



Assessing the Effectiveness of the U.S. Vaccine Injury Compensation Court

Anna Kirkland, University of Michigan

When parents hesitate or refuse to vaccinate their children, often it is because they have doubts about vaccine safety. They may have heard, for example, that vaccines can cause autism, allergies, immune problems, or attention deficit disorder. Experts who promote vaccination and citizen activists who raise questions have widely divergent ideas about what vaccine injuries are and how to recognize them. Despite continuing controversies, vaccination works well only if almost all people take this step to prevent the spread of relevant infectious diseases. State laws therefore require children to be vaccinated to attend public schools. Yet there also has to be a way to handle individual claims of harm when they arise.

Because widespread immunization secures an important public good and has the force of law, vaccination programs around the world have recognized that it is important to have a fair and ethical set of arrangements for responding to claims of vaccine-related injuries. Along with nineteen other industrialized democracies, the United States provides compensation for vaccine injuries – and in the U.S. system, citizens can petition for legal compensation for medical problems or deaths at a special court housed in the U.S. Court of Federal Claims, known simply as the “vaccine court.” Congress created this court in the 1986 National Childhood Vaccine Injury Act as a no-fault alternative to tort lawsuits. Although the original intent was to help children and families, anyone who receives a vaccine universally recommended for use in children can make a claim. By now, most claims come from adults vaccinated for influenza.

Vaccine injuries do happen, even though the scientific consensus is that serious medical problems resulting from immunizations are rare. The tetanus vaccine can cause brachial neuritis, which is inflammation of the nerves in the hand, arm, and shoulder; and the measles vaccine can cause encephalitis, which is a potentially very serious irritation and swelling of the brain. When someone claims harm and their claim is legally validated by the vaccine court, the injured person receives compensation for medical costs and a sense of being heard. Government responsibility is affirmed and the community provides a proper ethical response. Because the United States does not otherwise offer general social supports to families with disabled children, obtaining a vaccine court judgment can provide important funding for therapies and life-long care.

Vaccine Court Procedures and Outcomes

Although well established as an authoritative venue to which people must turn if they claim harm from vaccination, the U.S. vaccine court arouses controversy from various sides. Judgements rendered by the court are at times more generous than medical experts would like, yet are also often less generous than activists would prefer. “Preponderance of the evidence” is the legal standard of proof, which means that some claims lead to compensation even when there is no settled scientific consensus that a vaccine caused the injury in question.

But this does not mean that all claims are compensated, because the vaccine court judge (called a “special master”) sometimes rules that there is not enough evidence that the vaccine really caused the claimant’s medical problem. Successful compensation claims at the U.S. vaccine court have ranged from about 25 percent of cases to, recently, nearly half of cases. These rates bring the United States into line with rates of successful claims in other countries. Even so, petitioners’ attorneys and activists remain dissatisfied.

Weighing Criticisms of the Vaccine Court

Critics point to denials of many claims, delays, and the adversarial procedures as indications that the court is not functioning as Congress intended. Each line of criticism points to real aspects of the vaccine court’s functioning, but my investigations suggest that, on the whole, the court functions effectively as intended.

- The adversarial nature of vaccine court proceedings is rooted in the decision made by those who designed this process to channel petitions for compensation from vaccine injuries through attorneys and expert witnesses, who are selected by both parties to a case and paid whether they win or lose.
- Delays do happen, but I find that they are often a strategic way of adapting adjudications to the pace of science, as parties on both sides agree to hold cases until relevant studies about a particular type of possible vaccine injury causation are completed.
- Denials of claims are appropriate when there is not sufficient evidence to show the vaccine really caused a complainant’s problem. The clearest instance was denial of compensation for autism as a vaccine injury in the over 5,600 claims heard in the Omnibus Autism Proceeding of 2002 to 2010. Many families were disappointed, but claims were denied on very strong evidentiary grounds.

Activist critics of the vaccine court have mobilized protests, held Congressional hearings, published their own counter-research, and helped generate Government Accountability Office reports that scrutinize court results. Many medical experts feel that these controversies and the vaccine court itself unnecessarily challenge scientific certainty about vaccine safety. My research shows, however, that the vaccine court has restricted damage from false claims while giving activists and families opportunities to develop their claims. For example, without the vaccine court to corral early lawsuits claiming that thimerosal in vaccines caused autism, some of those suits would likely have been heard by juries before adequate safety studies were completed and showed no link to autism. The vaccine court prevented what would have been a public health scare based on incomplete science. For years, experts who believe vaccines cause widespread injuries have been paid to appear at the vaccine court and develop their arguments, even as activists prodded safety researchers to be thorough and transparent. All of this has helped to maintain the legitimacy of vaccine programs in the eyes of the larger public.

Immunization has always been controversial, and legally required vaccination involves government touching citizens’ lives in very personal ways. Given these realities, the U.S. vaccine court fits well within our legal culture and balances the prerogatives of scientific and medical expertise with the need for citizen participation and support.