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Vaccine-autism battle shifts to federal court

By Shankar Vedantam
The Washington Post

For more than a decade, families across the country have been warring with the medical establishment over their claims that routine childhood vaccines are responsible for the nation's apparent epidemic of autism. In an extraordinary proceeding that begins today, the battle will move from the ivory tower to the courts.

Nearly 5,000 families will seek to convince a special "vaccine court" in Washington that the vaccines can cause healthy and outgoing children to withdraw into uncommunicative, autistic shells — even though a large body of evidence and expert opinion has found no link.

The shift from laboratory to courtroom means the outcome will hinge not on scientific standards of evidence but on a legal standard of plausibility — what one lawyer for the families called "50 percent and a feather." That may make it easier for the plaintiffs to sway the panel of three "special masters," which is why the decision could not only change the lives of thousands of American families but also have a profound effect on the decisions of parents about whether to vaccinate their children.

A victory by the plaintiffs, public-health officials say, could increase the number of children who are not given vaccines and fall sick or die from the diseases they prevent.

Advocates of the theory that vaccines can cause autism have argued that the increase in cases was triggered by a mercury-based preservative in vaccines that, they say, is toxic to children's brains.

Under pressure from the advocates and to keep the issue from disrupting vaccination programs, U.S. officials began phasing out the additive, thimerosal, in children's vaccines around 1999 while maintaining that there was no hard evidence that it was dangerous.

About 20 experts are expected to testify in the case, which will involve a staggering amount of complicated epidemiology and biochemistry. Gary Golkiewicz, chief special master in the U.S. Court of Federal Claims, said a ruling could be a year off.

Experts for the government will argue that epidemiological studies have found no link between vaccines and autism, as the prestigious Institute of Medicine concluded in a 2004 report.

Large international studies and preliminary evidence from the United States suggest that after thimerosal was removed from children's vaccines, autism rates continued to soar.

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The Seattle Times

If thimerosal was the cause, removing it should have sharply lowered autism rates, scientists say. Although definitive national evidence is not in — children vaccinated after 1999 are just beginning to enter school, which is the point at which many receive a diagnosis — data from California suggest that autism rates are continuing to climb steeply.

The cases are rising, experts say, primarily because of better diagnosis and services: Parents and teachers are more attuned to the signs of autism, and doctors are better equipped to spot it than they were two decades ago. Also, the boundaries of the diagnosis have expanded to include a range of problems under an umbrella known as autism spectrum disorders.

The plaintiffs acknowledge that their case is far from airtight scientifically. But Kevin Conway, a Boston attorney representing the family of 12-year-old Michelle Cedillo of Yuma, Ariz. — whose claim was designated the opening test case for more than 4,800 plaintiffs — said that even if the science is equivocal, he has a good legal argument, which is all he needs.

"There is a difference between scientific proof and legal proof," Conway said. "One is 95 percent certainty, and the other is ... 50 percent and a feather."

Congress set up the vaccine court to provide compensation for individuals harmed by those side effects, because lawsuits were threatening to put vaccine makers out of business.

Conway said vaccines in general are a good thing. But Congress' efforts to shield makers from lawsuits over the rare but inevitable side effects have given the companies no incentive to make vaccines as safe as possible, he said.

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