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Anthrax Vaccine Lawsuit Filed by Military Servicemen against Pentagon

October 26, 2006

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Tue, 18 Mar 2003

Since 1998, nearly 500 active-duty service-members have refused the vaccine, and more than 100 have been court-martialed. Additionally, approximately 500-1000 pilots and flight crew members have quit, resigned or transferred from the Air National Guard or Reserves rather than take the vaccine. The vaccine is voluntary in the Australian, British and Canadian militaries, as well as for U.S. Department of State employees even though they serve in the same geographical region as that of U.S. military servicemembers.

LAWSUIT FILED CHALLENGING LEGALITY OF THE DEFENSE DEPARTMENT'S ANTHRAX VACCINATION IMMUNIZATION PROGRAM

Action Against Pentagon, HHS And FDA Seeks To Declare Vaccine Experimental And Illegal By Its Current Use

WASHINGTON, D.C. —

On the apparent eve of war, six military servicemembers and Defense Department civilian contractors filed suit today in the United States District Court for the District of Columbia and requested that a federal judge declare that the anthrax vaccine is an experimental drug and illegal. The identities of the plaintiffs are being withheld for fear of retaliation by the government. Each of the plaintiffs face either termination from employment or criminal prosecution. The lawsuit is being brought on behalf of all military servicemembers and civilians facing inoculation.

A separate motion was also filed today seeking a Temporary Restraining Order or Preliminary Injunction against the defendants to prevent further anthrax inoculations without informed consent or a presidential waiver. By law and Executive Order 13139, the President possesses the authority to waive an individual's right of informed consent in times of national emergency.

The vaccine is being utilized by the Department of Defense ("DoD"), named as a defendant, in order to allegedly protect servicemembers and civilian employees from exposure to aerosolized anthrax. However, the Food and Drug Administration ("FDA"), another defendant, has never formally approved the vaccine for this use. An Investigational New Drug ("IND") application was filed in 1996 by the DoD and the vaccine manufacturer requesting FDA approval for the vaccine for use against aerosol anthrax. The IND application still remains pending despite DoD's inoculation of more than 700,000 persons.

"The substantive changes in the way the vaccine is used and the purpose for which it is used render the vaccine an IND under current federal law," said John J. Michels, Jr., co-counsel in the litigation and a partner in the Chicago law office of McGuire Woods LLP. "As an IND, the vaccine may not be administered to service members without their informed consent. It is patently illegal", he added.

Internal government documents, many of which are described in the lawsuit, reveal a history of regulatory violations and scientific concerns regarding the DoD's Anthrax Vaccination Immunization Program ("AVIP"). A 1994 report by the Senate Veterans Affairs Committee concluded that the vaccine could not be expected to protect troops against airborne anthrax and should be considered experimental. In February 2000, the House of Representative's Committee on Government Reform recommended the termination of the mandatory AVIP.

"As every day goes by the AVIP continues to ruin the lives of loyal and dedicated servicemembers and their families. It is time for this mandatory program to be terminated unless informed consent or a presidential waiver is obtained", said Mark S. Zaid, Esq., the Managing Partner of the Washington, D.C. law firm of Krieger & Zaid, PLLC, and co-counsel in the litigation. Zaid added that the apparent impending war with Iraq does nothing to legitimize unlawful action by the government, particularly when it places human life at risk.

In December 1997, the DoD ordered the inoculation of all 2.5 million active duty personnel, regardless of duty station or responsibilities. The immunization series calls for six injections of the vaccine over a period of 18 months, followed by annual booster shots. Vaccinations began in March 1998, but in July 2000 the scope of the mandatory vaccination program was reduced due to the continuing inability of the vaccine manufacturer, BioPort, to comply with federal manufacturing standards. After a four-year hiatus, the FDA allowed BioPort to resume production in January 2002.

Since 1998, nearly 500 active-duty service-members have refused the vaccine, and more than 100 have been court-martialed. Additionally, approximately 500-1000 pilots and flight crew members have quit, resigned or transferred from the Air National Guard or Reserves rather than take the vaccine. The vaccine is voluntary in the Australian, British and Canadian militaries, as well as for U.S. Department of State employees even though they serve in the same geographical region as that of U.S. military servicemembers.

John J. Michels, Jr., is a partner in the Chicago office of McGuire Woods LLP (www.mcguirewoods.com (<http://www.mcguirewoods.com>)), and previously represented Major Sonnie Bates and Captain John Buck, the highest military officers to refuse the anthrax vaccine, and was the author of a high-profile legal memorandum analyzing the illegality of the AVIP; the subject matter of which he testified on before Congress in October 2000.

Mark S. Zaid is Managing Partner of the Washington, D.C. law firm of Krieger & Zaid, PLLC, which routinely represents individuals employed within the United States Intelligence and Military communities. He also serves as the Executive Director of The James Madison Project (www.jamesmadisonproject.org (<http://www.jamesmadisonproject.org>)), a non-profit organization that educates the public on national security issues including the anthrax vaccine controversy. Mr. Zaid has represented dozens of anthrax refusers, including service as senior defense counsel in nearly one dozen courts-martials. He testified before the House of Representatives regarding the AVIP in March 1999.

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Copies of the lawsuit are available upon request

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