

# ***Children's Healthcare Is a Legal Duty, Inc.***

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Number 4, 1991  
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This special issue presents the talk that Rita Swan, President of CHILD Inc., gave at the San Diego Conference on Responding to Child Maltreatment. The conference was held from January 22 through 25, 1992, at the Hyatt Regency in La Jolla. It was sponsored by the Center for Child Protection of the Children's Hospital in San Diego in cooperation with the American Professional Society on the Abuse of Children, Barbara Sinatra Children's Center, and the California Professional Society on the Abuse of Children.

Earlier in the week Swan gave a pediatric grand rounds talk at the University of California Medical Center in San Diego.



## **MEDICAL NEGLECT IN THE CONTEXT OF RELIGIOUS BELIEFS**

Good morning! I strongly appreciate the opportunity to address you on this topic. There will be twenty minutes for questions at the end of the period.

I need to say at the outset that I come to this topic by way of personal tragedy. My husband and I were raised in Christian Science and lost our only son in 1977 because of church doctrine against medical care. We left the church shortly after his death and have since become nationally known as advocates for the rights of children to medical care. My interest in this topic is not simply an academic one.

We founded the organization, Children's Healthcare Is a Legal Duty or CHILD Inc., which has tracked preventable deaths of children since 1980 in sixteen sects that

discourage medical care.

We have literature at a table which you are welcome to take.

Today we want to talk about the following (OVERHEAD)

1. What churches oppose some forms of medical care and why,
2. Federal policy on religious exemptions from child healthcare requirements,
3. Deficiencies in reporting requirements,
4. Importance of uniform standards of parental duty, and
5. Watching for more religious exemptions from legislators

### **What churches oppose some forms of medical care and why**

What churches oppose some forms of medical care? The largest group are the Jehovah's Witnesses with millions of members. Fortunately, their only objection today is to blood transfusions. The Witnesses first announced their opposition in 1946. They base it on a verse in Leviticus (17: 11, 13) commanding the Jews not to eat blood because "the soul of the flesh is in the blood." They cite Acts 15: 28, 29 commanding abstinence "from blood" as evidence that the prohibition applies to Christians also.

The Witness faith does not approve of any blood component or a transfusion of one's own blood, but does approve of non-blood plasma expanders.

Jehovah's Witnesses are not faith healers. They do not claim to have a religious ritual that will heal a patient of his need for a transfusion.

Instead, they take bits and pieces from medical journals to show the dangers of transfusions and also to show that many doctors think transfusions are overused. The AIDS epidemic has, naturally, strengthened the Witnesses' beliefs against transfusions.

Because most Witnesses take their children to doctors on the same basis as parents of mainstream religions do, doctors are often made aware of a Witness child's need for a transfusion and can quickly obtain a court order for it.

Several doctors who have dealt with these cases have commented that the family seemed relieved when the court ordered the transfusion because it took the burden of decision-making from them. Last year, however, the church's *Watchtower* magazine instructed members to resist court orders strenuously. Passive submission to secular law is no longer morally acceptable.

A second group are Pentecostal and charismatic faiths. Though most Pentecostal churches today have no objections to medical care, several small splinter groups have lost children because of rejecting medical care. Common to these charismatics is the belief that the crucifixion of Christ has redeemed them from both sickness and sin.



In their view, all disease is a sinful temptation presented by the devil. The faithful Christian should fiercely claim his God-given redemption from sickness, argue against the devil, believe that he is already healed, and ignore all symptoms to the contrary. If the person dies, believers will say either that he was not faithful or that his death was the will of God.

Christian Science is not a Pentecostal or charismatic theology and does not base its claims upon the crucifixion of Jesus. But its methods are similar to those of charismatic ritual healing. Prayer becomes a legalistic, formulaic argument that proves the disease unreal.

Christian Science holds that God did not make disease and therefore that disease does not exist. It seems to exist only because man does not understand God fully. All diseases are mentally caused by sin. The religion teaches, for example, that bacteria and viruses do not cause disease, but rather that alienation of man from God causes all disease. In the case of a young child, the religion teaches that the disease is caused by his parents' sins.

The Christian Science church directs its healers not to pray for anyone who goes to a doctor voluntarily. The church teaches that medical science and Christian Science are so antithetical that the sick person will be harmed if both systems are used together. God and a doctor are mutually exclusive alternatives—although, curiously, the church does allow medical care for a handful of very specific conditions, most of which are irrelevant to sick children.

The church develops its opposition to medicine in a petition submitted to the U. S. Supreme Court by a Sacramento Christian Scientist who let her daughter die of untreated meningitis: (OVERHEAD)

Christian Science provides that no person may become a member of the Church unless he or she is prepared to rely completely on spiritual healing as practiced in Christian Science. Members of the Church believe that attempts to use medical means as an adjunct to or in combination with spiritual means destroy a Christian Scientist's power to heal through prayer. Thus, spiritual healing is the *sine qua non* of Christian Science and a religious imperative for members of the Church. [Petition for Writ of Certiorari, *Walker v. Superior Court of Sacramento County*, docket no. 88-1471 (1989), on appeal from Calif. Supreme Ct.]

The rule that you cannot have Christian Science prayer-treatment if you go to a doctor is one of the most coercive features of the religion.

The Christian Science church has a salaried lobbyist in every state. Branch churches appoint assistants for the lobbyists. They campaign constantly for exemptions



from health care requirements. In 48 states, they have won religious exemptions from immunizations. In the majority of states, they have religious exemptions from metabolic testing of newborns. Some states have religious exemptions from prophylactic eyedrops for newborns, from premarital and prenatal blood tests, from studying about disease in schools, from tuberculosis tests—even for public school teachers, etc.

In the past twenty years, many states have also added religious exemptions from child abuse and neglect and various criminal charges. These are different from religious exemptions to the preventive and diagnostic measures just mentioned in that they appear to allow parents to withhold medical care when the child is sick.

### **Federal policy on religious exemptions from child healthcare requirements**

Now let us review federal policy on this issue. In 1974 the U. S. Department of Health, Education, and Welfare (HEW) put a religious exemption under federal mandate solely in response to the Christian Science church. All states were required to pass a version of it in order to get federal funding for child protection programs. It read as follows: (OVERHEAD)

A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.  
*45 Code of Federal Regulations 1340.1-2(b)(1)*

Thus, the vast resources of a multi-billion dollar federal bureaucracy were pressed into service for the benefit of the Christian Science church.

With federal money at stake, states rapidly began passing religious exemptions to child abuse and neglect. In 1978 HEW reported: (OVERHEAD)

The religious immunity or spiritual healing exemption has been the subject of widespread legislative activity. . . . Despite some commentators' characterization of these clauses as an impediment to the protection of children, legislative adoption of the clause has increased from 11 jurisdictions in 1974 to 44 jurisdictions today. (HEW, *Child Abuse and Neglect State Reporting Laws*, DHHS Pub. #80-30265)

HEW did not explain why the states had become so busy passing religious exemption laws.

The Christian Science church coordinated the federal government's push with state lobbying to extend religious exemptions into criminal codes. Arriving at the same time as a rebirth of charismatic and Pentecostal faith, the religious exemption laws have contributed to hundreds of preventable deaths of children.



In 1983, HEW's successor, HHS, removed the exemption from the *Code of Federal Regulations*, described it as a state option, and added failure to provide medical care to the definition of child neglect.

The federal government's new position raised the question of how failure to provide medical care could be defined as neglect if certain parents were allowed a religious exemption from neglect charges. On July 18, 1983, HHS Assistant Secretary Dorcas Hardy wrote to Congressman Berkley Bedell as follows: (OVERHEAD)

[U]nder the final rule, failure to provide medical care to a child is in all circumstances a reportable condition. . . .

Also, it is not permissible for a State to exclude the reporting of known or suspected abuse or neglect, including failure to provide medical care, if it is done because of the religious beliefs of the parent or other person responsible for the child. . . . The reporting of child abuse or neglect, receipt of complaints, investigation, and the provision of medical care, if indicated, are responsibilities which must be carried out regardless of any State provision for a religious exemption. [emphasis added]

#### Deficiencies in reporting requirements

Our contention has long been that States are not requiring the reporting of religiously-based medical neglect when they grant a religious exemption to neglect charges. How is a mandatory reporter of child abuse and neglect supposed to know that such a situation should be reported when the statute says it is not neglect?

Nine years after the religious exemption was removed from federal mandate it appears that HHS is starting to require changes in the states' religious exemption laws. Based on our observation of recent statutory language approved by HHS, we gather that HHS will continue to allow parents to have a religious exemption from child abuse and neglect charges, but *will* require the addition of statutory language specifically stating that medical neglect on religious grounds must be reported to Child Protection Services.

In Maryland, for example, a proposal approved by HHS gives parents the right to withhold medical care in that it gives them an exemption from neglect charges, but then adds: (OVERHEAD)

However, the absence of a finding of neglect shall in no way limit the administrative or judicial authority of the state to ensure that medical services are provided to the child when his or her health requires it. Likewise, any child provided non-medical religious care and treatment shall be subject to the same reporting, investigative, and treatment standards to which all children in the state are subject regardless of religious beliefs and practices of their parents, guardians or others.



### **Importance of uniform standards of parental duty**

We appreciate HHS's willingness to review the religious exemption issue. We appreciate the fact that mandatory reporters will now have a clear statutory duty to report cases of medical neglect on religious grounds.

But this posture still represents inadequate protection for children in our view. The child welfare bureaucracy needs to recognize that it cannot be everywhere and prevent harm to every child. Children are helpless; someone has to have a legal duty to care for them. Religious exemption laws approved by HHS exempt parents from this duty—parents who have custody of children 24 hours a day. Who is supposed to replace the parents and see that medical care is provided?

HHS wants laws requiring mandatory reporters to report cases of religiously-based medical neglect to child welfare services. But what if reporters do not become aware of these sick children kept in the privacy of their homes? Then these children will have no right to medical care.

The Christian Science church has called upon its members to work against bills that would require reporting to Child Protection Services. In a nutshell, the Christian Science church wants to have an unlicensed health care system. It is afraid that reporting obligations will lead to state regulation. For example, it tells its practitioners and quote nurses *not* to report suspected communicable diseases to Public Health, saying that they quote "must avoid any appearance of attempted diagnosis, since to do so would be to engage in the unlawful practice of medicine." (*Legal Rights and Obligations of Christian Scientists in Minnesota*, 1976 edition, p. 14)

HHS does not require Christian Science practitioners to be placed on the list of mandated reporters, yet these religious healers are often the only ones besides the parents who are aware of a Christian Science child's illness.

But even in states that clearly require such healers to report a sick child without medical care, the church claims they do not have to do so. Sometimes they claim the healers are clergy who have a confidentiality privilege.

Also, Christian Science believes in treating disease without seeing the sick person. Florida has an ironclad law that Christian Science practitioners must report sick children deprived of medical care. But in 1986 seven-year-old Amy Hermanson died of diabetes without medical care in Sarasota, Florida. Her parents had retained a Christian Science practitioner in Indiana to quote "treat" her without seeing her.

The state of Florida did not charge the practitioner with failure to report because it could not extradite for a misdemeanor.



It will be extremely difficult, perhaps impossible, for states to get religious healers who make their living encouraging parents to rely on their methods and believe them to be divinely ordained to report children under their care as suspected abuse and neglect cases. Such healers are participating in the medical neglect. And many charismatic groups arising in recent years have no ordained clergy. What language will mandate reporting within such groups?

Also, it is not easy for people outside of these groups to become aware of their sick children. The Christian Science church advises its parents to, in essence, lie to public officials who inquire about their children. Here is an excerpt from their legal advice to California members. (OVERHEAD)

[I]f a child is being given Christian Science treatment for an illness, inquiries made by school or other public officials as to care of the child should be answered with assurance that such child is being given good care and *is having treatment for the illness*. Otherwise, such officials may conclude that the child is a neglected child. In talking with such officials, a parent should stay clear of statements such as "belief of illness" or "claim of sickness" which may result in the officials thinking that the illness is being ignored or treated as a fanciful aberration of some kind. *Legal Rights and Obligations of Christian Scientists in California*, 1984 edition, p. 45

The italics on the phrase "is having treatment for the illness" is the church's own emphasis. The church wants the school or other public officials to believe the child is getting medical treatment. It tells the parents to mislead the officials with church terminology. Obviously, most officials will assume the child is receiving medical treatment because they will not know that Christian Science calls argumentative prayers treatments. But the church also tells parents not to use standard Christian Science jargon for disease as a false "belief" or "claim" because that might arouse the officials' suspicion.

Today 41 states have religious exemptions in their juvenile codes, while twenty or more have religious exemptions in criminal codes. Six states have exemptions for "non-medical remedial treatment," which may possibly include faith healing. South Dakota is the only state in the nation with neither a "non-medical" exemption nor any religious exemption from a duty to care for a sick child. However, some religious exemptions are so ambiguous as to have little legal force, as we shall see later.

Between 1974 and 1982 no charges were filed in any United States cases of religiously-based medical neglect. In 1982, though, prosecutors began filing charges in some of the deaths. During the past decade criminal charges have been filed in 39 cases of religiously-based medical neglect of children. States have won convictions in 24 cases by filing charges under statutes that do not have religious exemptions or by finding



caveats in religious exemption language.

Many of these convictions have been upheld on appeal. The U. S. Supreme Court declined to review two of them. Several courts have cited the U. S. Supreme Court's ruling in *Prince v. Massachusetts* in 1944 that "the right to practice religion freely does not include liberty to expose the community or child to communicable disease, or the latter to ill health or death. . . ." (321 U.S. 158)

No court has ever ruled that our First Amendment right to religious freedom includes the right to deprive a child of necessary medical care. This simple, but momentous fact cannot be over-emphasized. **There never was a Constitutional necessity for these religious exemptions. They have come into state codes because of bad federal policy and legislators' indifference to children.** And this is true not only for medical care of sick children, but also preventive and diagnostic measures. As long ago as 1905 the U. S. Supreme Court upheld the state's right to require vaccination without exception for religious belief in the case of *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

#### **Watching for more religious exemptions from legislators**

As your states wrestle with their religious exemption statutes, we urge you to promote the advantages of removing them altogether, which has been a state option since 1983. What is so onerous or complicated about asking Christian Scientists to obey the same laws that others do? Removal gives all children equal rights to medical care, and all parents the same duty to provide it. This fair play promotes respect for the law by all citizens. And I would mention that medical neglect is a growing problem. Parents who see certain groups exempted from a duty to obtain and pay for medical care may feel that they should not have to get medical care for their children either.

The law can have flexibility in application without a religious exemption. If the child is brought to the hospital or doctor and has not been seriously endangered by a delay, medical treatment can be court ordered without charging the parents with neglect. In the classic Jehovah's Witness scenario, the child is seen by a doctor at the same point in time as any other child would be, the doctor says a blood transfusion is necessary, the Jehovah's Witness parent refuses consent on religious grounds. In this situation the state should simply court order the medical treatment the child needs without adjudicating the parents as negligent.

This is a desirable way to handle a situation **when the child is in the hospital.** But let's not have laws announcing in advance that one group of parents has no duty to care for their children—no duty even to bring them to medical attention.



Child neglect has been a neglected topic, perhaps because it is less sensational than abuse. Criminal charges have been filed in seven deaths of Christian Science children in recent years, yet other deaths continue to slip through the cracks and receive no public scrutiny at all. Some coroners are still signing off on these deaths as due to natural causes and are not reporting them to law enforcement.

A doctor at a midwestern children's hospital told us that nearly every week children came in whose parents had waited longer than they should have to seek medical attention. Sometimes the children are dead on arrival, sometimes very close to death, but, he said, "We just take the parents' word for it" and do not report the cases to law enforcement or child welfare agencies.

We need to get the message out that parents must provide for their children. At the point when a reasonable person would recognize symptoms of a potentially serious illness, the parents should have a legal duty to seek medical attention for the child.

Unfortunately, the momentum in state legislatures is running the other direction. Not only are child advocates failing to get religious exemptions repealed, but the Christian Science church is busily adding new ones. Indeed, the church claims to have added more than 100 new religious exemptions to state statutes in the past two years—and this in a period when its prestige is surely at an all-time low because of the media coverage given to the court cases.

An area that deserves particular vigilance right now is child death review laws. The Christian Science church is attempting to get religious exemptions from autopsies. In Kansas, the church has gotten an interim Senate Judiciary Committee to recommend the following amendment to SB477: (OVERHEAD)

An investigation or autopsy shall not be required in any case where death occurs without the attendance of a licensed physician solely because the deceased was under treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing permitted under the laws of this state.

Such an exemption will, of course, make public scrutiny of deaths of Christian Science children impossible.

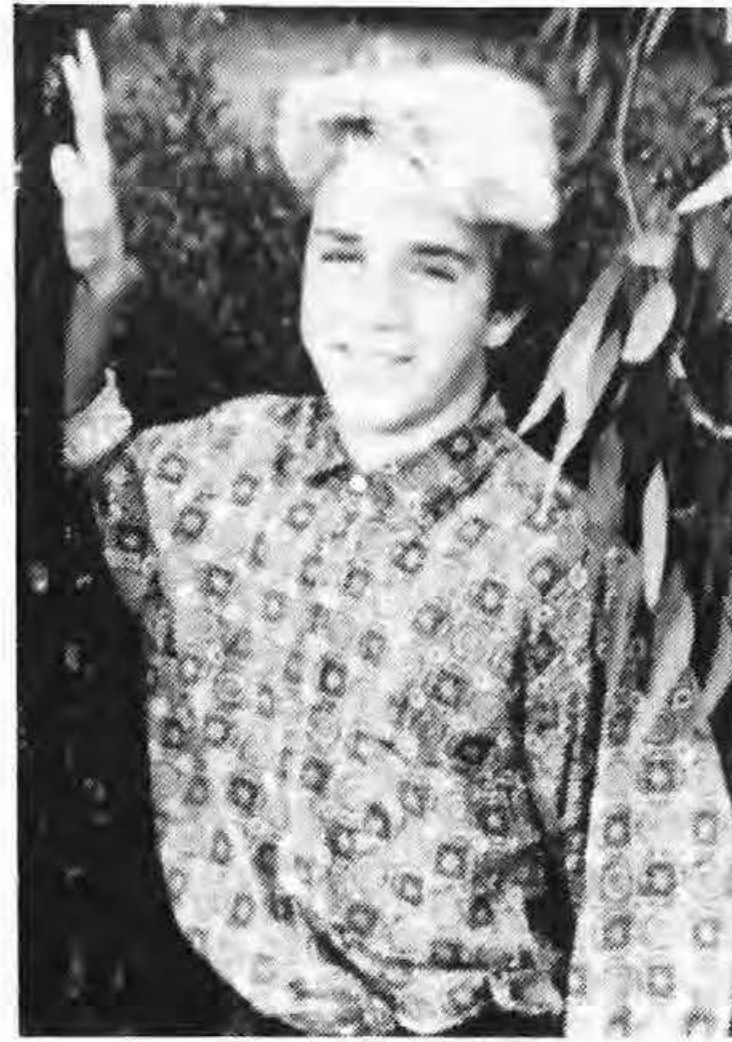
We ask for your help in watchdogging legislatures. It is a thousand times easier to block a religious exemption before it becomes law than to repeal it after the fact.

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Swan then showed several slides of children who died or were injured because of Christian Science. She concluded with a picture of Ian Burdick, who died of untreated diabetes at age 15 in Sherman Oaks, California, in 1987. Her talk continued as follows:

This case illustrates what a long way we have to go on this issue. Ian Burdick died at a time when three sets of Christian Science parents in California had been indicted for letting their children die without medical care, including one couple in Los Angeles County. Yet the Los Angeles County Coroner did not refer Ian's death to any law enforcement agencies for review.



*Ian Burdick*

And all of these cases illustrate that we cannot protect these children through the reporting system alone. The parents must also have a duty to provide medical care.

The question at issue here is, shall we have two classes of citizenship for children? Or do children have the right to equal protection of the laws?

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Swan received a standing ovation. The talk was a general session speech attended by more than 600 people. A videotape or audiotape of the speech may be ordered from Convention Recorders, P. O. Box 87042, San Diego CA 92138, Ph. 800-487-8273.

Swan submitted two questions over her talk for continuing education credit:

1. Courts have ruled that the First Amendment right to freedom of religion requires that
  - a) Parents must be allowed to withhold lifesaving medical care from children on religious grounds
  - b) Parents must be allowed to withhold lifesaving medical care from children on religious grounds, but the state can order the medical care if it discovers a sick child
  - c) Parents must be allowed to withhold preventive and diagnostic measures from children on religious grounds, but not medical care necessary to save a child's life.
  - d) None of the above
2. Which of these does *not* cause disease according to Christian Science theology?
  - a) Sin
  - b) Malicious animal magnetism
  - c) Bacteria and viruses
  - d) Seeking medical treatment

The correct answers are 1d and 2c.