



**ACCV Presentation
December 2025**

Glossary of Terms

- **Petition:** The legal document typically prepared by an attorney that initiates a claim, which includes basic details about the alleged vaccine injury and is filed with the Court of Federal Claims, with a copy provided to HHS.
- **Petitioner:** Either the person alleged to have been injured by the vaccine or their legal representative (i.e., a parent) if the injured person is a minor or unable to represent themselves.
- **Special Master:** One of eight judicial officers within the Court of Federal Claims responsible for resolving petitions.
- **Decision:** The legal document from the Special Master that explains his or her determination on the merits of the petition.
- **Final Judgment:** The action by the court that either awards or denies compensation and ends the proceedings.

Glossary of Terms

- **Compensable:** The petitioner receives an award of compensation, which can be achieved through a concession by HHS, a settlement or proffer, or a decision on the merits by the Special Master.
- **Conceded by HHS:** HHS has determined that a petition should be compensated based on review and analysis of the medical records and other available evidence.
- **Non-compensable/Dismissed:** The petition is dismissed (for any reason), and the petitioner receives no compensation for the injury.
- **Vaccine Injury Compensation Trust Fund:** The pot of money paid into by vaccine manufacturers that covers any compensation awards to petitioners.

Glossary of Terms

- **Settlement:** A compromise between the parties where the petitioner accepts less than the full value of their damages in exchange for a guaranteed award, while the government agrees to pay something, without agreeing that the vaccine caused the injury, in exchange for the petitioner dismissing the case.
- **Proffer:** In a conceded case or following a decision finding entitlement to compensation, if the parties are able to agree to a reasonable amount of damages, respondent will file a suggested award of compensation.
 - **Note:** It is ultimately up to the presiding Special Master to determine that either a settlement or proffer is appropriate and issue a decision adopting the parties' agreement.

The Path of a Petition



DOJ Vaccine Litigation Section

Section 12(b)(1) of the Vaccine Act provides:

- “In all proceedings brought by the filing of a petition under section 300aa-11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of Title 28.”

28 U.S.C. § 518(a) provides:

- “Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General [or their designated officer within DOJ] shall conduct and argue suits and appeals in the Supreme Court and suits in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit...”

Two Phases of Adjudication

- Entitlement Phase
 - Is the petitioner entitled to compensation for the injury?

If entitlement to compensation is conceded by HHS or found by the Special Master, the case proceeds to damages

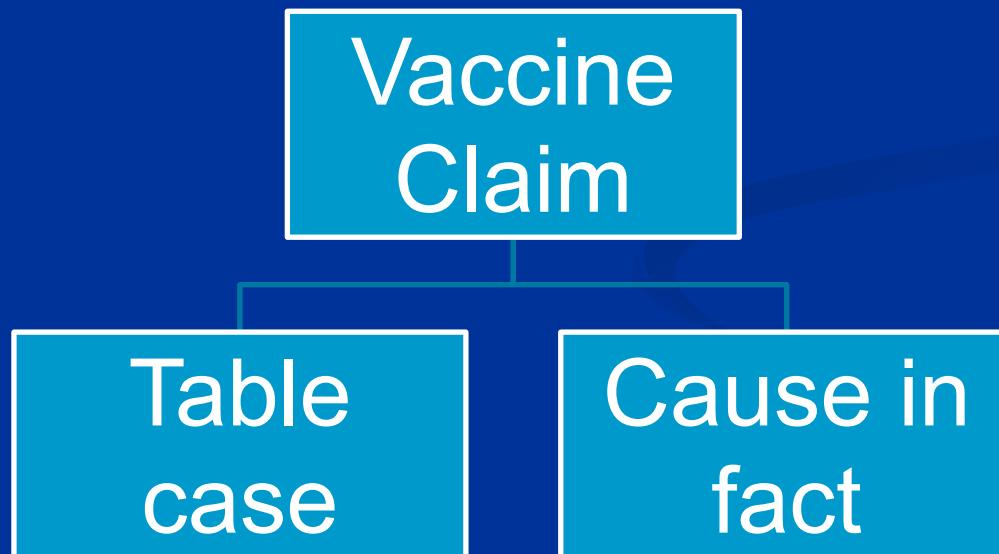
- Damages Phase
 - What types and what amount of compensation should the petitioner receive?

Entitlement to Compensation: General Requirements

- 1) Received a vaccine listed on the Vaccine Injury Table and contained in § 14 of the Act
- 2) Suffered a vaccine-related injury, or a vaccine-related significant aggravation of a pre-existing injury
- 3) Experienced a sufficiently serious injury as defined by the Vaccine Act
- 4) Has not collected an award or settlement in a civil action for damages for the injury

What must a petitioner show to establish a vaccine-related injury?

Two ways to prove causation:



Burden of Proof

Preponderance of the evidence,
or “more likely than not”

- “Preponderance of the Evidence,” *Black’s Law Dictionary* (12th ed. 2014): “The greater weight of the evidence...evidence that has the most convincing force; superior evidentiary weight...sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”
- The most common standard in civil litigation

Table case

Table injuries require proof that the petitioner sustained, or had significantly aggravated, an illness set forth on the Vaccine Injury Table within the requisite period of time after vaccine administration.

See 42 U.S.C. § 300aa-11(c)(1)(C)(i).

General requirements:

- Covered vaccine
- Covered injury
- Onset in the Table time period
- No evidence of a “factor unrelated”

Qualifications and Aids to Interpretation (QAI)

- QAI define conditions listed in the Vaccine Table.
- Examples are encephalopathy/encephalitis, anaphylaxis, syncope, brachial neuritis. See 42 C.F.R. § 100.3(b).
- If the evidence shows that a petitioner suffered an injury as defined in the QAI within the time period set forth in the Table, causation is presumed (i.e., no additional evidence is required from the petitioner).
- Claims of Guillain-Barré syndrome (GBS) and shoulder injury related to vaccine administration (SIRVA) comprise a substantial majority of Table cases.

Causation in fact

- If the injury alleged is not on the Table, or the Table requirements (timing and diagnosis) are not met, the petitioner can still attempt to prove that the injury was “caused-in-fact” by the vaccine.
 - The Special Masters apply the test articulated by the Court of Appeals for the Federal Circuit in Althen v. HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005):
 - Petitioner must prove by a preponderance of the evidence: (1) a **medical theory** causally connecting the vaccination and the injury; (2) a **logical sequence of cause and effect** showing that the vaccination was the reason for the injury; and (3) a showing of a proximate, or **medically appropriate, temporal relationship** between vaccination and injury.

Causation in fact

- In addition, petitioner must show that the vaccine was a substantial factor in bringing about the injury and that the injury would not have occurred in the absence of the vaccination.
 - Pafford v. HHS, 451 F.3d 1352 (Fed. Cir. 2006) (citing to Shyface v. HHS, 165 F.3d 1344 (Fed. Cir. 1999))
- The Federal Circuit has clarified that this is the same standard that applies in traditional civil tort litigation.
 - Moberly v. HHS, 592 F.3d 1315 (Fed. Cir. 2010)

Causation in fact

- The Federal Circuit has confirmed that the medical theory and “logical sequence of cause and effect” offered by a petitioner must be supported by a “reputable” and “reliable” scientific or medical explanation.
 - Grant v. HHS, 956 F.2d 1144 (Fed. Cir. 1992); Knudsen v. HHS, 35 F.3d 543 (Fed. Cir. 1994)
- A persuasive medical theory must be more than just “plausible.”
 - Cerrone v. HHS, 146 F.4th 1113, 1121 & n.3 (Fed. Cir. 2025); LaLonde v. HHS, 746 F.3d 1334 (Fed. Cir. 2014); W.C. v. HHS, 704 F.3d 1352 (Fed. Cir. 2013)

Daubert v. Merrell Dow Pharmaceuticals, Inc.

- The Supreme Court's 1993 decision in Daubert v. Merrell Dow Pharmaceuticals, Inc. held that trial judges have a "gatekeeping" duty to ensure that evidence of a technical or scientific nature is scientifically reliable before giving it any weight.
- The Federal Circuit has held that the Daubert framework is useful in Vaccine Act cases when evaluating the reliability of the evidence.
 - Cedillo v. HHS, 617 F.3d 1328, 1338-39 (Fed. Cir. 2010); Terran v. HHS, 195 F.3d 1302, 1316 (Fed. Cir. 1999)

Government Evidence

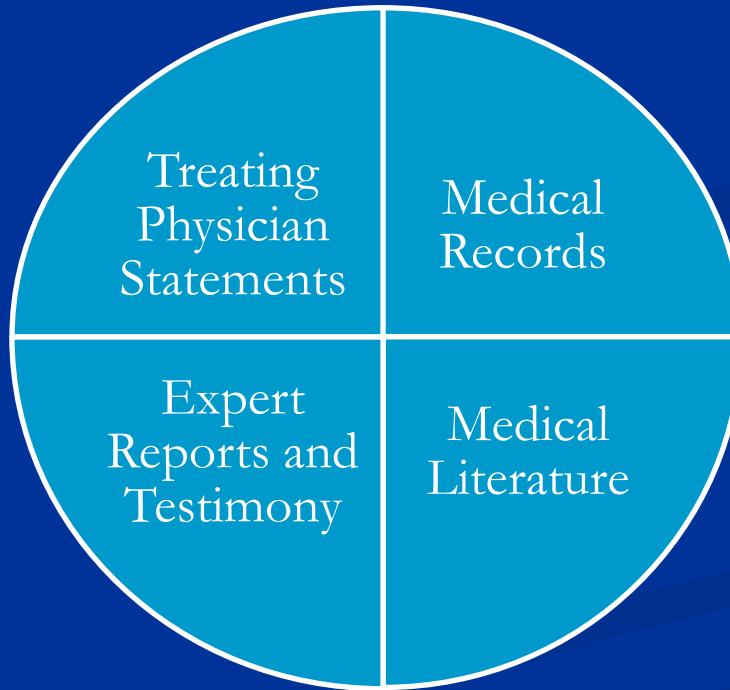
The government may introduce evidence to rebut the petitioner's case, and the Special Master may consider that evidence when determining whether the petitioner has met their burden of proof*

- Disputed diagnosis
- Unreliable medical theory
- Alternate cause
- Medically inappropriate timing (too soon or too remote)

* Doe 11 v. HHS, 601 F.3d 1349 (Fed. Cir. 2010); Stone v. HHS, 676 F.3d 1373 (Fed. Cir. 2012)

What kinds of evidence does the special master consider?

The special master may not find causation for petitioner based upon the petitioner's claims alone, unsubstantiated by medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1).



Informal Resolution

Most cases are resolved informally between the parties

- Litigative Risk Settlements
 - The petitioner and the government agree to a compromise prior to a formal finding by the Special Master
- ADR
 - Early neutral evaluation by a different Special Master
 - By Outside Mediator
- Negotiations between the parties to resolve damages after HHS concession or entitlement decision by the Special Master, resulting in either a settlement or a proffer

Damages Phase

Types of Compensation

(dictated by Section 15(a) of the Vaccine Act)

- Actual and reasonably-projected future unreimbursable expenses
- Actual past (i.e., pre-judgment) unreimbursed expenses
- Lost Earnings
- Pain and Suffering
- Death Benefit

Damages Phase

Amount of Compensation

- Pain and suffering
 - Statutory maximum: \$250,000.00
 - The Special Masters historically have reserved higher awards for more severe injuries
- Death Benefit
 - Statutory award of \$250,000.00
 - The Federal Circuit has held that lost earnings, pain and suffering, and unreimbursable expenses may also be awarded in a death case.
 - Zatuchni v. HHS, 516 F.3d 1312 (Fed. Cir. 2008)
- Lost Earnings
 - Different for minors and adults
 - The Federal Circuit has held that lost future earnings are limited to persons who are alive at the time of judgment.
 - Tembenis v. HHS, 733 F. 3d 1190 (Fed. Cir. 2013)

Damages Phase

“Unreimbursed” or “Unreimbursable” Expenses

- Compensation awards to petitioners are offset by:
 - State Compensation Programs (i.e., Worker’s Compensation)
 - Private Disability Policies
 - Health Insurance Policies
 - Medicare
 - Veteran’s Affairs Benefits
 - State and federal taxes
- **Note:** Medicaid benefits are not offsets

Forms of Payment

- Section 15(f)(4)(A) of the Vaccine Act provides that compensation:
 - “shall be determined on the basis of net present value”
 - “shall be paid from the Vaccine Injury Compensation Trust Fund...in a **lump sum** of which all or a portion may be used as ordered by the special master to purchase an **annuity**” to be used for the benefit of the petitioner
 - Reversionary Trusts

Attorneys' fees and costs

- Reasonable attorneys' fees and other costs are paid, win or lose, as long as the petition was brought in good faith and there was a reasonable basis for the claim. 42 U.S.C. §300aa-15(e).
 - “a reasonable basis can only be established with objective evidence,” and “more than a mere scintilla but less than a preponderance of proof could provide sufficient grounds for a special master to find reasonable basis.”
 - Cottingham v. HHS, 971 F.3d 1337, 1344, 1346 (Fed. Cir. 2020)
 - Petitioners receive a presumption of good faith