

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOHN DOE #1 et al.

Plaintiffs,

v.

DONALD H. RUMSFELD et al.,

Defendants.

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Civil Action No.: 1:03CV00707 (EGS)

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Declaration of Major Richard Poplin, OKANG

1. My name is Richard Poplin and I am a major in the Oklahoma Air National Guard and an F-16 fighter pilot. I have served in the military for sixteen years, during which I have deployed overseas to support Operation Provide Comfort II and Operation Northern Watch four times between 1996 and 2002. I am scheduled to deploy again this summer to support on-going operations in Iraq. I am also an airline pilot in my civilian career.

2. During the last six years I have had significant concerns about the legal and ethical basis for the Department of Defense (DoD) anthrax vaccine immunization program (AVIP). Due to anthrax vaccine shortages in 1999-2001 and my unit's deployment schedule I have been able, thus far, to avoid taking the vaccine without refusing an order to do so. In the meantime, I have twice attempted to force a legal review of the actions of those responsible for the AVIP. I did this in two ways: first, as lead complainant in a DoD Inspector General complaint filed in January 2000; second, in a conversation with, and detailed letter to, former Attorney General John Ashcroft in

January 2002. This declaration provides a confirmation of these two attempts to force an investigation of what I believe may be a criminal cover-up of the problems with AVIP.

3. In January 2000, I filed a DoD Inspector General (DoD IG) complaint (IG Hotline case #74998) on behalf of myself and 73 other military officers who were concerned about false statements made by a political appointee and a USAF major general during Congressional testimony related to AVIP. On June 30, 2000, the DoD IG informed me by letter that they had refused to investigate the complaint. I then sought the assistance of the chairman of the House Committee on Government Reform, who pressured the DoD IG into conducting an investigation. Only through intense pressure did the DoD IG finally acknowledge, in a detailed report released in May 2001, that the major general had violated the DoD Joint Ethics Regulation. The DoD IG concluded that the general's "statement lacked the necessary element of 'straightforwardness,' and so was inconsistent with guidelines for honesty as set forth by the Joint Ethics Regulations (JER)."

4. On January 10, 2002, I met former Attorney General John Ashcroft at Chicago O'Hare Airport, Illinois. I spoke to him one-on-one for approximately 20 minutes specifically about the mismanagement, and probable law-breaking, that had occurred with AVIP during the Clinton Administration. Attorney General Ashcroft was polite, receptive and attentive. I followed that conversation up with a letter dated January 10, 2002. I certify to this court that the attached letter provided in support of the Doe v. Rumsfeld *amicus* brief is a true and exact copy of the letter I sent to Attorney General Ashcroft. I received a succinct reply, also attached, from the Department of Justice (DoJ) on March 29, 2002, and was never contacted again regarding the allegations raised in my letter.

5. DoJ's failure to contact me was not a surprise, however, as I did not expect DoJ to reveal any details about a possible investigation. In fact, the DoJ March 29, 2002 reply did reference "legal proceedings the Department of Justice may be involved with on behalf of the Department of Defense and Health and Human Services." [sic] At first, I believed that this was a reference to a qui tam lawsuit filed in October 2000 by two other military officers against BioPort Corporation under the Federal False Claims Act. An assistant US attorney in Michigan, Mr. Robert Dodge, conducted a nearly year-long DoJ investigation of BioPort, the Army and FDA pursuant to this qui tam complaint. However, as I informed Attorney General Ashcroft in my letter, DoJ terminated this investigation in the weeks following the September 11, 2001 terrorist attacks and the post-9/11 anthrax letter attacks. This Federal False Claims Act lawsuit was ultimately dismissed because the court decided the complainants lacked standing (i.e. were not the "original source" of allegations of fraud), and not on the merits of the fraud allegations. This ruling is still under appeal.

6. Since DoJ's involvement in the qui tam complaint appears to have ended in September 2001 with a decision not to prosecute BioPort for fraud, it is unclear exactly what DoJ meant when, in March 2002, when they referred to "legal proceedings the Department of Justice may be involved with on behalf of the Department of Defense and Health and Human Services." I believe it is critically important for the court to force the Departments of Justice, Department of Defense and Department of Health and Human Services to fully disclose all information relevant to possible law-breaking by BioPort, or DoD and FDA officials involved with the policy, medical, and regulatory decisions related to DoD's use of anthrax vaccine.

7. Further, DoD should not use the anthrax vaccine in a “voluntary” program under the recent “emergency declaration”, or a mandatory program, until any and all information related to the anthrax vaccine is fully disclosed. Until then, there can be no credible informed consent of the risks of the vaccine.

Pursuant to 28 U.S.C. 1746, I declare under penalty that the foregoing is true and correct. Executed this 27th day of February, 2005.

/s/

Richard Poplin, Major, OKANG

2606 East 22nd Place
Tulsa, OK 74114

January 14, 2002

Richard Poplin
2606 East 22nd Place
Tulsa, OK 74114

Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Ashcroft:

I am writing to express my deep appreciation for you taking the time to speak with me when we met at O'Hare Airport on January 10th while you were traveling to Springfield. I supported and voted for President Bush, and as an American and an Air National Guard F-16 pilot, I am proud to have him as my commander-in-chief and you as the nation's chief law enforcement officer.

I would also like to follow-up on the issue of the Department of Defense anthrax vaccine immunization program (AVIP) and DoD's sole-source contractor, BioPort Corporation. I am very concerned that the Justice Department is reflexively defending wrongdoing on behalf of DoD and HHS bureaucrats and senior military officers who do not want to admit their complicity in this illegal Clinton policy. Consequently, there are at least four legal proceedings in which Justice Department attorneys have already or will soon act on behalf of DoD and HHS (see attachment). Further, a US attorney investigated BioPort Corporation under the Federal False Claims Act for nearly a year, but declined prosecute last September. He admitted to the complainants that the Justice Department decision was political and not based on the merits of the case.

On April 25, 2001, a senior policymaker in the White House wrote to Deputy Secretary of Defense Paul Wolfowitz, stating: "I do think we need to examine the issue of both Gulf War Syndrome and the Anthrax vaccine and how they can be dealt with. They are political problems for us." Unfortunately, it does not appear that the same encouragement was given to the Department of Justice, which is defending Clinton Administration illegality related to AVIP, while the manufacturer remains shut down four years after the FDA found it incapable of complying with the Food, Drug and Cosmetic Act.

Instead, the Justice Department should investigate those responsible for AVIP, which resulted from a willful and politically-motivated decision to violate the law (Food, Drug and Cosmetic Act) in March 1997 and, subsequently, a law passed in 1998 to protect servicemembers' health rights (10 U.S.C. 1107). The targets should include:

- former Deputy Secretary of Defense Rudy DeLeon,
- former Assistant Secretary of Defense for Health Affairs Dr. Stephen Joseph,
- the current Special Assistant to the Secretary of Defense for Chemical and Biological Defense Dr. Anna Johnson-Winegar,
- former FDA Lead Deputy Commissioner Dr. Michael Friedman, and,
- the current director of FDA's Center for Biologic Evaluation and Research, Dr. Kathryn Zoon.

My interest in this issue is as a reserve military officer trying to insure that President Bush is not tainted by the actions of the Clinton Administration, which violated both federal law and the Nuremberg Convention in its implementation of AVIP. The policy choice before you, and other senior Administration officials, is whether you want to continue to defend a mandatory immunization policy for the military with a vaccine that only two percent (2%) of civilians who were actually exposed to anthrax would take. The leadership of the military does not understand the law, and has invested too much of their credibility into AVIP to do the right thing. That is why we have civilian control of the military, and it is time for the Bush Administration to act.

Protecting military servicemembers is a worthy goal, but forcing the illegally licensed and adulterated BioPort anthrax vaccine on the troops with the Uniformed Code of Military Justice is bad law, a corrupting of the practice of medicine, and a betrayal of a constituency that proved critical to President Bush being elected.

Respectfully,

/s/

Richard Poplin
Captain
Oklahoma Air National Guard

Attachment

ATTACHMENT
Federal Lawsuits on
DoD Anthrax Vaccine Immunization Program and
BioPort Corporation

Qui Tam Lawsuit (5:00 CV 124). A federal False Claims Act suit was filed against BioPort Corporation and its former executive director and chief operating officer, in October 2000 in the Western District of Michigan. This suit alleges fraudulent claims for payment of an anthrax vaccine that was not licensed or manufactured in accordance with the Food, Drug and Cosmetic Act, thereby violating the Defense Department contract. The complaint clearly documents the delivery of an adulterated and unapproved vaccine for payments of nearly \$150 million. The Western District US Attorney's office spent eleven months investigating the complaint, but in late September 2001 declined to intervene. The investigating attorney told the complainants that the decision was political and not based on the merits of the case, that clear violations of the law had occurred, but that "DoD knew what they were buying." The complainants have until January 31, 2002 to serve the complaint upon BioPort without Department of Justice assistance.

Buck-Bates Declaratory Judgement Lawsuit (Case No. 1:01CV00941). The plaintiffs, a former USAF major and a serving USAF captain/physician, filed this action against Secretary of Defense Rumsfeld, Secretary of Health and Human Services Thompson, and acting FDA Commissioner Schwetz seeking a declaration pursuant to the Declaratory Judgment Act, 28 USC 2201, that the anthrax vaccine being involuntarily administered to military servicemembers is an "Investigational New Drug" (I.N.D.), as defined by 21 USC 355, or a drug unapproved for its intended use pursuant to 10 U.S. Code 1107 and Executive Order 13139.

O'Neil Declaratory Judgement Lawsuit (Case No. 01 1489). The plaintiffs, parents of a former Marine, filed this early action for declaratory relief against defendants former President Clinton and Secretary of Defense William Cohen, also seeking a declaration pursuant to the Declaratory Judgment Act, 28 USC 2201, that the mandatory anthrax vaccine, involuntarily administered to the military since December 1997, is an investigational new drug as defined by 21 USC 355, or a drug unapproved for its intended use pursuant to 10 U.S. Code 1107 and Executive Order 13139.

Tort Claims Against BioPort Corporation (1:01CV02190). Filed in the District of Columbia against BioPort Corporation on behalf of 15 men and women who have suffered serious and permanent adverse reactions to the anthrax vaccine they were compelled to take while serving in the military. The suit alleges that the defendants manufactured and distributed a product defectively designed, inadequately tested and processed in a manner contrary to good manufacturing principles. Since the Secretary of the Army has indemnified BioPort for all claims resulting from adverse reactions, the government is liable for damages. Evidence will show senior military officers admitting in emails, etc. that DoD was "calling the shots" at this supposedly private corporation -- owned by a foreigner and a retired admiral who was the most senior military officer to endorse candidate Bill Clinton in 1992.



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

Richard Poplin
2606 East 22nd Place
Tulsa, OK 74114

MAR 29 2002

Re: BioPort and AVIC

Dear Mr. Poplin:

This letter is in reply to your correspondence to the Attorney General which was referred to this Office for consideration and response. Your letter concerns the problems with the anthrax vaccine used in the Anthrax Vaccine Immunization Program (AVIC) which BioPort produced, and the legal proceedings which the Department of Justice may be involved with on behalf of the Department of Defense and Health and Human Services.

I regret the delay in responding to your correspondence which we only recently received due to regular mail delays and email processing problems associated with the recent instances of anthrax in the mails.

The Department of Justice always welcomes the views of the public on matters of importance such as this, and we appreciate your concern.

Thank you for writing.

Sincerely yours,

Kenneth L. Jost
Assistant Director
Office of Consumer Litigation
Civil Division

A handwritten signature in black ink, appearing to read "Steph K Lyerly".

By: Stephanie K. Lyerly
Consumer Affairs Specialist