

DEC 15 2020

OSM

U.S. COURT OF FEDERAL CLAIMS

In the United States Court of Federal Claims**OFFICE OF SPECIAL MASTERS**

Filed: November 18, 2020

* * * * *	*	
H.R.,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 18-1855V
v.	*	
	*	Special Master Dorsey
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	Motion for Redaction.
	*	
Respondent.	*	
* * * * *	*	

H.R., pro se, for petitioner.Heather L. Pearlman, US Department of Justice, Washington, DC, for respondent.**ORDER GRANTING PETITIONER'S MOTION FOR REDACTION**¹

On October 21, 2020, petitioner filed a motion to redact the undersigned's October 7, 2020 Decision denying entitlement. Petitioner's Motion for Redaction of Petitioner's Name in Decision ("Pet. Mot."), filed Oct. 21, 2020 (ECF No. 46). For the foregoing reasons, petitioner's motion is **GRANTED**.

I. RELEVANT PROCEDURAL HISTORY

On November 30, 2018, H.R. ("petitioner") filed a petition in the National Vaccine Injury Compensation Program.² Petitioner alleged that as a result of an influenza ("flu") vaccine he

¹ The undersigned intends to post this Order on the United States Court of Federal Claims' website. **This means the Order will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioners have 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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished order contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this Order to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

received on November 5, 2017, he suffered from Guillain-Barré syndrome (“GBS”). Petition at 2 (ECF No. 1).

On October 7, 2020, the undersigned issued a decision denying entitlement. Decision dated Oct. 7, 2020 (ECF No. 45). On October 21, 2020, petitioner filed a motion to redact his name in the decision, limit the public’s access to petitioner’s name, and/or any other private or privileged information the Special Master deems appropriate. Pet. Mot. at 1. In support of this request, petitioner notes that the “[d]isclosure of such information would constitute [an] invasion of privacy” and “[r]edaction would not affect the public’s ability to understand the basis for the decision.” *Id.* at 1.

Respondent filed a response on October 30, 2020, outlining the standards for a motion for redaction and “defer[ring] to the sound discretion of the special master to determine what remedy strikes the appropriate balance between the public and private interests in this instance.” Respondent’s Response to Pet. Mot. (“Resp. Response”), filed Oct. 30, 2020 (ECF No. 47).

Petitioner filed a reply on November 17, 2020, along with a declaration. Pet. Reply, filed Nov. 17, 2020 (ECF No. 50). Petitioner explained that he has over 100 employees under his supervision and management, and he fears disclosure of his medical information could have a prejudicial impact on his current business and future business relations. *Id.* at 2-5.

This matter is now ripe for adjudication.

II. DISCUSSION

A motion for redaction is governed by section 12(d)(4)(B) of the Vaccine Act. *See* § 12(d)(4)(B). That section provides that information concerning “medical files and similar files” may be redacted if its disclosure “would constitute a clearly unwarranted invasion of privacy.” *Id.* What constitutes a “clearly unwarranted invasion of privacy” requires balancing petitioner’s “right of privacy against the public purpose of the Vaccine Act.” *W.C. v. Sec’y of Health & Hum. Servs.*, 100 Fed. Cl. 440, 460 (2011), *aff’d*, 704 F.3d 1352 (Fed. Cir. 2013). While a petitioner has an interest in keeping sensitive medical or other embarrassing information private, the public has an interest in disclosure, so as to increase public awareness of vaccines and the medical conditions they may or may not cause. *Id.* at 461. In other words, sensitive information is often the subject of the litigation, and “in cases where sensitive information is the subject of the dispute, that information is routinely disclosed in decisions, to enable the reader to follow and understand the decision maker’s rationale.” *Castagna v. Sec’y of Health & Hum. Servs.*, No. 99-411V, 2011 WL 4348135, at *13 (Fed. Cl. Spec. Mstr. Aug. 25, 2011).

Although the Vaccine Rules make mandatory the redaction of a minor’s name, adult petitioner’s names, which are not similarly protected automatically, may also be redacted if the petitioner establishes proper grounds for redaction. *See R.V. v. Sec’y of Health & Hum. Servs.*, No. 08-504V, 2016 WL 3776888, at *2 (Fed. Cl. Spec. Mstr. May 10, 2016) (“[A] petitioner needs to make some showing to justify the relief of redaction; redaction is not available simply at a petitioner’s beck and call.”). The undersigned will permit redaction in cases, such as this, where a specialized showing is made.

The facts and circumstances of this case warrant redaction of petitioner’s name to initials. Petitioner made an adequate showing for redaction. **Accordingly, petitioner’s motion for redaction of his name in the decision is GRANTED.**

Thus, the public version of the decision denying entitlement shall be redacted to include only petitioner’s initials, H.R. Moreover, the undersigned further directs the clerk to amend the case caption to the following:

* * * * *	*
H.R.,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
	*
* * * * *	*

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master