

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 14-592V

Filed: March 18, 2016

UNPUBLISHED

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DAVID DUNCAN,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;  
Tetanus-Diphtheria-acellular Pertussis;  
("Tdap"); Table Injury; Brachial Neuritis;  
Brachial Plexus; Special Processing  
Unit ("SPU")

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Isaiah Kalinowski, Maglio Christopher and Toale, PA (DC), for petitioner.

Michael Milmo, U.S. Department of Justice, Washington, DC, for respondent.

### DECISION AWARDING DAMAGES<sup>1</sup>

**Dorsey**, Chief Special Master:

On July 11, 2014, David Duncan filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,<sup>2</sup> (the "Vaccine Act" or "Program"). Petitioner alleges he suffered pain and weakness in his shoulder and arm following the administration of the tetanus, diphtheria, and acellular pertussis ("TDAP") vaccine on October 26, 2012. Petition at 1, 4. (ECF No. 1). The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 28, 2014, a ruling on entitlement was issued, finding that petitioner was entitled to compensation. (ECF No. 16). On March 18, 2016, respondent filed a proffer on award of compensation ["Proffer"] stating that petitioner should be awarded \$193,000.00. Proffer at 1 (ECF No. 49). According to respondent's Proffer, petitioner

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

agrees to the proposed award of compensation. Id. Furthermore, petitioner has filed an "Acceptance of Proffer." Notice, filed Mar. 18, 2016 (ECF No. 50).

Pursuant to the terms stated in the attached Proffer, the undersigned awards petitioner **a lump sum payment of \$193,000.00 in the form of a check payable to petitioner, David Duncan.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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

DAVID DUNCAN,	)	
	)	
Petitioner,	)	No. 14-592V
	)	Chief Special Master Dorsey
v.	)	ECF
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On October 28, 2014, then Chief Special Master Denise Vowell issued a Ruling on Entitlement finding that petitioner was entitled to vaccine compensation for his brachial neuritis. Respondent proffers that, based on the evidence of record, petitioner should be awarded \$193,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the special master’s decision and the Court’s judgment award the following:<sup>1</sup>

- A. A lump sum payment of \$193,000.00 in the form of a check payable to petitioner, David Duncan. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

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<sup>1</sup> Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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