expected costs, and the number of years for which such therapy will be needed must be specified. The Damages Order details the requirements of the life care plan.

As part of a life care plan for an individual with an extreme disability, the cost of long-term in-home companion care often represents a sizeable portion of the requested compensation. If a petitioner seeks compensation for the services of a skilled individual – e.g., an LPN – rather than an unskilled companion, the petitioner must demonstrate **why** the services of such a skilled

person are needed.

D. Supporting Evidence

Evidence helpful to demonstrate the need for the services called for in a life care plan may include the following:

- The testimony (perhaps by affidavit) of one or both parents (preferably the primary care giver) as to the immediate past needs of the child – e.g., information on prescriptions, types of therapy, a description of a typical day in the injured's life, and any information that would aid the special master in determining the future needs of the injured;

- The testimony (perhaps by affidavit) of the treating physician as to the necessity of the care, treatment, or other expenses called for in the life care plan;

- A videotape depicting a typical day in the life of the injured person. An amateur-quality videotape is sufficient for this purpose; and

- Where compensation is requested for structural changes to a house, a videotape of the house.

E. Reimbursed Expenses and Offsets

Practitioners should keep in mind that the Program in general is intended to be a **secondary** payor for expenses arising out of vaccine injuries. See § 15(g). Compensation will **not** be awarded for any expense for which the petitioner or injured party has been reimbursed or compensated, or **can reasonably be expected to be reimbursed or compensated**, by a health insurance policy, an entity providing health benefits on a prepaid basis (e.g., a Health Maintenance Organization), or any state or federal agency or benefits program (except that future benefits under Title XIX of the Social Security Act – i.e., Medicaid – will not be considered an expected source of benefits). Consequently, petitioners' counsel must address and provide, with particularity, accurate information on the questions of what health insurance benefits have been and will be likely available to petitioner, what school system services (e.g., speech therapy) have been and will be available, and what state and federal program benefits (e.g., state "crippled children's funds," federal Supplemental Security Income (SSI), or similar programs) have been and will be available.

F. Annuities

The statute gives the special master authority to order that all or part of a compensation award be made in the form of an annuity rather than a lump sum. See § 15(f)(4)(A) and (B). Some of the obvious benefits of an annuity are that it (1) ensures benefits for the lifetime of the

recipient, even if the person's expected life span is exceeded; (2) eliminates the need to determine a "life expectancy"; and (3) eliminates the burden and uncertainty of investing a large lump sum. Thus, in forming a request for an award, petitioner may wish to consider and address the issue of whether the special master should or should not utilize an annuity as part of the compensation and, if so, for what portion of the damages.

G. Life Expectancy

Though it is an exceedingly painful issue, the special master, in determining the amount of an award to a severely injured person, must consider the issue of the reasonable life expectancy of the injured party, unless the petitioner desires that compensation for prospective elements of care be made in annuity form. Thus, if the petitioner does not desire and the special master does not order an annuity format for the award, the petitioner must address and provide evidence on the life expectancy issue.

H. Settlements: Speeding the Award

Once it is determined that a petitioner qualifies for a Program award – either by respondent's concession or the special master's determination – in a great many injury cases the petitioner and the respondent have been able to settle the amount of the award. A petitioner's counsel may wish to explore such a settlement with the respondent. If the parties are unable to settle the issue on their own, they may wish to take advantage of mediation or other alternative dispute resolution ("ADR") procedures available. See **Attachment 7** to these Guidelines.

Once a settlement is reached, pursuant to the statute the settlement must be formally approved by a "decision" of the special master, and judgment must subsequently be entered. After the **decision** is filed, pursuant to Vaccine Rule 11(a) the parties can expedite the entry of **judgment** by each party filing a notice renouncing the right to seek review of the special master's decision by a U.S. Court of Federal Claims judge. A form for such a notice is appended to these Guidelines as **Attachment 3**.

XII. ELECTION TO ACCEPT JUDGMENT OR FILE A CIVIL ACTION

Pursuant to the statute and Vaccine Rule 12, after a judgment on the merits is entered, the petitioner must file an election in writing either to (1) accept the judgment or (2) file a civil action for damages for the alleged injury or death. **Upon failure to file an election within the 90 days prescribed, a petitioner will be deemed to have filed an election to accept the judgment**. Sample election forms are appended to these Guidelines as **Attachments 4 and 5**.

Thus, at the conclusion of the case, in order to speed the receipt of the award, counsel should be ready to file an election immediately upon entry of judgment. Since the election is a statutory requirement, respondent **cannot** process an award until the election is filed or deemed filed at the close of 90 days. This is true even if the judgment results from a settlement with

respondent.

Note also that Vaccine Rule 12(b) provides a procedure for seeking certain limited compensation available when a petitioner elects to decline the award. The Rule is self-explanatory, but note that a motion for the limited compensation under the Rule will be treated procedurally as a motion under Vaccine Rule 20, meaning that the respondent may respond within 14 days and the petitioner may reply thereto within seven days. Also note that a special master's ruling on such a request will constitute a separate "decision," from which either party may seek review by filing a separate motion for review under Vaccine Rule 23.

Finally, note that under Vaccine Rule 33, if an appeal is taken from a U.S. Court of Federal Claims judge's ruling to the Federal Circuit by either party (see Section XV, infra), the election whether or not to accept judgment is not due until 90 days after the mandate of the Federal Circuit, or after a subsequent U.S. Court of Federal Claims judgment if the appellate court should order a remand. Accordingly, a petitioner should not file an election until determining not to appeal. On the other hand, if a petitioner files an election to accept the judgment, and the **respondent** subsequently files a notice of appeal, the petitioner's election becomes moot. The petitioner will have to file a superseding election once the appeal is resolved and the judgment becomes final.

XIII. WITHDRAWAL IN ABSENCE OF TIMELY DECISION

Should the statutory time period for the special master's submission of a decision expire, without the filing of a decision by the master, a petitioner may elect to withdraw from Program proceedings and pursue a traditional tort remedy. See § 21(b)(1). (For petitions relating to vaccinations administered on or after October 1, 1988, the time period usually expires 420 days after the petition was filed – 240 days (§ 12(d)(3)A)(ii)) plus 180 extension days (§ 12(d)(3)(C))). When this time period expires, the special master will ordinarily issue to the petitioner a formal notice informing him of this fact. See § 12(g). The petitioner should then, within 30 days, file a notice indicating his intent either to continue in the Program or to withdraw. Counsel should note that if the option to withdraw is selected, petitioner would appear to be precluded from re-entering the Program to seek compensation for damages resulting from the vaccination specified in the petition.

If the special master's **decision** is timely, but, after a motion for review of that decision is filed, the U.S. Court of Federal Claims fails to enter **judgment** on the claim within the statutory time period (see § 21(b)(2) for computation of this period), a petitioner has an identical option to withdraw or continue in the Program. See § 21(b)(2) and Vaccine Rule 29.

XIV. ATTORNEYS' FEES AND COSTS

The Program provides reimbursement of reasonable attorneys' fees and other litigation costs in cases where the petitioner prevails, and may also provide reimbursement in cases where the petitioner is unsuccessful. See § 15(e). The Program is the sole source of funds both for attorneys' fees **and** costs. Counsel may neither pursue, nor accept, funds from petitioner in addition to, or in lieu of, fees and costs awarded by this court. Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991). Thus, counsel are advised to maintain detailed contemporaneous records of time and funds expended under the Program. There is a well-established body of federal law concerning the meaning of "reasonable attorneys' fees" and the requirements for proving such fees and costs.

Pursuant to Vaccine Rule 13, a request for attorneys' fees and other litigation costs must be filed no later than six months after the filing of the election to either accept the judgment or file a civil action. This six month period is subject to extension, but counsel should file their request as soon as practicable. Petitioner must comply with General Order #9, which is located at **Attachment 6** to these Guidelines, when filing the fee petition.

A. Content of Fee Request Generally

Each petition should include:

1. An affidavit of the petitioning attorney. Such affidavit should include information about the petitioning attorney (i.e., the year of graduation from law school, length of practice, specialties of practice, customary billing practices, history of hourly rates charged) and a statement that the attached report of hours and costs expended is accurate.

2. Similar information concerning other persons whose time is being billed.

3. Contemporaneous time records that indicate the date and specific character of the service performed, the number of hours (or fraction thereof) expended for each service, and the name of the person providing such service. Each task should have its own line entry indicating the amount of time spent on that task. Several tasks lumped together with one time entry frustrates the court's ability to assess the reasonableness of the request.

4. A list of costs advanced under the petition. Such expenses, if not self-explanatory, should be explained sufficiently to demonstrate their relation to the prosecution of the petition. Additionally, there must be filed a statement, signed by petitioner, specifying any costs which were borne by petitioners personally rather than counsel, and stating the amount of any retainer paid by petitioner. See **Attachment 6** to these Guidelines.

5. Any further supporting documentation for the requested hourly rate, which may include:

   a. The firm's retainer fee agreement that incorporates a "reasonable hourly rate" should the client terminate the agreement.

   b. Affidavits of other attorneys who practice in the same community and in the same general field of practice. Such an affidavit should be complete as to the affiant's geographical location, years of practice, nature of practice, etc. By far the most useful affidavit will be one that states what the affiant **actually charges and receives** on an hourly basis. Vague affidavits merely opining that the claimed rate is "reasonable," without giving the factual basis for such opinion, are of no value.

   c. Relevant case law involving the awarding of fees.

   d. Studies and surveys of attorneys' fees by a state or local bar. The information submitted in this regard should be as specific and detailed as possible. Information showing a broad range of hourly rates, without specifying which types of attorneys charged which rates within that range, will be of little help.

B. Response to Fee Request

A fee request will be treated procedurally as a motion under Vaccine Rule 20, meaning that the respondent may respond within 14 days, and that the petitioner may reply to any response by respondent within seven days. Extensions of the reply deadline may be obtained by telephoning the special master's law clerk.

C. Review of Special Master's Fees Decision

A special master's ruling on a fee request will constitute a separate "decision" by the special master. Therefore, a party may seek U.S. Court of Federal Claims judicial review by filing a separate motion for review under Vaccine Rule 23. (Once a fees judgment is entered, however, there is no need to file an "election" to accept or reject the fees judgment.) (Saunders v. Secretary of HHS, 25 F.3d 1031 (Fed. Cir. 1994)).

XV. OBTAINING REVIEW OF A SPECIAL MASTER'S DECISION

The decision of a special master becomes final, without any need for further review, unless a party files a motion for review within 30 days. The procedures for review are clearly set forth in the Vaccine Rules. Only a few comments and highlights of the procedures follow.

First, counsel should note that to obtain review, the motion, with accompanying memorandum, **must** be filed within **30 days** from the **filing date** of the decision. **There will be no extension of this deadline**. See Vaccine Rule 23. (Note: Although the special master's decision may reach a petitioner by mail, there is **no** provision for extending the 30-day period by three days to account for mail delivery, or to account for any unusual delay in delivery.)

Note also that a special master's decision will be upheld unless found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 12(e)(2)(B).

Finally, because the ruling of a special master on an attorneys' fee request will constitute a decision of the special master **separate** from the decision on the merits, review by a U.S. Court of Federal Claims judge is obtained by a **separate** motion for review pursuant to Vaccine Rule 23. Similarly, a U.S. Court of Federal Claims judgment denying or awarding fees will be considered a judgment separate from the judgment on the merits, so that a separate appeal to the Federal Circuit must be taken pursuant to Vaccine Rule 32.

XVI. POST-JUDGMENT RELIEF: RULES 59 AND 60 OF THE RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

After the court's **judgment** has been entered in a case, in certain extraordinary circumstances, a new trial, rehearing, amendment of judgment, reconsideration of judgment, or relief from the judgment may be available under Rules 59 or 60 of the Rules of the United States Court of Federal Claims (i.e., the Court of Federal Claims' Rules, **not** the Vaccine Rules in Appendix B). See Patton v. Secretary of HHS, 25 F.3d 1021 (Fed. Cir. 1994). Under Vaccine Rule 36(a), at Appendix B to the Court of Federal Claims' Rules, a motion made under Court of Federal Claims Rules 59 or 60 ("RCFC 59" or "RCFC 60") will be referred by the Clerk's Office to a specific judge of the court if that judge previously reviewed the petition on appeal pursuant to Vaccine Rule 23. If neither party appealed the special master's decision to a judge of the U.S. Court of Federal Claims under Vaccine Rule 23, the Clerk's Office will refer the motion to the Office of Special Masters for disposition.

A motion filed under RCFC 59 or RCFC 60 should be accompanied by a full explanation of the situation giving rise to the motion, and must explain which specific provision of RCFC 59 or RCFC 60 is thought to give the court authority to grant the relief requested. In motions referred to the Office of Special Masters, the non-moving party will have the same opportunity to respond to this motion as with any other motion coming before the court. See Vaccine Rule 20. For motions referred to a judge of the Court of Federal Claims, the non-moving party's opportunity to respond to the motion is governed by the terms specified in RCFC 59 or RCFC 60.

XVII. GENERAL NOTE CONCERNING DEADLINES AND EXTENSIONS THEREOF

The deadlines found in the Act and prescribed by the Vaccine Rules must be scrupulously followed, so that petitions may be resolved in a timely fashion. Upon good cause shown, however, a special master or judge may grant extensions of time to accomplish the required tasks, except with respect to any time period specified in the Act, Rules, or case-law as not susceptible to extension (e.g., the 30-day period for filing a motion for review of a special master's decision).

A request for an enlargement of time should be made prior to the expiration of the given time period. If that is impossible, the court will entertain a motion to enlarge *nunc pro tunc*. However, counsel must then be prepared to explain both why an enlargement is necessary **and** why it was not requested before expiration of the deadline.

In certain situations, an extension of a deadline may be obtained without filing a written motion, simply by telephoning the special master's office. This procedure may be used **only** when the request is made in advance of the current due date. Further, deadline extensions may be obtained via telephonic request **only** when the requesting counsel can advise that he or she has contacted opposing counsel and that opposing counsel has authorized him or her to represent that the opponent has no objection to the request. **Otherwise, requests for extensions of time must be made by written filing**.

If counsel presents no explanation, or an insufficient one, for not meeting a deadline, the court may take the following discretionary actions:

- Should respondent's counsel be in default, the court may make written report to that attorney's supervisor;

- Should petitioner's counsel be in default, the hourly rate or number of hours requested in any subsequent petition for fees and costs may be reduced.

XVIII. OBTAINING PROGRAM INFORMATION

General procedural questions concerning the Program should be directed to the Office of the Clerk of the U.S. Court of Federal Claims at (202) 219-9657. Also, general information and published special master decisions since 1997 are available on this court's website at www.uscfc.uscourts.gov, under the Office of Special Masters portion of the website. Note: The special masters intend to make greater use of its web page in disseminating relevant, instructive Program information.

There are several sources from which to obtain judicial precedent concerning the Program. Published decisions of U.S. Court of Federal Claims judges and of the Federal Circuit in vaccine cases have been and will continue to be published in the West Publishing Company's "United

States Court of Federal Claims Reporter" and "Federal Reporter, 3d Series," respectively. These decisions, in addition to the published decisions of the Special Masters, are also available through Westlaw and Lexis. On Westlaw, opinions of special masters and U.S. Court of Federal Claims judges are located in "FEDCL," and Federal Circuit decisions are available in "CTAF." On Lexis, the decisions of the special masters and of the U.S. Court of Federal Claims judges are available in the general library (denoted as "GENFED") under the "Other Federal Courts"/"U.S. Court of Federal Claims/Claims Court/Court of Claims" sections. (To most effectively call up all vaccine cases from that file, use the search term "vaccine." For a search of a more specific issue (e.g., attorney's fees), attach further search terms with a connector (e.g., "and", "w/25") to the primary search word "vaccine.")

ATTACHMENT 1: SAMPLE VACCINE PETITIONS

[The sample below offers a "fill-in-the-blanks" format for the **first paragraph only** of a Vaccine Program petition. For the succeeding paragraphs, follow a narrative format, **with references to accompanying exhibits**, as demonstrated by the sample of a complete petition contained on the following pages.]

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *

_____	*	
_____,	*	
	*	
Petitioner[s],	*	
	*	
v.	*	No. ___ - _____V
	*	
SECRETARY OF HEALTH AND	*	**[docket number to be assigned**
HUMAN SERVICES,	*	**by the Clerk after filing]**
	*	
Respondent.	*	
	*	

* *

PETITION

The above-named petitioner[s] request[s] compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq. (Supp. 2000), for the **[death/injury]** of **[victim's name]**, who received a **[type of vaccine]** vaccination on **[date]**, and who thereafter suffered the "Table Injury" known as **[name of Table Injury]**.

[If no "Table Injury" is alleged, instead the following format may be substituted after the date of vaccination:]

and who thereafter suffered **[name the injury or condition]**, which was "caused-in-fact" by the above-stated vaccination.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *

JOHN AND JANE SMITH, legal representatives of a minor child, JOEY SMITH,	*	
Petitioners,	*	
v.	*	No. ___ - ____V
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

* *

PETITION

The above-named petitioners request compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (Supp. 2000), on behalf of their minor son Joey Smith (hereinafter "Joey"), who received a diphtheria-pertussis-tetanus vaccine (hereinafter "DPT") on September 14, 2000, and who suffered eight days later, on September 22, 2000, a fever, uncontrollable crying, jerking of his arms and legs, and a staring episode, which was "caused-in-fact" by the above-stated vaccination.

(1) Joey was born on July 10, 2000, in Boston, Massachusetts. See Exhibit 1 [birth certificate].

(2) Joey was the product of an uneventful pregnancy, was healthy at birth, and was found to be a normally developing child at two "well baby" pediatrician visits prior to September 2000. See Exhibits 2, 3, and 4 [records of pregnancy care; records of birth; pediatrician records of "well baby" visits].

(3) Joey received his first administration of DPT at approximately 2:00 p.m., on September 14, 2000, in Brookline, Massachusetts. See Exhibit 5 [pediatrician record of vaccination].

(4) At 10:50 p.m., on September 22, 2000, Joey suffered a fever and uncontrollable crying. He also had a staring episode and rhythmic jerking of all extremities for approximately five minutes. See Exhibits 6 and 7 [affidavits of John and Jane Smith]. An emergency medical

team was called, visited the Smith home, and rushed Joey to the emergency room at Children's Hospital. See Exhibit 8 [EMT records]. The examining doctor at the emergency room diagnosed Joey's staring and jerking movements as a "generalized tonic-clonic seizure." See Exhibit 9 [emergency room records] at l. During his ensuing three-day hospitalization, Joey was observed to suffer approximately nine more tonic-clonic seizures. See Exhibit 10 [hospital inpatient records] at 7-8, 10-12. During the course of his hospitalization, Joey's temperature ranged between 98.6 and 103 degrees Fahrenheit. Id.

(5) Joey's condition stabilized following treatment for his fever and seizures, and he was discharged from the hospital on September 26, 2000. See Exhibit 11 [discharge report and instructions].

(6) Joey suffered seizures periodically for six months following his vaccination and continues to experience seizures to this day. He also suffers from developmental delay. See Exhibit 12 [pediatrician's records].

(7) Pediatric neurologist John Jones has reviewed all the medical records which pre-date and post-date the administration of Joey's DPT vaccination. Dr. Jones has also reviewed the statements of Joey's parents. Dr. Jones has concluded that Joey suffered an encephalopathy and a seizure disorder eight days after he received his first DPT vaccination. Dr. Jones's opinion is that there is no evidence to suggest a cause for encephalopathy and seizure disorder other than the vaccination and Joey's injuries were temporally related to the administration of his DPT vaccine. Dr. Jones also believes that the encephalopathy and seizure disorder resulted in Joey's subsequent developmental delay. Dr. Jones's reasoning and conclusions are set forth in his affidavit attached as Exhibit 13.

(8) Petitioners contend that Joey suffered an encephalopathy and a seizure disorder which was caused-in-fact by the DPT vaccine. Petitioners further contend that their son's developmental delay is a sequela of that brain injury and convulsive disorder. See 42 U.S.C. § 11(c)(1)(C)(ii)(I).

(9) John and Jane Smith have been appointed their son's legal representatives by the Commonwealth of Massachusetts. See Exhibit 14 [notice of appointment].

(10) Neither the petitioners nor their son have ever received compensation in the form of an award or settlement for Joey's vaccine-related injuries. See Exhibits 6 and 7. Nor have petitioners filed a civil action for Joey's injuries prior to filing this petition. See Exhibits 6 and 7.

(11) The petitioners request that their compensation demand (including attorney's fees and costs) be deferred at this time pursuant to 42 U.S.C. § 300aa-11(e), until such time as the entitlement issue has been resolved. **[In a case where the vaccine recipient has died, the petitioner should instead state that compensation is requested in the amount of $250,000,**

in addition to attorney's fees and costs, pursuant to 42 U.S.C. § 300aa-15(a)(2).]

JANE BROWN, ESQUIRE
Counsel of Record for Petitioners

BROWN & BROWN, P.C.
123 Milk Street
Boston, Massachusetts 01234
(617) 123-4567

[**PLEASE NOTE**: See the next page for the certificate of service, which **must** accompany the petition.]

CERTIFICATE OF SERVICE

I hereby affirm that an original and two copies of this petition and all related medical records are hereby filed with the Clerk of the United States Court of Federal Claims. A copy of the petition and related medical records was served by first-class mail upon the respondent at the address below on **[date]**.

Secretary of Health and Human Services
c/o Director, Division of Vaccine Injury Compensation
Office of Special Programs
Health Resources and Services Administration
5600 Fishers Lane, Room 16C-17
Rockville, Maryland 20857

JANE BROWN, ESQUIRE
Counsel of Record for Petitioners

BROWN & BROWN, P.C.
123 Milk Street
Boston, Massachusetts 01234
(617) 123-4567

ATTACHMENT 2: SAMPLE "NOTICE OF FILING DOCUMENT[S]"

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *

_____	*	
_____,	*	
	*	
Petitioner[s],	*	
	*	
v.	*	No. ____- _____V
	*	Special Master **[name of master]**
SECRETARY OF HEALTH AND	*	
HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

* *

NOTICE OF FILING DOCUMENT[S]

Attached hereto for filing in the above-captioned case is [petitioner's [s']/[respondent's] **[name of document(s) to be filed, e.g., Motion for Extension of Time, Exhibit Nos. 5-10, Prehearing Memorandum, etc.]** .

_____
[Name of Counsel]
Counsel of Record for [Petitioner[s]/Respondent]

[Address]

Date: _____

[**PLEASE NOTE**: A certificate of service on opposing counsel is required to be stapled to the end of all filings. An original plus one copy of each document, with attachments, is required for all post-petition filings. Each complete set of documents to be filed is to be bound together in a permanent fashion – i.e., stapled, velo-bound, etc.– with a tab at the beginning of each exhibit if more than one exhibit is being filed. For example, if Exhibits 10 through 20 are being filed, one complete set of the exhibits is to be bound together with the original (signed) "Notice of Filing Documents" placed on top; the second set of exhibits must also be bound together and enclosed, with a copy of the "Notice of Filing Documents" placed on top.]

ATTACHMENT 3: SAMPLE "NOTICE OF DECISION NOT TO SEEK REVIEW"

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *

_____	*	
_____,	*	
	*	
Petitioner[s],	*	
	*	
v.	*	No. ___ - _____V
	*	Special Master **[name of master]**
SECRETARY OF HEALTH AND	*	
HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

* *

NOTICE OF DECISION NOT TO SEEK REVIEW

The special master issued a decision in the above-captioned case on **[date]**. [Petitioner[s]/respondent], through [his/her/their] counsel, hereby formally notifies the U.S. Court of Federal Claims that [he/she/they] will not seek review of that decision by a U.S. Court of Federal Claims judge, and renounce[s] the right to seek such review.

_____
[Name of Counsel]
Counsel of Record for [Petitioner[s]/Respondent]

[Address]

Date: _____

[**PLEASE NOTE:** A certificate of service on opposing counsel is required to be stapled to the end of all filings; an original plus one copy of the Notice is required for filing.]

ATTACHMENT 4: SAMPLE "ELECTION TO ACCEPT JUDGMENT"

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *		
_____	*	
_____,	*	
	*	
Petitioner[s],	*	
	*	
v.	*	No. ___ - _____V
	*	Special Master **[name of master]**
SECRETARY OF HEALTH AND	*	
HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	
* *		

ELECTION TO ACCEPT JUDGMENT

Petitioner[s], through [his/her/their] counsel of record, hereby elect[s], pursuant to 42 U.S.C. § 300aa-21(a), to accept the Judgment entered on **[date]** in the above-captioned case.

_____
[Name of Counsel]
Counsel of Record for Petitioner[s]

[Address]

Date: _____

[**PLEASE NOTE:** A certificate of service on opposing counsel is required to be stapled to the end of all filings; an original plus one copy of the Election is required for filing.]

ATTACHMENT 5: SAMPLE "ELECTION TO FILE CIVIL ACTION"

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *

_____	*	
_____,	*	
	*	
Petitioner[s],	*	
	*	
v.	*	No. ____ - _____V
	*	Special Master **[name of master]**
SECRETARY OF HEALTH AND	*	
HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

* *

ELECTION TO FILE CIVIL ACTION

Petitioner[s], through [his/her/their] counsel of record, hereby elect[s], pursuant to 42 U.S.C. § 300aa-21(a), to maintain [his/her/their] option of filing a civil action in lieu of accepting the Judgment entered on **[date]** in the above-captioned case.

_____
[Name of Counsel]
Counsel of Record for Petitioner[s]

[Address]

Date: _____

[**PLEASE NOTE:** A certificate of service on opposing counsel is required to be stapled to the end of all filings; an original plus one copy of the Election is required for filing.]

ATTACHMENT 6: GENERAL ORDER #9

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
Filed July 24, 1995

GENERAL ORDER #9

This Order is issued to inform petitioners that an additional piece of information will be required to support **Applications for Fees and Costs** filed under the National Vaccine Injury Compensation Program.

In some Program cases, **petitioners themselves**, rather than their counsel, have expended part or all of the costs of the Program proceeding. However, in a few of such cases, petitioners' counsel have submitted cost applications which inadvertently omitted the cost items paid by petitioners themselves. Under current case law, correcting such an omission is difficult and time-consuming.

In an effort to ensure that petitioners and counsel alike are fairly and fully compensated and to avoid unnecessary litigation in correcting oversights and errors, the court **shall** require in **all** future applications for fees and costs a statement signed by **petitioners and counsel** which clearly delineates which costs were borne by counsel and which costs were borne by petitioners, including the amount of any retainer that has been paid.

IT IS SO ORDERED.

_____
Gary J. Golkiewicz
Chief Special Master

ATTACHMENT 7: GENERAL ORDER #11

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
Filed February 8, 2001

GENERAL ORDER #11

ALTERNATIVE DISPUTE RESOLUTION ("ADR") TECHNIQUES AVAILABLE IN VACCINE CASES

I. INTRODUCTION

The National Vaccine Injury Compensation Program was specifically designed to resolve vaccine-related injury claims in a fashion that is speedier, less costly, and less adversarial than ordinary tort litigation. The Program has been largely successful in that regard, but in recent years the Office of Special Masters has utilized certain techniques of Alternative Dispute Resolution ("ADR") that have resolved many cases *even more speedily and efficiently*.

When a Vaccine Act case is in dispute and the parties are unable to settle that dispute on their own, the special master considers the evidence and argument advanced by both parties, usually after one or more evidentiary hearings, and determines whether the petitioner is entitled to Program compensation, and, if appropriate, the proper amount of compensation. This process, while quicker and more efficient than ordinary tort litigation, can entail considerable time and expense. As an alternative to this decision-making process, the special masters provide ADR services which can often greatly reduce the time and expense of litigation.

ADR is a term widely used to describe methods and techniques of facilitating settlement of disputes without resort to formal court proceedings. Generally, ADR methods assist the parties in understanding the strengths and weaknesses of their case as well as their opponent's, in assessing their chances of prevailing in formal litigation, and in viewing their case objectively from different perspectives. ADR techniques rely upon collaborative discussion rather than adversarial proceedings. When ADR is successful, a voluntary settlement is reached quickly and efficiently. Even where a settlement is not achieved, the parties' understanding of the case is greatly enhanced, resulting in a more focused presentation to the decision-maker and ultimately a quicker resolution.

The use of ADR techniques has proven highly successful in resolving cases under the Program. While utilized primarily in the past to facilitate settling damages issues, ADR is now being used successfully to foster resolution of entitlement issues, litigative risk settlements, and many attorney fee issues. While mediation is the ADR method of choice, mini-trials and early neutral evaluations have also been used with great success. The essential ingredients are the

parties' willing and creative involvement. The ADR process has proven flexible and capable of handling virtually any fact pattern and legal issue, since the technique is tailored to the issues and the parties' recommendations for a given case. ADR should be viewed as an important tool for resolving a dispute without sacrificing the quality of justice or the right to trial in the event that a voluntary settlement is not achieved.

In every Program case, the parties should carefully consider, ideally at an early point in the case, whether use of one of the ADR techniques described below might lead to a resolution that is not only speedy and efficient, but also provides for satisfaction to both parties.

II. TYPES OF ADR PROCEDURES AVAILABLE

A. Terms defined

Before discussing the types of ADR procedures that have been used in Vaccine Act cases, it may be helpful to define two terms. **"Mediation"** means that a third party meets and works with the parties to facilitate their settlement negotiations. The mediator attempts to help the parties improve their communication with one another, identify the key interests of each side, and determine areas of each party's position in which there is enough flexibility to allow for compromise. The mediator ordinarily meets with both parties and both counsel together (note that the *petitioners themselves* are ordinarily included, not just their counsel), and then often will meet with each side separately, alternating between parties. Mediation can consist of a single session lasting from a couple of hours to a full day, or can consist of more than one session, with time periods in between the sessions. **"Neutral evaluation**,**"** on the other hand, means that a neutral third party spends time evaluating the *substance* of the case and the parties' respective positions, and then gives each side a frank assessment of the strengths and weaknesses of that party's case. This can often break a logjam in settlement negotiations where a party has an overly optimistic assessment of the strength of that party's case.

B. Types of procedures

It should be emphasized that the **parties themselves**, subject to the special master's approval, will choose an ADR procedure in any individual case. The parties should choose a format with which they are fully comfortable. The following are some of the available options.

1. Mediation/neutral evaluation by "settlement master"

The ADR technique that has been most commonly used in Program cases, with an extremely high rate of success, has been the appointment of a "settlement master." The settlement master is a special master of the United States Court of Federal Claims *other* than the presiding special master. (The "presiding special master," of course, is the special master who is already assigned the case and who would resolve the case by decision if no settlement is reached.) The settlement master can engage in mediation, neutral evaluation, or a combination

of the two, as dictated by the preferences of the parties, to help the parties reach a settlement. But there are several particular points to consider when weighing the use of a "settlement master" as opposed to ADR by the *presiding* special master (option #3 below) or by a "professional mediator" (option #2 below).

As compared to mediation/evaluation by the presiding special master, use of a settlement master has the benefit that if the ADR fails to produce a full settlement, the settlement master will *not* be the one to decide the case. Therefore, the settlement master will feel freer to give the parties a candid assessment of their respective cases, and also it may be more acceptable to the parties for the settlement master to engage in *separate* meetings with each side to the case.

Moreover, use of a settlement master may also have some advantages, in some cases, over use of ADR by a "professional mediator" (option #2 below). Obviously, as a judicial officer extensively experienced in hearing and deciding *Vaccine Act cases*, the settlement master is extremely well qualified to give each party an experienced assessment of the strengths and weaknesses of that party's case. For example, if the dispute concerns the proper *amount* of compensation, the settlement master will likely have a thorough working knowledge of what amounts special masters have awarded in similar cases, information that could greatly help the parties reach a compromise.

Of course, if ADR by the settlement master fails to produce a settlement satisfactory to both parties, the case will be returned to the presiding special master for hearing and decision.

2. Mediation/neutral evaluation by professional mediator

A second ADR option is to utilize mediation and/or neutral evaluation by someone who is not a special master--*i.e.*, a *professional mediator/evaluator*. Courts nationwide are now employing private, professional neutrals in court-sponsored ADR programs with a high rate of success, often in complex cases involving serious medical injuries.

The chief advantage of this form of ADR is that professional neutrals with practices devoted solely to mediation often have excellent specialized skills in resolving difficult conflicts. They have skills in building trust by remaining neutral at all times, and in improving the communications among the parties and counsel. Professional mediators are often particularly skilled in dealing with emotionally-charged cases, and in reaching out to the parties in the case. While counsel usually drive legal negotiations, professional neutrals are trained to encourage the *parties' direct involvement* in settlement discussions to meet the needs and interests of the parties. Further, professional mediators can bring "a fresh face and look" to a dispute, from someone without preconceived notions about the case.

3. Mediation/neutral evaluation by presiding special master

A third available ADR procedure is to utilize mediation and/or neutral evaluation by the

presiding special master, meaning the same special master who is already assigned the case. This process has been used successfully in a number of Program cases. The presiding master would, of course, engage in the above-described techniques of mediation, neutral evaluation, or a combination thereof, to help the parties to achieve settlement. The master might restrict the sessions to meeting with both sides together, or might also engage in separate sessions with each side individually, whichever the parties prefer.

One advantage of this procedure is that the presiding special master already knows much about the substance of the case, and can prepare very quickly for the ADR session. Further, to the extent that the master gives the parties an evaluation of the case, the evaluation will be of considerable weight, since that same master would be the one to decide the case if settlement efforts fail.

On the other hand, a great many parties may not wish, understandably, to discuss their settlement negotiations with the same special master who would decide the case if settlement is not reached. If so, they may elect instead to try one of the other ADR procedures described above or below. Or, with the presiding special master's approval, the parties could proceed to ADR with the *presiding special master*, with the agreement that if settlement is not achieved, then the case will be formally transferred to ***another*** special master for decision. That option would combine the key feature of the "settlement master" option (*i.e.*, mediation by a master who will not decide the case if a settlement is not reached) with the advantage of having mediation by a master who is already familiar with the case.

4. Mini-trials

This is a procedure in which the parties present an abbreviated form of their case to either the presiding special master, another special master, or a third-party neutral. This procedure may be particularly useful when the record as it stands does not yet contain enough information for either side to appreciate fully the strengths of each side's case. The parties ordinarily agree to a time limit for each side's presentation. The mini-trial can be conducted as informally (or formally) as the parties prefer. The parties may choose who would be the best person to preside at the mini-trial--*i.e.*, the presiding special master, another special master, or someone else--and to what extent (if any) they wish the presiding official to offer an evaluation of the evidence after the presentation. The basic theory of the mini-trial is that it will give the parties in a short period of time a great deal of insight as to the strengths of each side's case, thus facilitating settlement. Typically, no ruling results from the mini-trial, and the parties retain their right to put on their *entire* case before the presiding special master at a later date, if settlement fails.

5. Other ADR procedures

The techniques discussed above are not necessarily the only ADR options available. Other procedures have been utilized, including, in cases where the parties agree, *binding* arbitration by either the presiding special master or another arbitrator. The special master and the parties can

design other types of processes tailored to the particular case. The parties should feel free to discuss other ideas with each other, and to suggest them to the presiding special master.

III. ADDITIONAL POINTS

A. Confidentiality

All ADR proceedings, including documents generated solely for the ADR and communications within the scope of the proceedings, are confidential. If the ADR proceedings are conducted by a settlement master or third-party neutral, no description of the proceedings, any communications involved therein, or any documents generated solely for the ADR, will be divulged by the settlement master or neutral to the presiding special master (or to anyone else). Moreover, the parties ordinarily agree that if the ADR fails to result in settlement, *the parties, too*, and any other participants in the ADR, will be bound by this rule of confidentiality. (The presiding special master will provide a form for a confidentiality agreement that the parties may wish to execute before beginning the ADR proceedings.)

B. Preparation for ADR procedure

Counsel may or may not have experience in ADR proceedings. To select the appropriate ADR procedure and to prepare for the ADR proceeding, counsel are encouraged to familiarize themselves with ADR experiences under the Act. Counsel should discuss these matters among themselves, with the court, or with attorneys experienced in ADR matters under the Act. The court can furnish resources to familiarize parties with ADR under the Act.

C. Parties are strongly encouraged to consider ADR

Entry into any type of ADR proceeding is always purely voluntary on the parties' part. However, the special masters wish to emphasize that they believe that ADR is an excellent way to resolve Vaccine Act cases. They strongly encourage the parties to consider ADR as an option at any point in the proceeding. The presiding special master may well suggest ADR at some point in the proceeding if the master deems it appropriate, but the parties should *always* feel free to suggest it on their own. The Office of Special Masters will strive to ensure that any ADR proceeding is conducted *promptly and speedily* once the parties request it. Thus, ADR can not only offer a substantial likelihood of prompt resolution if the ADR is successful, but will also *not* substantially delay the ultimate resolution of the case even if the ADR is unsuccessful.

IT IS SO ORDERED.

_____

Gary J. Golkiewicz
Chief Special Master

ATTACHMENT 8: NOTICE TO PETITIONERS REGARDING ADMINISTRATIVE CHANGES TO THE VACCINE INJURY TABLE

As of July 15, 2002

Depending on the date a petition is filed, the Vaccine Injury Table found at 42 U.S.C. § 300aa-14(a) may **not** apply in your case.

Pursuant to § 14(c) and § 14(e)(2) of the Vaccine Act, the Secretary of Health and Human Services may amend the Vaccine Injury Table by adding or deleting injuries, changing the time periods within which onset of a Table injury must occur, or by adding additional vaccines and "Table Injuries" for such vaccines. The Secretary may also define or redefine the covered injuries through the Qualifications and Aids to Interpretation.

In accordance with the Secretary's statutory authority, the Secretary has made revisions to the Vaccine Injury Table as follows:

• On February 8, 1995, the Vaccine Injury Table was amended, applicable to petitions filed on or after March 10, 1995. See 60 Fed. Reg. 7678 (1995) (codified at 42 C.F.R. pt. 100).

• On February 20, 1997, the Vaccine Injury Table was amended, applicable to petitions filed on or after March 24, 1997. See 62 Fed. Reg. 7685 (1997) (codified at 42 C.F.R. pt. 100).

• On May 11, 1998, the Vaccine Injury Table was amended, adding coverage to claims filed on or after August 6, 1997, for injuries or death related to the hepatitis B, varicella, or *Haemophilus influenza* type b (Hib) vaccines. See 63 Fed. Reg. 25777 (1998) (codified at 42 C.F.R. pt. 100).

• On July 27, 1999, the Vaccine Injury Table was amended, adding coverage to claims filed on or after October 22, 1998, for injuries or death related to the rotavirus vaccine. See 64 Fed. Reg. 40517 (1999) (codified at 42 C.F.R. pt. 100).

• On May 22, 2001, the Secretary gave notice adding coverage under the Vaccine Injury Table's Category XIII (the general category reserved for new vaccines recommended by the Centers for Disease Control and Prevention for routine administration to children) to claims filed on or after December 18, 1999, for injuries or death related to the pneumococcal conjugate vaccine. See 66 Fed. Reg. 28166-01 (2001) (codified at 42 C.F.R. pt. 100).

(Note: These revised Tables do **not** appear in the U.S.C.)

The practical outcome of these modifications is the establishment of several discrete Vaccine Injury Tables. Therefore, it is important, when filing a petition, to be aware of the existence of these Vaccine Injury Tables and to utilize the appropriate Table in your case, **depending on the date the petition is filed**. In other words, the Vaccine Injury Table in the statute at § 300aa-14(a) applies to all petitions filed **prior** to March 10, 1995; for petitions filed on or after March 10, 1995, one of the administratively-amended versions of the Vaccine Injury Table applies. If you review these Guidelines after filing a petition, please make sure that the correct Vaccine Injury Table was referenced. If the incorrect Vaccine Injury Table was used, please notify the court as soon as possible and request a reasonable extension of time in which to amend your petition. Petitioners are responsible for educating themselves on which Table applies to their respective circumstances. Petitioners may wish to refer to HHS's website at www.hrsa.gov/osp/vicp for information on the applicable Vaccine Injury Table or download the latest administratively-amended version of the Vaccine Injury Table (42 C.F.R. § 100.3) from Lexis/Nexis or Westlaw.