

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

No. 11-695V

Filed: December 7, 2012

DEBBIE LYNN RAKES,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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ORDER

VOWELL, Special Master:

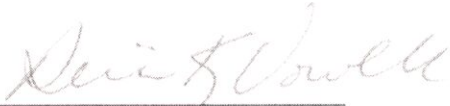
Pursuant to the Rules of the United States Court of Federal Claims,¹
respondent's counsel is hereby authorized to sign and serve a subpoena on

Fairlane Division of VRTX, Inc.
254 Fifth Avenue, 3rd Floor
New York, NY 10001

for the purpose of obtaining any and all documents concerning the influenza vaccination administered to Debbie Rakes in November 2008 by a representative of Occupational Healthcare of Alamance County at a vaccination clinic for VRTX/Fairlane employees at the Gibsonville, NC facility.

The form of the subpoena shall be obtained from the Appendix of Forms (Form 7A) of the Rules of the United States Court of Federal Claims. Respondent is authorized to serve said subpoena by no later than Monday, January 7, 2013. A copy of this order must be appended to the subpoena.

IT IS SO ORDERED.



Denise K. Vowell
Special Master

¹ See Rule 45(a)(3) of the Rules of the United States Court of Federal Claims. See also Appendix B, Rule 7(c).

January 10, 2013
Claude Simon
VRTX, Inc.
3rd Floor
254 Fifth Avenue
New York, NY 10001

Heather Perlman
Trial Attorney
Civil Division
U.S. Department of Justice
P.O. Box 146, Ben Franklin Station
Washington, D.C. 20044-0146

RE: Response to Subpoena No. 11-635V Dated January 2, 2013

Dear Ms. Perlman:

We have completed the search of our records pursuant to this subpoena.

Attached is the original invoice from the service provider who administered vaccines to our employees in November, 2008.

The invoice does not indicate, nor do we have any record of who received vaccines in November, 2008. If any records of individuals who received vaccines do exist, they would be in the possession of the service provider.

If you have any further questions, you may contact me at csimon@fairlane.biz or 845-796-9140.

Sincerely,



Claude Simon
President
VRTX, Inc.

Alamance Regional Medical Ctr.
PO Box 202
Burlington, NC 27216

INVOICE

Invoice Number: 4971
Invoice Date: Nov 30, 2008
Page: 1

Bill To:

VRTX, Inc.
1204 Springwood Ave.
Gibsonville, NC 27249

Ship to:

Quantity	Item	Description	Unit Price	Amount
14.00	FLUVACCINENON	Flu Vaccine - Non-contract	25.00	350.00

11/7/09
OK \$ 326

1/7/09
A⁴ 3265

Subtotal	350.00
Sales Tax	
Total Invoice Amount	350.00
Payment/Credit Applied	
TOTAL	350.00

Check/Credit Memo No:



U.S. Department of Justice

Civil Division

Washington, DC 20530

January 2, 2012

VIA FEDERAL EXPRESS

Wei Chang
Fairlane Division of VRTX, Inc.
254 Fifth Avenue, 3rd Floor
New York, NY 10001

RE: *Rakes v. Secretary of Health and Human Services*, Fed. Cl. No. 11-695V

Dear Ms. Chang:

Enclosed please find a subpoena for records in your possession pertaining to one of your employees, Debbie Lynn Rakes (DOB: 10/18/65). Ms. Rakes has filed a claim seeking compensation from the United States Government under the National Vaccine Injury Compensation Program for an injury that she allegedly suffered as a result of a vaccine administration. I am a trial attorney with the United States Department of Justice, and have been assigned to represent the Government's interests in the case. Ms. Rakes has indicated that your records may be relevant to her claim, and she has asked my assistance in obtaining them. The enclosed subpoena was issued under the authority of the cognizant Court, as evidenced by the accompanying Court Order. I spoke with you by telephone (212-683-9300) this morning and was informed that you would accept service by Federal Express.

As indicated on the subpoena, please copy and forward to me within thirty (30) days, at the address provided on the subpoena and below under my signature, all records in your possession pertaining to an influenza vaccination administered to Ms. Rakes in November 2008 by a representative of Occupational Healthcare of Alamance County at a vaccination clinic for VRTX/Fairlane employees at the Gibsonville, NC facility, as well as any documentation pertaining to the vaccination clinic held at VRTX/Fairlane in November 2008. I have included a pre-addressed Federal Express label with the Department of Justice account number. You may also send me the original invoice for the cost associated with copying the requested records. This will allow me to expedite the processing of the invoice for payment.

I appreciate your processing this request at your earliest convenience. Thank you for your kind attention to this matter. Please do not hesitate to contact me at (202) 353-2699 if you have any questions or require any further information.

Sincerely,



Heather L. Pearlman
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P. O. Box 146, Ben Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 353-2699
Fax: (202) 616-4310

Attachments: Subpoena; Order

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DEBBIE LYNN RAKES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent

No. 11-635V

Special Master Denise K. Vowell

SUBPOENA

To: Fairlane Division of VRTX, Inc.
254 Fifth Avenue, 3rd Floor
New York, NY 10001
Attention: Wei Chang, Corporate Secretary
Telephone: (212) 683-9300

You are commanded to produce and permit inspection and copying of any and all records pertaining to an influenza vaccination administered in November 2008 to the following individual:

Name: Debbie Lynn Rakes
DOB: October 18, 1965

You are further commanded to produce and permit inspection and copying of any and all records pertaining to a vaccination clinic held at VRTX/Fairlane in November 2008.

These materials should be sent **on or before February 1, 2013** to the following location:

Heather L. Pearlman
Trial Attorney
Torts Branch, Civil Division
United States Department of Justice
1425 New York Avenue, N.W. Ste 3152
Washington, D.C. 20005
Tel: (202) 353-2699

Attorney for Respondent

Heather L. Pearlman, Trial Attorney
ISSUING OFFICER SIGNATURE AND TITLE

01/02/13
DATE

(INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Heather L. Pearlman, U.S. Department of Justice, P.O. Box 146, Benjamin Franklin Station, Washington, D.C. 20044 (202) 353-2699
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

NOTE - If the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served or if the place of deposition is more than 100 miles from the place where the deponent resides, is employed or transacts business in person, the person served may regard the command as optional unless there is attached to the subpoena an order of the Court requiring his/her appearance, notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. 28 U.S.C. § 1821.

PROOF OF SERVICE

Fairlane Division of VRTX, Inc.
254 Fifth Avenue, 3rd Floor
New York, NY 10001

DATE
SERVED

PLACE

Wei Chang, Corporate Secretary

Federal Express

SERVED ON (PRINT NAME)

MANNER OF SERVICE

- ☐ Fees tendered for one day's attendance and mileage allowed by law. (Fees and mileage need not be tendered when the subpoena is issued on behalf of the United States or an officer or agency thereof.)

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

P.O. Box 146, Ben Franklin Station
Washington, DC 20044-0146
ADDRESS OF SERVER

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.