

SAMPLE VACCINE PETITION

[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.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*
*
*

No. ____ - _____ V

**[docket number to be assigned
by the Clerk after filing]**

* * * * *

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 1. 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).]

JOHN LAWYERMAN, ESQ.
Counsel of Record for Petitioners

LAWYERMAN LLP
123 California Street
Oakland, CA 01234

[**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

JOHN LAWYERMAN, ESQ.
Counsel of Record for Petitioners

LAWYERMAN LLP
123 California Street
Oakland, CA 01234