

Vaccine Litigation over Mercury and Autism Puts Kids in Jeopardy

By ACSH Staff — September 26, 2007

In this week's *New England Journal of Medicine*, three separate publications deal with the current status of children's vaccines and the litigation swirling around them. The main article is yet another large study debunking any connection between infants' exposure to mercury in vaccines and autism or any other neurodevelopmental condition. I wonder -- along with thousands of doctors and scientists around the world -- whether there will ever be enough evidence to silence those who continue to make these unfounded assertions?

This new study arises from research done at several academic centers, four HMOs, and the Centers for Disease Control and Prevention (CDC) in Atlanta. Over one thousand children were assessed for neurological function -- forty-two separate measurements in each -- based upon their documented exposure to mercury in vaccines (and immune globulin preparations) as recorded from birth in their HMO medical records. No relationship between their total burden of mercury (via the preservative thimerosal) and any neurological or developmental abnormality was found.

But that won't be sufficient to thwart those who continue to petition various courts for compensation, on the basis of alleged vaccine-induced injury. This stark reality is discussed in some detail in two essays in the same journal: one by an attorney and law professor at U.C.-Berkeley, Stephen D. Sugarman, and the other by noted vaccine expert Dr. Paul Offit at Children's Hospital of Philadelphia.

The Legal Games Continue

Mr. Sugarman's discussion outlines the various legal options for those who still claim that their children's ailments were caused by one (or some combination) of their vaccines. The facts here are truly frightening: they can go to the federal Vaccine Injury Compensation Program (VICP), established in 1988 to allow families alleging vaccine-induced injury or illness to be compensated in a no-fault manner, with only minimal proof of vaccine-causation required. More than fair, you think?

But wait: over the past few years, a large group of parents asserting that their autistic children were rendered sick by vaccines have petitioned for special consideration, and now they're getting heard at a federal panel, the "vaccine court" (see my piece "Science Is Not a Democracy" from the *Washington Times*). This three-judge panel is even now hearing claims that vaccines -- either the mercury in some of them or some other, undetermined mechanism -- caused the children's autism. Two out of three judges will carry the day, if they believe that "it is more likely than not" that the vaccines caused the damage. It should be a requirement for these judges -- and for any other jury -- to read these three articles before rendering decisions so fraught with implications for

America's public health.

Furthermore, if the parents lose in that court, they still have recourse to a standard civil lawsuit, and their cases will be adjudicated by those well-known non-experts: a lay jury of their peers. In those settings, the full brunt of the cottage industry of anti-vaccine parents, lawyers, and advocates (including some in our own Congress) will be brought to bear, arguing for holding the drug makers liable.

If the vaccines are found, at any of these stages, to be responsible for the kids' sicknesses, huge damage awards can be expected, and vaccine makers will close up shop -- the few that are still in the business, that is.

Disease and Death Ahead

Dr. Offit's comments are almost calming in comparison. He merely outlines the unintended consequences of the ill-advised decision by the CDC and the American Association of Pediatrics (AAP) to recommend removing thimerosal from children's vaccines in 1999. That use of the "precautionary principle" -- better safe than sorry -- turns out to have been much more sorry than safe. It spurred the current uproar against thimerosal. Parents naturally felt that if something was removed "out of an excess of caution," it must have been toxic to begin with.

So the CDC and AAP sowed the wind, and now we are all potentially going to reap the whirlwind. If children's vaccine makers flee the marketplace out of fear of huge financial damage awards, we will likely see a resurgence of infectious scourges we thought had been relegated to the history books in the twentieth century.

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See also: ACSH's [full report](#) [3], [consumer-friendly pamphlet](#) [4], and [brochure](#) [5] on vaccine controversies.

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