

Double Standards

The long awaited decision in the Cedillo MMR/Thimerosal/Autism case [Theresa Cedillo and Michael Cedillo, as parents and natural guardians of Michelle Cedillo v. Secretary of Health and Human Services - No. 98-916V] was filed by Special Master George L. Hastings Jr. on February 12, 2009.

[<ftp://autism.uscfc.uscourts.gov/autism/vaccine/Hastings-Cedillo.pdf>]

It immediately became the ultimate proof that the MMR vaccine and Thimerosal do not cause autism.

I chose not to publicly comment on the case until the plaintiffs' appeal was decided. Needless to say, I was like many others, most saddened and disappointed to learn recently that the original decision was affirmed. This was even more painful for me because it coincided with the good news from the U.K. about the Fletchers' case.

I was fully informed about the medical aspects of both cases even though I did not officially participate in the Cedillo litigation.

Special Master Hastings' statement that the "*the petitioners have not demonstrated that they are entitled to an award on Michelle's behalf*" should not be interpreted as meaning that Michelle Cedillo's autism and multiple health problems were absolutely unrelated to her vaccinations. The statement simply indicates that the petitioners' experts did not convince the Special Master(s) that the preponderance of the scientific evidence supported the petition.

I have offered expert testimony in litigation involving vaccine injury and am reasonably well informed about the U.S. vaccine injury compensation program. With all due respect to the Special Master(s), it is still my opinion that Michelle Cedillo's present life-threatening seizure disorder, her serious and disabling gastrointestinal, ocular and joint findings and her marked regression are somehow related to the MMR vaccination that she received. I am also not convinced that the Thimerosal that was injected into her little body in the first year of life did not seriously affect her immune system and set her up for a more serious reaction to her triple live virus vaccine at 15 months.

Discussing the outcome, Special Master Hastings elaborated: "*...The expert witnesses presented by the respondent were far better qualified, far more experienced, and far more persuasive than the petitioners' experts...*"

It is the "far better qualified" description that I will be discussing here.

In my opinion, two experts for the respondent, Stephen A. Bustin PhD and Eric Fombonne MD seemed to have caused the most damage to the petitioners' case at the Washington DC hearings.

In “The Expert and Decorum” I questioned whether Dr. Bustin’s testimony should even be considered after he granted an interview and discussed his role and input in the Cedillo case *before* the Special Masters had decided the case.

I published that article in England because it was there that the interview in question was granted, possibly to influence the Wakefield et al GMC hearings.
[<http://jabs.org.uk/pages/yazbak-expert.asp>]

In the following pages, I will discuss certain aspects of Dr. Fombonne’s testimony, the other main witness for the respondent.

Vera S. Byers MD, PhD testified for the plaintiff on Thursday June 14, 2007.

[<ftp://autism.uscfc.uscourts.gov/autism/cedillo/transcripts/day04.pdf>]

According to Dr. Byers (p. 862-863), she received a degree in Microbiology (UCLA), a Masters degree in Protein Chemistry (UCLA), an MD degree (UCSF) and a PhD in Basic Immunology (UCSF)

Dr. Byers who had completed a residency in Internal Medicine and a 3-year Fellowship in Immunology at UCSF was also board-certified in Internal Medicine.

All this did not seem to impress Senior DOJ Attorney Vincent J. Matanoski who cross-examined Dr. Byers for the respondent and questioned her expertise in Allergy and Immunology (p. 956):

Q. You’re not certified in allergy and immunology, are you?

A. I’m board eligible. I have not taken the test. Instead, I did the three-year fellowship in clinical immunology and practiced allergy for 25 years

Q. Why didn’t you take the test?

A. Because at that time it was a very long time ago. At that time it only really qualified you to treat allergy, and at that time I thought the practice of allergy was extremely boring and I never planned to do it, so then I went on to do it for the next 25 years.

Q. So you practiced without being certified?

A. I practice, yes. I’m boarded in internal medicine

Q. But you called yourself board eligible

A. Board eligible in allergy immunology yes.

Q. Is board eligible a phrase that’s recognized by the organization that certifies allergists and immunologists?

A. Yes, it is, so therefore if you are filing out an application, for example, like I’m a fellow in the American Academy of Allergy and Immunology. If

you're filling out an application for that they will ask you whether you are boarded in allergy immunology or whether you're board eligible in allergy immunology

Q. You'll see on your screen a letter from the American Board of Allergy and Immunology referencing your status with that organization. They note that the board neither recognizes uses nor defines that term board eligible.

A. Okay

Q. So you have been essentially representing that this is a qualification that you have in terms of rendering an opinion about immunology?

A. Yes, I have.

For clarification: Dr. Byers was mentioning the requirements to join the *professional association* known as the American Academy of Allergy and Immunology or more precisely the American Academy of Allergy, Asthma and Immunology (AAAAI) as it is now known. The Academy is certainly not the American Board of Allergy and Immunology (ABAI) that Mr. Matanoski had contacted.

Dr. Byers was correct. According to the AAAAI web site "*Physicians (MD or DO) who have completed an accredited allergy/immunology training program are invited to join the AAAAI.*" [<http://www.aaaai.org/professionals/membership/member.stm>]

Board certification was not a requirement for application to membership in the AAAAI at the time. It still is not.

The ABAI on the other hand is a Conjoint Board of the American Board of Internal Medicine and the American Board of Pediatrics. According to the Board "All candidates for the ABAI Certification Examination must have successfully completed 24 full-time months of continuous training at an accredited education program." The Board also stresses "that the responsibility of acquiring knowledge in allergy and immunology rests with the candidate." [<http://www.abai.org/training.asp>]

Again Dr. Byers had a *three year fellowship* in allergy and immunology and the outstanding program at UCSF is certainly accredited.

Specialty boards, the ABAI included, also offer subsequent exams at regular intervals for "Maintenance of Certification". [<https://www.abai.org/exam.asp>]

Obviously if Attorney Matanoski had asked the ABAI "Was Dr. Byers eligible to take your certification examination after her three year fellowship at UCSF if she paid the registration/examination fee?" the answer would have certainly been yes.

A Google search for “Board eligible in allergy and immunology” yielded a list of 27,200 items in 0.30 seconds on August 31, 2010. Another search on the same day for California and Board eligible in allergy and immunology yielded 12,700 items in 0.14 seconds. Evidently many U.S. physicians and organizations use the description to indicate completion of training and expertise in the field.

Furthermore, pursuant to Rule 702 of the Federal Rules of Evidence, testimony of an "expert witness" may be allowed "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue" An "expert witness" is defined as "a witness qualified as an expert by knowledge, skill, experience, training, or education" Id.

In any case, it is clear that the lead attorney for HHS had insisted on June 14, 2007 that in spite of her MD and PhD degrees, her board certification in Internal Medicine and her 3-year fellowship and training in immunology in a renowned U.S. institution, in addition to 25 years of practice in the field of allergy and immunology, Dr. Byers could not mention her “board-eligibility” as an indication of expertise in the field: *She needed to have taken the exam and be “board certified”.*

On Monday June 18, 2007, Attorney Matanoski started the sixth day of testimony with a long opening statement.

[<ftp://autism.usfc.uscourts.gov/autism/cedillo/transcripts/day06.pdf>]

He was followed by DOJ Attorney Lynn Ricciardella who called Dr. Eric Fombonne, the first expert witness for HHS, to the stand.

Doctor Fombonne was and still is Chairman of the Department of Psychiatry & Head of the Division of Child Psychiatry at McGill University. After listening to his testimony that day and again on June 25, 2007, I must concede that he was an effective expert witness for the respondent. His qualifications, knowledge and experience are not in question here. Only questioned is his interpretation of “Board Certification” and its acceptance.

Dr. Fombonne stood up, raised his right hand and said “I do” when Special Master Hastings asked him “Do you swear to tell the truth, the whole truth and nothing but the truth so help you God.”

Ms. Ricciardella then warned the Special Masters, the audience and those of us listening via the telephone “Before we begin, Dr. Fombonne has a soft voice.” (p. 1238)

Attorney Ricciardella was right. Listening by telephone, I could not understand what Dr. Fombonne was exactly saying when he was describing his qualifications. The Special Masters apparently did not either and repeatedly asked the witness to speak up and get closer to the microphone.

According to the record, the following was one of the early exchanges between Attorney Ricciardella and Dr. Fombonne (p. 1242):

Q. And why did you decide to specialize in Child psychiatry?

A. Because I had an interest in the childhood antecedence of psychiatric disorders in an adult life and then also a strong interest in neurodevelopmental disorders

Q. Doctor, what certifications do you hold in your field?

A. I have a medical degree and I have full training in child and adolescent psychiatry. I'm the equivalent of board-certified in child and adolescent psychiatry in the French system

With the speed of lightning and without mentioning, at least for the record, which medical school Dr. Fombonne attended, when he actually graduated, where and when he specialized in adult, child and adolescent psychiatry and how many years he had actually spent to achieve his “full training”, Attorney Ricciardella accepted the witness’ self-professed board certification equivalency and endorsed it by asking: “Is that the highest *certification* in your field?” To which the witness answered “Yes”.

Ms. Ricciardelli’s last question and the witness’ positive answer were now not about training in France but about the highest certification in the field of pediatric and adolescent psychiatry *anywhere* including the United States.

To me, listening on the phone, things had suddenly become rather strange. When it came to the plaintiff’s expert witness, her extensive post-graduate training did not count. She needed to pay a fee and pass an exam in order to be qualified to testify as an expert witness while the expert for HHS only needed to have an accent and a soft voice and *to state* that his training was the highest certification in his field.

In addition, Dr. Fombonne’s assertion that *he had become a pediatric psychiatrist* because of his “strong interest in neurodevelopmental disorders” appeared to contradict his statement in his 2007 CV, that he only “*developed an interest for autism*” starting in 1986. Indeed a review of his many publications revealed that his first autism-related publication, “Une étude multicentrique sur l’autisme et les psychoses infantiles. *Handicaps et Inadaptations*”, was published in 1991.

Unlike many other expert witnesses, Dr. Fombonne seems to have always had an easy time in U.S. Courts. In his article titled “Pervasive Developmental Disorders in Montreal, Quebec, Canada: Prevalence and Links With Immunizations” published in the July 6, 2006 issue of *PEDIATRICS*, Dr. Fombonne declared that he had been an expert witness for certain vaccine manufacturers in U.S. thimerosal litigation “*since 2004*” in spite of the fact that he had not published anything about the mercury preservative before the July 2006 *PEDIATRICS* article in question. [<http://pediatrics.aappublications.org/cgi/content/full/118/1/e139>]

On his first day of testimony at the Cedillo trial, Dr. Fombonne spent an inordinate amount of time analyzing scenes from the videos that had been provided by the plaintiffs. He tried ad nauseam to show that Michelle Cedillo was not perfectly

normal before she received her MMR vaccine. He then tried to convince everyone in Court that the girl they had all seen in a wheel-chair did not actually get so much worse physically, cognitively and socially after the triple live virus vaccine ... like her parents dared claim.

During his video-related discussion, the French psychiatrist was constantly “supported” by Attorney Ricciardelli. After a while, they both seemed to have completely forgotten in their euphoria, that Michelle Cedillo’s case was not only about adverse events related to the MMR vaccination but also very much about the possible ill-effects from the large amounts of mercury that had been injected into her in the first year of her life.

The attorneys for the DOJ must have had their own reasons for bypassing all U.S. - trained and *board-certified pediatric psychiatrists* to choose a foreign expert who until recently had been swearing that autism was not increasing. They certainly seemed to have pushed “outsourcing” to a new dimension.

It is certainly regrettable that when it came to the foreign expert for the respondent, he was allowed to self board-certify when a well-trained American physician testifying for the plaintiffs was not even permitted to *mention* that she was board-eligible.

Double standards are always unfair. In a hearing about such devastating vaccine injuries, they are inexcusable.

As I see it, the biggest problem with “Cedillo v The Secretary of Health and Human Services” was the fact that it was the first “Test Case” about vaccines and autism. The attorneys for HHS needed to mount a colossal defense to assure that it was defeated and they did!

Under different circumstances and had a knowledgeable medical expert presented a pediatric system review of Michelle’s findings and how they could each be related to her vaccination (s), there would and should have been a reasonably good chance for a different decision.

The following facts are beyond denial:

1. Autism was not Michelle’s only injury
2. Michelle was healthy at her first birthday and she is not now
3. There is no pathological entity that can cause so many serious problems in so many systems at the same time

If so, then the question must be asked: If Michelle did not have a vaccine reaction, then what caused her many present serious problems?

Before the paid and biased pro-vaccine crowd starts attacking me personally, let me repeat that I am not on some anti-vaccination crusade and that I am pro-judicious vaccination. The CDC itself concedes that adverse events do occur following vaccination. If they did not, we would not need VAERS and the Vaccine Injury Compensation Program.

Michelle and her parents have been suffering a living hell. They deserved to be compensated. It is regrettable that in their case, “Justice” was not better served.

**F. Edward Yazbak, MD, FAAP
Falmouth, Massachusetts**