

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law

Kidnapped baby returned to hospital

On June 1, Kansas authorities regained custody of a critically ill baby and took her to a hospital again. Ellen Encisco was kidnapped from St. Francis Hospital in Topeka on May 17th, a week before her first birthday.

Her parents, John and Nada Encisco, belong to a fellowship called Practical Ministries, which follows a strict vegetarian diet and does not believe in using medical care for healing.

Mr. Encisco worked as a computer consultant. Neighbors described him as professional and the family as "ideal."

Kidnapped from hospital

On May 15, Ellen was taken into protective custody after police were told her health was endangered. She was placed in the hospital for treatment of malnourishment and anemia. She weighed only 10 pounds when admitted.

On May 17th her parents and an herbal healer, visited the child. Later, nurses went into the room when a heart monitor alarm which had been connected to the baby went off. They found the room empty. The monitor was disconnected and intravenous feeding tubes had been removed.

Baby thought to be in danger

Medical authorities told police that Ellen would not survive much more than a day without medical intervention. The last week of May, however, a local television station aired a videotape of Ellen which the Enciscos had given out to show that she was in good health.

Police searched for her around the clock.

Parents felt misled

After the parents were located, prosecutors wrote them about Ellen's care. Encisco believed that the state had agreed to let them care for her at home. But when the police approached the family, they took the child from them and went immediately to the hospital.

Encisco claimed the prosecutors had broken a promise that the family could keep Ellen.

"I feel I was lied to," Encisco told reporters. "I want to warn people that freedom of . . . religious liberty and family dignity are at stake.

"This issue goes beyond Ellen. It affects everyone."

Encisco distributed a letter from Assistant District Attorney Jean Schmidt, which said, "I believe that your daughter has the best chance of recovering in your custody and under your care."

It does not, however, refer to any deal between the Enciscos and prosecutors.

INSIDE

Another faith death in Philadelphia	2
Plea bargain in Colorado faith death	3
Prosecutor gives up in Colorado case	4
Charges against Candian parents dropped . .	6
Religious exemptions cause whooping cough	9
Jehovah's Witnesses and transfusions	9
CHILD board member, Dr. Asser, comments	13
New book discusses faith deaths	14
<i>Crime of Dorothy Sheridan</i> reissued	15
Impact of book	16
Coming media coverage	17
CHILD testifies before U. S. Advisory Board	17
Sokol speaks out	18

Parents refuse to visit daughter

At a news conference Encisco distributed information on the group's religious beliefs with respect to medical treatment. "When one recovers from disease, it is God who restores him. Sickness, suffering, and death are the work of an antagonistic power. Satan is the destroyer, God is the restorer," the information said in part.

Encisco said that he acknowledged the state's interest in ensuring the welfare of children, but that the state also should respect the family's desire to treat Ellen by nonmedical means.

"The moral and physical responsibility is ultimately with the parents," he said, "and her health [should be left to] a higher authority, the Creator."

Encisco said he and his wife will not visit their daughter in the hospital as long the girl is subjected to medical treatment, which clashes with their religious beliefs. He said visiting the hospital would be tantamount to endorsing Ellen's medical treatment.

God to punish the officials

A family friend and spokesperson for the Enciscos, Dean Huckins, said that God would punish officials for reneging on the agreement. "They will reap what they are sowing," he says.

Currently, there is a 24-hour police guard on her at the hospital.

Dr. John Renner, who directs the Consumer Health Information Research Institute in Kansas City, has offered to meet with the herbal healer and establish a well-balanced diet for Ellen.

Taken in part from the AP releases, 20 May 1992, 2 and 3 June 1992.

Another faith death in Philadelphia

Faith Tabernacle beliefs contributed to the death of another child in Philadelphia on March 12. Kimberly Wilson, age 18 months, died of pneumonia and myocarditis.

Her parents, Joseph and Esther Wilson, are

members of Faith Tabernacle, which opposes medical care of children and adults.

Police were told the child had had a fever for three days. The fever abated, but on March 12th at 5 a.m. Kimberly woke up crying. The parents gave her water and put her back down.

At 6:30 a.m., the father found her unconscious. He tried mouth-to-mouth resuscitation, but then realized the little girl was dead. He called the pastor of Faith Tabernacle Church, who notified a funeral director.

City has ignored at least 16 deaths

Philadelphia has a long history of doing nothing about deaths of children in situations of religiously-based medical neglect. CHILD files have reports of fifteen Faith Tabernacle children and one First Century Gospel child dying in Philadelphia without medical care during the past two decades. None of these cases has been prosecuted.

In response to Kimberly Wilson's death, city Health Commissioner Dr. Robert Ross said "the family has a constitutional right to exercise their religious beliefs" and "investigation" would be appropriate only if the autopsy indicated physical abuse.

Cases prosecuted elsewhere in state

Ross does not understand Pennsylvania law very well. The state does have a religious exemption in the juvenile code, but not the criminal code. During the past decade prosecutors in two central Pennsylvania counties have charged three sets of Faith Tabernacle parents with manslaughter for withholding lifesaving medical care from their children and won convictions in all three cases.

One of the convictions was appealed, and no right to practice religion at the expense of a child's health was upheld by the courts.

Taken in part from *The Philadelphia Daily News*, 13 March 1992.

Colorado parents plea bargain in daughter's death

David and Barbara Sweet of Olathe, Colorado, have agreed to a plea bargain in criminal charges stemming from the death of their daughter, Angela, age 7. Angela died June 26, 1990, of peritonitis due to a ruptured appendix. The Sweets refused to get medical care for her. They belong to the Church of the First Born, which opposes medical attention for illness, injury, or childbirth.

Protection ordered for surviving children

Mrs. Sweet pled guilty to felony child abuse in late April. Mr. Sweet pled no contest to the same charge on June 2. They were sentenced to three years probation and ordered to report to their probation officer or the sheriff's office if any of their ten surviving children become seriously ill or injured.

Mike Stern, Montrose County District Attorney, also included in the plea agreement an excerpt from a book entitled *Your Child's Health* by Dr. Bart Schmidt. It named several symptoms of children's diseases. The terms of probation require the Sweets to report if their children exhibit those or other symptoms of serious illness or injury.

Sick for seven weeks

Angela was last seen in school on May 3 and suffered considerably over the seven weeks of her illness. At death, Angela was emaciated, almost skeletonized. Her abdomen was riddled with infection and pus. "She was sick for weeks, and she must have suffered quite a bit," the county medical examiner said.

Nevertheless, the case was a difficult one to prosecute. Stern said he wrestled with it a long time before filing charges and finally decided he had to do it because he could not live with himself if he let Angela's death go unchallenged and another child died.

Negligence of DSS officials

A major problem was the negligence of the Department of Social Services (DSS). Special

prosecutor Stephen ErkenBrack was appointed to investigate these officials. On April 3, 1991, he reported these facts to Stern.

The principal of Angela's school asked DSS to investigate the girl's condition on May 16, advising DSS that the Sweets belonged to Church of the First Born and did not believe in medical treatment. DSS took no action.

DSS visits nine days after first report

On May 23, a school board member called DSS about Angela's prolonged absence. On May 25, DSS worker August Martinez visited the Sweet residence, but did not talk with Angela because she was asleep. He advised the Sweets to seek medical care; the Sweets said it was against their religion.

On May 29, he brought Cinda Caddy, a Public Health nurse, back with him for a second visit. Angela was still in bed, but awake. Mrs. Sweet said Angela was feeling better. Caddy specifically asked about abdominal pain; Mrs. Sweet said she had none.

Caddy asked to examine Angela; Sweet said, "I'd rather you didn't." So Caddy did not perform even a cursory examination. After Angela's death, Sweet said she would have allowed an examination if Caddy had insisted.

Martinez returned alone for a third visit June 14. He thought Angela was improving.

Death may have been avoidable

The medical examiner said it was hard to imagine Angela seeming better June 14 than she did May 29. There might have been some brief and slight improvements, he said, but the "overall course" of her illness would have been "a steady decline."

The DSS was supposed to file a child fatality report with the state within ten days of the death, but did not file it until five months later.

Though ErkenBrack found insufficient evidence for criminal prosecution of officials, he criticized their performance. "The medical reality," he said, "is that Angela's death may have been avoidable had someone merely touched her abdomen and realized the gravity of the situation. That action requires neither medical treatment nor a violation of the parents' religious beliefs.

Had they learned the extent of danger to Angela. . . . authorities could likely have obtained the requisite court order. . . to obtain medical treatment."

Liability more important than children

Though Martinez expressed remorse, other officials refused to cooperate with the investigation, which indicated to ErkenBrack "a concern that there be no finding of liability in the future rather than a concern that there be no similar deaths in the future."

State laws present difficulties

A second major problem was Colorado's religious exemption to child abuse that was enacted in 1989. It applies to both the juvenile and criminal codes and cannot be bypassed. The only charge applicable to fatal medical neglect in Colorado is felony child abuse, so a prosecutor with a faith death in his district must deal with the religious exemption to felony child abuse.

The statute provides an exemption from abuse and neglect charges for those who treat a child's illness with "a recognized method of religious healing" rather than medicine. The law further states at 19-3-103 CRS that prayer is "a recognized method of religious healing" if

(a)(I) Fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as medical expenses pursuant to regulations or rules promulgated by the United States Internal Revenue Service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

A privilege only for Christian Scientists

I and II give a privilege only to Christian Scientists. Other faith healers must provide evidence that their prayers can heal disease as effectively as medical treatment. As one observer commented, "To get an exemption, your prayers either have to heal disease or you have to send bills for them." Colorado is the only state that allows the IRS and insurance companies to

determine what a crime is.

The Sweets argued that the law discriminated among religions; they also claimed a religious right to withhold medical care from their child. On July 30, 1991, Montrose County District Court Judge Jerry Lincoln rejected their claims and ordered them to stand trial.

Lincoln ruled that the Colorado legislature did not intend to allow parents to withhold lifesaving medical care on religious grounds. We disagree. The law plainly states that a parent "who chooses and legitimately practices treatment by spiritual means through prayer in accordance with section 19-3-103, CRS, shall not be considered to have injured or endangered the child and to be criminally liable under the laws of this state solely because he fails to provide medical treatment for the child."

New bill responds to Sweet death

The legislature has just passed SB 92-177, which is a pallid DSS response to the death of Angela Sweet. This law states that a court may order "a medical evaluation" as well as medical treatment so that it can "make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious handicap or disability. . . ."

Such a law might have been helpful with the specific fact-situation of Angela Sweet. The DSS may have felt it could not obtain a court order for medical care of Angela because it had no evidence that her illness was life-threatening. (And did not work very hard to get any.)

But SB 92-177 is a long way from the rights that Colorado children should have. A DSS official has told us that the Department will not seek more from the legislature because they "have Christian Scientists up the wazoo."

Charge dropped in Jesus through Jon and Judy death

On April 17, 1992, charges were dropped against Jon Lybarger for letting his daughter Jessica die in Estes Park, Colorado, without

medical care on March 15, 1982. Weary Larimer County District Attorney Stuart Van Meveren decided against taking the case to a fourth trial after pursuing justice for more than a decade. His difficulties were largely caused by Colorado's religious exemption to child abuse.

Lybarger and his wife Judy founded a ministry called Jesus through Jon and Judy, which held that Jesus should be their only doctor. They lived with their nine children in a primitive one-room cabin and relied on donations from their members for their income. They had cancelled credit cards and insurance policies as evidence of their faith.

Their five-week-old baby Jessica became congested and had periodic coughing spells. On March 13, she seemed to stop breathing momentarily. Lybarger then called a church elder and said the devil was trying to take Jessica away, but the Lord had given her back. He asked the elder to pray for Jessica and anoint her with oil.

Officers did not press for care

That evening sheriff's officers came to their home in response to an anonymous phone call. The officers thought the baby had a cold but not a life-threatening illness. One officer asked if Lybarger would permit her to have medical treatment. Lybarger said he wanted "the best help" for his baby, which was "God." The officers left.

On March 14, her condition worsened. She had a serious coughing spell. Lybarger noticed her breathing became somewhat shallow and she raised some phlegm. He and his wife took her to the McGillicuddy's home.

Medical advice was rejected

A licensed practical nurse, Mrs. McGillicuddy testified that Jessica was pale, sickly, too weak to nurse, breathed with difficulty, and had blue fingernails. She told the Lybargers she believed the baby had pneumonia and suggested she be taken to the hospital across the street from them.

Lybarger replied, "We can't do that. This has been our walk. This is what we believe in. It's our life."

Staying up during the night, McGillicuddy noticed Jessica crying faintly and staring. At 2 a.m., she woke her husband and told him Jessica

had to be taken to the hospital. Both she and her husband urged Lybarger to seek medical care. Lybarger refused, citing a Bible verse that a man who puts his hand once to the plow and turns back is no good in God's eyes.

In mid-morning the Lybargers thought Jessica was getting better. Lybarger went to sleep. In the afternoon Jessica died of bacterial pneumonia, a disease that readily responds to antibiotics.

Convictions won

In August, 1982, Lybarger was convicted of felony child abuse. Judge William Dressel ruled the religious exemption unconstitutional as a violation of the rights of children. He said, "The legislature has no right to make that exemption to criminal conduct."

But the Colorado Supreme Court overturned the conviction in 1985, ruling that Dressel had exceeded his authority because neither the state nor the defense had asked for the law to be ruled unconstitutional.

Legal quagmire

In 1986 Van Meveren won a second conviction of Lybarger, but in 1991 the Colorado Supreme Court overturned it also because of Dressel's construction of the religious exemption law and his jury instructions on it.

Van Meveren prosecuted the case for a third time in October, 1991. During the trial, the Colorado Supreme Court ordered the judge to respond to a writ for a stay because of television coverage. The trial judge declared a mistrial because he did not feel he could hold the jury until the issue was resolved.

It took yet another six months for the Supreme Court to issue its written opinion on the media coverage.

Van Meveren regretted giving up on a case he had worked so hard on, but decided to do so because of the passage of more than a decade, expenses, the continuing ordeal for witnesses, and the fact that the religious exemption law has been substantially changed since Jessica died.

In CHILD Inc.'s view, it has been changed for the worse.

Charges dropped in Canadian baby's death

On March 2, 1992, Ontario Court Justice Then dismissed charges against Sonia and Khachadour Atikian of suburban Toronto in their third trial over the death of their 17-month-old daughter Lorie. The dismissal was based on a procedural technicality. The judge determined that the Atikians' right to a fair trial had been violated because the Crown neglected to advise the defense of the time of a phone call.

Although the violation did not apply to the third trial, Justice Then dismissed the charge because of the ordeal the parents had been put through by the sensational publicity, community hostility to them, and two previous trials.



Lorie Attikian

Child died of malnutrition

Lorie died of malnutrition and related pneumonia on September 25, 1987, because her parents followed a dietary regime recommended by unlicensed herbalist, Gerhard Hanswille. The Atikians were charged with failure to provide the

necessities of life.

Pathologist Dr. Kent Mancer reported many alarming features of Lorie's condition. She weighed only 11.2 pounds and was 28 inches tall, the height of a 10-month-old. Her heart, liver, and kidneys were half the size expected in a child her age. Fungus was growing on her skin, throat, and lungs. She lost much of her hair and what was left had turned gray to about an inch from the roots, which was evidence that she was not receiving enough protein. Blood and pus drained from her ears because of an ear infection that had lasted two to three months. Her skin was broken and ulcerated over her groin, buttocks, mouth, and armpits. Her body was covered in scabs and had changed colors.

Mancer testified that her body was consuming its muscle tissue to maintain life and probably could not even control her temperature during her final weeks. He said she suffered agonizing pain for months, but may not have had the energy to cry. He also said kids quit crying "if they find it doesn't do them any good."

An ambulance attendant who picked up her body at the home testified, "I thought somebody had handed me a doll. . . . I couldn't believe this was a human being."

Quack's treatments described

From the time she was weaned, her mother fed her a strict diet of fruit, vegetables, brown rice, homeopathic "cell salts," and tea. Hanswille told Atikian not to feed Lorie meat or dairy products. He told her Lorie would be a "super baby" because of her pure diet.

The day before Lorie's death, her mother wrapped her in cabbage leaves to draw poisons out of her body on Hanswille's instructions. Also on that day Hanswille placed the baby in a \$2,000 machine that gives a weak electric shock in an attempt to "stimulate" her. The machine includes an electrified comb to "liven up the hair."

Hanswille received a doctorate in naturopathy from Bernadine University, an unaccredited Las Vegas correspondence school. After being closed by the state in 1976, it moved to California where it received state "authorization" as a branch of the Church of Universology.

Hanswille has written books describing how to heal diabetes, epilepsy, tumors, paralysis, etc. by "touchless massage," by collecting "universal energy," and by making clay dolls with semen and blood.

Warnings against doctors and medicine

His books also warn against giving children medicine. Atikian testified that he told her Lorie would die if she was taken to a doctor.

Hanswille testified that he never discouraged the parents from seeing a doctor. He described himself as just a giver of information. People "come to me and ask me questions and I give them answers," he said. "It's just like someone asking how to paint a wall."

First trial resulted in conviction

The parents were first tried in June, 1990. They were convicted and sentenced to two years in prison. Judge John O'Driscoll told the jury that neither herbalism nor Hanswille were on trial and that the law did not allow parents to escape responsibility for the care of their children by blaming others. If a person pulled a thick sack over his head, he said, "Surely that person cannot then be heard to blame the bag maker for his or her inability to see."

"Neither one of you is mentally retarded; neither one of you is stupid," he told the Atikians. "[You could] see what is before your eyes."

On December 19, 1990, however, an Ontario appellate court overturned the conviction. It ruled O'Driscoll had not given enough weight to the Atikians' defense that they had an honest belief that they were providing the child with the necessities of life because of their reliance on Hanswille.

Honest belief and willful blindness

In the summer of 1991, a six-week retrial of the Atikians ended in a hung jury. The issue of "honest belief" was the crux of the case. Canadian law allows it as a defense to both manslaughter and failure to provide. There is both a subjective and objective standard to these crimes in Canada.

On the other hand, "willful blindness" is an element of both crimes. And the defendant's

state of mind is a factual question for a jury to determine. A parent who sincerely and honestly believes he is healing his child with prayer or an herbal diet can raise an "honest belief" defense, but if the jury sees evidence that the parent willfully blinded himself to symptoms obvious to the reasonable prudent person, the jury may convict him of the crimes. See *Regina v. Naglik*, 65 Can Crim Cases 3rd 272 (1991).

Similar conviction overturned

Nevertheless, the honest belief issue must be handled carefully by crown attorneys and trial judges. Another conviction overturned because of it was one involving religiously-based medical neglect. Arthur and Carol Tutton of Kitchener, Ontario, withheld insulin from their diabetic son Christopher. They belonged to a Pentecostal church that believed in faith healing, but admitted at trial that the church did not oppose medical treatment or diagnosis.

In 1979 at age 3, Christopher was diagnosed as diabetic and admitted to the hospital. His mother attended classes on diabetes education during his hospitalization. She read and studied material provided her on diabetes. Four months later both parents attended a full week of seminars on managing juvenile diabetes. Mrs. Tutton kept records of Christopher's condition for many months.

In October, 1980, Mrs. Tutton stopped giving him insulin in the belief that he was being healed by the power of the Holy Spirit. In two days, he became quite ill. His father and "a minister friend" rushed him to the hospital because he was "breathing funny." His condition was stabilized with insulin at the hospital. The attending physician was quite concerned about Mrs. Tutton's visions and warned the parents at great length that Christopher would need regular insulin throughout his life. Mr. Tutton assured him that insulin would not be withheld again without consulting a doctor.

Vision led to withholding insulin

In October, 1981, however, Carol Tutton believed she had another vision in which Jesus told her that Christopher was cured and did not need insulin. Jesus further said, she later

reported to the police, "that complete faith in Him, not man's doctrine. . . will bring forth the manifestation of this healing." She stopped giving insulin with her husband's approval and knowledge.

Three days later she phoned for an ambulance. When emergency medical personnel arrived and examined the child's body fifteen minutes later, rigor mortis had already set in.

The Tuttons were convicted of involuntary manslaughter in 1983. However, the Ontario Court of Appeals overturned the conviction and ordered a new trial. The appellate court's order was upheld by the Supreme Court of Canada in 1989 with a 3-3 vote.

Acts of omission vs. acts of commission

The Crown decided not to retry the case partially because of the death of a key witness in the interim.

The Court of Appeals ruled that acts of omission should be judged purely by a subjective standard, while acts of commission should be judged by an objective standard. In other words, the parent's state of mind would determine whether child neglect was criminal, while child abuse would be defined by a purely objective standard, that is, the behavior of the reasonable, prudent parent regardless of motivation.

The 1955 Amendments to the Criminal Code have caused confusion over whether the Canadian standard for criminal negligence is subjective or objective. The Supreme Court's findings in *Tutton* did not resolve that confusion, but did discard the Court of Appeals' distinction between acts of commission and omission. The standard for culpability appears to be both subjective and objective, but it is the same standard for both acts of commission and omission.

Liable if aware of the risk to life

To summarize this difficult issue, the Crown has the burden of proving that the defendant had a blameworthy state of mind. The actions themselves can be used as some evidence of mental state. Juries must be advised that an "honest belief" is a defense, but that the defendant is criminally liable if he was aware of

the risk to the lives of safety of others or willfully closed his eyes to the reality of that risk.

Canada has no religious exemption from a parent's duty to provide medical care to a sick child.

Christian Science stand differs in Canada

Canadian jurisprudence in this area is important to CHILD because the Christian Science church advises Canadian members to seek medical care for serious illnesses of children. We certainly do not want the church using the reversals of the *Tutton* and *Atikian* convictions as an excuse to export its recklessness with parents and children from the United States to Canada. If the reversal rulings are read carefully, they provide no encouragement for the church.

In 1903 the case of *Rex v. Lewis* established in Canada that Christian Science is not a legal substitute for medical care of a child. Lewis was convicted of manslaughter for letting his six-year-old son die of diphtheria without medical care.

But the 1924 case of *Rex v. Elder* may be more significant in shaping the attitude of the Christian Science church. William Elder was a Christian Science practitioner retained to "treat" 12-year-old Doreen Watson of Winnipeg. She died an agonizing death from diphtheria.

A medical doctor examined the girl, explained the effectiveness of antitoxin treatment of diphtheria, and urged the family to obtain it. They refused. Elder claimed that Christian Science deserved much of the credit for reduction in diphtheria mortality and that he would immediately break up the disease with his prayer.

Practitioner was convicted

Elder was indicted for manslaughter on five counts: 1) for having aided, abetted, counseled, or procured Robert Watson to omit his duty to supply his daughter with the necessities of life; 2) the same, substituting "necessaries" for "necessaries of life;" 3) for being under a legal duty to have and to use reasonable knowledge, skill and care in administering surgical and medical treatment, but omitting to do so; 4) for having held himself out as possessing competent skill to deal with Doreen's life and health but

treating her with criminal inattention and gross neglect; and 5) for unlawfully killing and slaying Doreen Watson. The jury acquitted him on the third and fifth counts, but found him guilty of the others.

The conviction was later overturned on a point of evidence, but there was no question as to the law. Christian Science practitioners can be convicted of manslaughter in Canada for encouraging parents to withhold lifesaving medical care from a child.

Explanation for different standard

In the June 1979 issue of *Canadian Doctor*, the Christian Science church wrote that they do obtain medical care for "the grave illness of a minor." But when reprinting their piece in *The Christian Science Sentinel* of December 3, 1979, the church added a footnote: "The Canadian Penal Code provides that parents must provide their minor children with 'necessities of life.' This term has been judicially interpreted in Canada to include proper medical care."

To paraphrase, "getting medical care for children is something we have to do in Canada, but certainly not the United States."

There were several convictions of Christian Science parents in the United States before 1979. The U. S. Supreme Court had ruled in *Prince v. Massachusetts* in 1944 that First Amendment religious freedom rights do not include the right to endanger a child. But the Christian Science church continues to encourage parents to withhold medical care in the United States, while directing Canadian parents to get it.

We suspect the difference is that Christian Science practitioners have not been prosecuted in the United States and that the church is more concerned about liability of its practitioners than of its parents.

Taken in part from *Canadian Doctor*, June 1979; *Christian Science Sentinel*, 3 December 1979; *Lawyers Weekly*, 23 June 1989; Clifford Cawley, *The Right to Live*, pp. 167, 211-16; and court documents.

Whooping cough among children with exemptions to vaccinations

In February the *American Journal of Disease Control* (AJDC) published an article about outbreaks of pertussis, commonly known as whooping cough, among Massachusetts children with religious exemptions to vaccinations. See Paul Etkind, Susan Lett, *et al.*, "Pertussis outbreaks in groups claiming religious exemptions to vaccinations," *AJDC* 146 (February 1992): 173-6.

Etkind and Lett studied four pertussis outbreaks that occurred in Massachusetts between 1986 and 1988 at private day care centers, private schools, and in a play group. About 50% of the children claimed religious exemptions from the pertussis vaccine.

Although fewer than 1% of all Massachusetts kindergarten students claim religious exemptions to immunizations, such students are often clustered, creating susceptible groups capable of supporting outbreaks.

The authors report that, despite a concerted effort to encourage families to seek treatment and antibiotic prophylaxis of contacts, compliance was poor.

Between 1981 and 1988, the incidence of pertussis in the United States increased almost threefold, from 0.5 cases per 100,000 in the population to 1.4 cases per 100,000, Etkind and Lett report.

Inconsistencies in Jehovah's Witness doctrine explored

CHILD members Ron and Michelle Leeds of Pembroke Pines, Florida, want to share with our readers the following exchange of letters that took place when they were members of the Jehovah's Witnesses. Michelle points out that Witness theology absolutely prohibits both transfusions and auto-transfusions. The blood gas test she describes includes returning blood to a newborn. Thus, it is essentially an auto-transfusion. Yet, the Society told her it is permissible.

5117 S.W. 28th Avenue
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 May 1, 1985

Watchtower Bible and Tract Society of New York, Inc.
 Writing Department
 25 Columbia Heights
 Brooklyn, New York 11201

Dear Brothers:

I am writing you in regard to some questions that have arisen in my mind concerning certain medical procedures and how they should be viewed. My husband is a respiratory therapist. Although his specific job in the allied health field has little if anything to do with blood as used with a transfusion, there is a certain type of medical test he performs on infants in the neonatal unit which has brought up questions in our minds. Let me explain this procedure and my question as simply as possible. In medical practice, it is called a "blood-gas analysis". This is a test given to premature infants to determine the blood oxygen level, PH balance, and other vital data about the child. This test will enable the medical profession to know how to proceed in further treatment. This diagnostic test is commonly administered to adults, also, whereby a blood sample is taken, analyzed, and the blood is then discarded after the test.

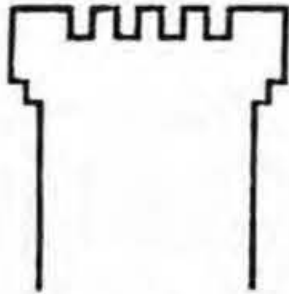
The question that comes to mind pertains to these newborn or premature infants. The procedure is described as follows: the medical personnel must first remove 1-3 c.c.'s of mixed blood and I.V. solution from an interarterial catheter to ensure a pure blood test sample. Then they will collect a 0.2-0.3 c.c. sample, analyze and discard it. But because a child at this stage of their life has so little blood, the first 1-3 c.c. mixture of I.V. and blood taken must be returned into the baby's body. This must be returned, otherwise the volume removed would deplete the baby's blood supply. In premature infants weighing as little as 2 pounds (approximately 1 kilogram), the entire blood volume may be only 80 c.c.'s which is about two "shot glasses" full. This illustrates how vital this small amount of blood is to the infant. Medically speaking, the hospital does not consider this to be a blood transfusion, but simply a standard test. I am sure that many children of Jehovah's Witnesses have had this test performed. My question is: **how is this test viewed in the light of the Society's prohibition on transfusions and auto-transfusions?**

My other question is regarding individuals who are hemophiliacs. We know these people are born with a very low blood-clotting factor. Modern medicine is now able to use "fibrinogen" to stop hemorrhaging and blood factor VIII for helping hemophiliacs. Again, **what is the Watchtower Society's view on using components of blood for these vital purposes?** In light of the recent April 15th Watchtower magazine, I am anxiously awaiting your response.

In Jehovah's Service,

Michelle Leeds

Sister Michelle Leeds



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EF July 29, 1985

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Dear Sister Leeds:

Your follow-up letter of July 3, 1985, has been received. We regret very much that there has been a delay in getting a reply back to you in response to your letter of May 1. Our records indicate that a reply was prepared for you on May 31, but for some reason we are unable to locate a copy of this reply. Therefore we hasten to send the following information which we hope will be helpful to your husband in making a decision on the employment situation with which he is faced.

We suggest first a review of the published information that appears on pages 29-31 of the June 15, 1978, issue of The Watchtower. The matter of withdrawing blood and having this reintroduced back into the body after being stored is first discussed. Then consideration is given to the use of a heart-lung machine or a kidney-dialysis machine. The point is made that some Christians have conscientiously reasoned that the blood in such procedures is flowing continuously and that the external circuit might be viewed as an extension of the circulatory system. They have considered it comparable to a piece of tubing that might be implanted in the body to shunt blood around a blockage in a vessel. Then the following is stated: "Of course, each Christian should weigh what is involved in the use of these and similar devices. He could consider whether he views the blood involved to be blood that clearly has left his body and so should be disposed of or as blood that, basically, is still part of his circulatory system. (Deuteronomy 12:16) Then he can make a decision that will leave him with a clear conscience before God.--1 Peter 3:16." (See in this regard also the article that appears on pages 25-27 of the June 22, 1985, issue of Awake!) The same basic principles would need to be given consideration when the Christian doctor or medical person is called upon to decide whether or not he or she can assist with a procedure that involved removing and reintroducing blood into the body of a patient. Of course, who was responsible for the decision to utilize a certain procedure would have a bearing, and this is given consideration on pages 215 and 216 of the April 1, 1975, issue of The Watchtower.

In the light of what is stated above, some have felt that they could submit their young child to some procedures such as you described in your letter, since the purpose in directing

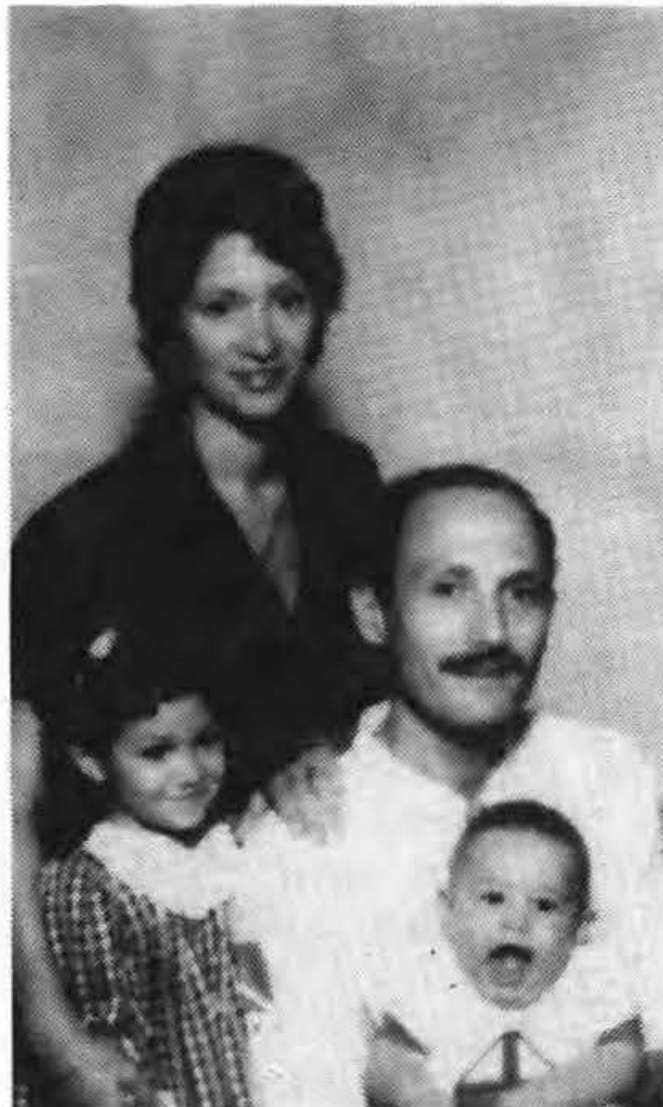
blood outside the body momentarily and then reintroducing it back into the body is not to store the blood for later transfusion purposes but to perform a diagnostic test. This is a factor to consider, just as it is in connection with the matter of accepting a blood component for immunization purposes. Others have rejected this procedure because of the dictates of conscience, just as they also refuse to accept any blood component such as a serum. So, in this grey area, there is room for each one to decide matters in such a way as to maintain a clear conscience before Jehovah.--1 Timothy 1:5, 19.

Regarding the taking of a blood component for immunization purposes, or in treating hemophilia, we refer you to page 30 of the above-mentioned issue of The Watchtower.

We trust the above comments will be helpful to your husband in making a personal decision on this matter while giving serious and appropriate consideration to Scriptural principles. We send our warm love and Christian greetings.

Your brothers in Jehovah's service,

Watchtower B. V. Society
OF NEW YORK, INC.



The Leeds Family

Ethics for providers and patients

by Seth Asser, M. D.

Advances in medical technology often force patients, families, and providers to decision points that can be very problematic. We are now all familiar with publicized cases where life and death issues end up in protracted litigation. There are many examples of less dramatic dilemmas in medical practice which do not make the headlines. The questions addressed in these letters involve both those of professional ethics and personal choice.

Medical workers are not obligated to perform or participate in procedures to which they have personal moral objection. Abortion is a good example. When a physician cannot, because of personal beliefs, withdraw life support from a terminal patient at the request of the patient or family, that doctor should allow transfer of responsibility to another physician.

Reducing barricades

However, placing barricades to the exercise of individual choice by the patient is not good practice. Orthodox Jews are a highly spiritual and ethical group who do not believe in organ transplantation, probably because of their interpretation of the same old testament passages the Witnesses read so literally. Nevertheless, many physicians who are Orthodox Jews will still discuss and facilitate the process of organ donation with families who wish to do so, knowing the simple reality of diversity of beliefs among their patients. This diversity is inescapable in medical practice, and health care providers need to decide if they can accept it and still work with their patients or if they must withdraw each time conflicts with patients' beliefs arise.

The case of the infant who needs blood gas tests is quite interesting. While a respiratory therapist may not actually perform blood withdrawal, he or she is intimately involved in the process of life support that absolutely requires blood tests, at least given the reality of present technology.

Perhaps the most difficult aspect of this process for the caregiver who is a Witness is the virtual certainty that most premature newborns

receiving life support with frequent blood tests will eventually require a transfusion. Unlike older individuals who may tolerate profound anemia long enough for the bone marrow to produce cells, the preterm infant cannot. Also, newborns, particularly those under stress, are unable to produce the required volume of blood on their own.

Ethically crucial problem

This problem is not addressed in the letters above but is ethically crucial. A medical professional should never act to place a patient in certain, life-threatening danger while knowing that the means for rescue from that danger are not available. In practice, it is almost certain that should a newborn child of Jehovah's Witness parents require a transfusion and the parents refuse permission, court intervention will be sought.

Thus, the question of whether blood not used for the blood gas test can be returned to the body is only part of the issue. There are technological advances on the horizon that may markedly reduce or eliminate the need for blood gas sampling. There may also be safe and effective blood substitutes available some day. For the present, blood sampling is essential and, in the case of the newborn on life support, transfusion often is as well.

Changes in medical positions

That the Watchtower Society seems to view the momentary withdrawal of blood for testing purposes as a "grey area" for the members is encouraging. The changes in theological statement by the Society over the years on issues such as immunization, organ transplantation, and partial blood component therapy for hemophiliacs and others, indicate how religious institutions may adapt and evolve as society and technology change.

If acceptance of techniques such as hemodialysis, blood component infusion, and organ transplantation are matters left to individual conscience, then perhaps the permission to include limited auto-transfusion for diagnostic purposes is good progress. After all, removing and storing one's blood for the purpose

of later use during surgery is not really a transfusion (the prefix "trans" means "going from one across to another"), but more accurately an infusion of one's own blood to temporarily help the bone marrow during a time of non-physiologic increased demand.

Religions' need for identity

Nevertheless, the consistent changes in the modern world may lead some religious groups to hold tight to certain beliefs. It is an important method for maintaining a unique identity in an era of increasing social homogeneity.

Will the Watchtower Society some day label lifesaving blood transfusion for infants and children as another gray area? It seems unlikely, yet the acknowledgement that there should at times be "room for each one to decide matters in such a way as to maintain a clear conscience" leaves the door open to more change.

Pediatrician publishes on faith deaths

Child abuse and neglect is the subject of a wide-ranging book entitled *Suffer the Children: A Pediatrician's Reflections on Abuse* that has just been issued by the Health Press in Santa Fe, New Mexico. The author, Dr. Rosamond Murdock, practiced pediatrics in Boston before her retirement.

Of special interest to CHILD members is the chapter, "Love but let die!" which deals with medical neglect based on religious or dietary beliefs. Murdock changes the names of the children and does not mention the churches involved. She has, nevertheless, told us in a telephone conversation that five of the cases in the chapter are Christian Science children and that she saw scores of injuries to children because of Christian Science during her years of practice.

Four more neglect cases include two deaths

Of the five cases described, one is obviously Robyn Twitchell, but the others are new to us. One is an eight-year-old girl with diabetes that

was, fortunately, discovered by a school nurse. After resistance and objections from her parents, they finally complied with an insulin-maintenance program.

Murdock describes the grisly death of a three-year-old Christian Science child to diphtheria in the Boston area.

She also tells about a Midwestern family whose children came down with measles. Their nine-year-old daughter contracted encephalitis from it which left her permanently paralyzed on the right side. Her speech, mobility, and manual dexterity were impaired. Their six-year-old son developed tetanus from stepping on a rusty nail. Over the next ten days his neck and jaw stiffened, swallowing became very difficult, muscle spasms became progressively more intense, painful, and frequent; and he lost bladder and bowel control. An uncle who was not a Christian Scientist threatened to take him to the hospital if the parents would not. The next morning the boy turned blue during a prolonged spasm of the larynx. His parents then set out for the hospital, but he died en route.

The deaths from diphtheria and tetanus occurred many years after vaccines preventing these diseases became available. The measles vaccine was not available then.

Deaths of Jehovah's Witness children

Murdock also tells about a Jehovah's Witness child dying twenty minutes before a court order for a transfusion arrived and a Witness mother and her baby dying in childbirth because her husband would not give permission for a transfusion as she went into shock.

Other chapters discuss the history of child abuse and neglect, sexual abuse, substance abuse and its impact on babies, physical abuse, emotional abuse, runaways, suicides of young people, bureaucratic inadequacies, how to be alert for evidence of child abuse and neglect, how to report suspected child abuse and neglect, and resources for combatting the problem.

Murdock writes in a simple, straightforward style for the general reader. Scores of case histories from her practice bear witness to a lifetime of work for children.

From Lisa to Robyn: the long trail of blood

The Crime of Dorothy Sheridan by Leo Damore has just been reissued as a Dell paperback. First published in hardcover by Arbor House in 1978, the book is a scholarly and readable account of a child's death under Christian Science treatment, the prosecution of the mother for manslaughter, and the Christian Science church's response.

Dorothy Sheridan converted to Christian Science in the wake of her divorce. She moved to Harwich, Massachusetts, and began working as a nursery school teacher. In February, 1967, her five-year-old daughter Lisa developed a raging fever and severe cough. Sheridan called a Christian Science practitioner for "treatment," church parlance for an argumentative form of prayer. Lisa became delirious. Two days later the fever broke; Sheridan and her practitioner were convinced that Christian Science had achieved an outstanding healing.

But the coughing, congestion, and shortness of breath persisted. Lisa could not eat solid food. She had to be carried to the bathroom. She complained of having to urinate, but not being able to do so.

Look for positive signs only

Finally, the coughing stopped. Lisa was obviously still extremely weak, but the Christian Scientists were sure they were winning.

A second practitioner told Dorothy Sheridan not to "mull over symptoms"—at least not the symptoms that did not support their presumptions. She also complained that Sheridan was acting like the man who demanded "signs and miracles" from Jesus in order to believe. Neither practitioner ever visited the sick child.

Death leads to manslaughter charge

Three weeks after the first symptoms of illness Lisa Sheridan died in her bed of pneumonia. A quart of pus in her chest had collapsed her right lung and suffocated her.

Dorothy Sheridan was charged with involuntary manslaughter. To our knowledge, she

was the first Christian Scientist in Massachusetts to be indicted for letting her child die without medical care.

The Mother Church retained prestigious attorney Jay Skinner to represent her and openly stated that it was paying all of Sheridan's legal costs, although it has refused to do so for the thirteen Christian Scientists indicted in recent years. The church also brought in Christian Scientists from around the country to testify at the Sheridan trial about their healings and professional success. The self-congratulation did not sit well with the humble residents of her small Cape Cod town.

Good Christian Scientists—mother and daughter

On the witness stand, Sheridan never cried, never asked for mercy upon sincere, if mistaken conduct, but focused instead on a mechanical defense of Christian Science. She told the police that Lisa was "a good Christian Scientist," who would never have "asked for a doctor."

The jury convicted her. She was sentenced to five years probation and ordered to obtain medical care for her surviving child.

She clung tenaciously to her faith. She said, "If I had to do it all over again, I don't know how I could do anything different," and expressed the hope that her case had "brought about a better understanding of Christian Science."

Church's interest placed above mother's

Nevertheless, Damore suggests, she was ultimately betrayed by the church for whom she had sacrificed her daughter and her dignity. She said at the time of her conviction that she wanted to appeal. Eight months later, though, she withdrew her appeal. Damore's interviews with church officials reveal their fears of an appellate ruling which would create binding law that Christian Science was not appropriate physical care of sick children.

For the church, it was easier to abandon Dorothy Sheridan as a convicted felon and get the legislature to change the law. In 1971, the Massachusetts legislature passed an ambiguous religious exemption to a non-support misdemeanor.

Church willfully misrepresented law

A Massachusetts prosecutor quoted in Damore's book warned that future Christian Scientists could still be prosecuted for manslaughter because the statute governing that crime had not been amended.

Proud of its power over legislators, the church ignored the warning. In a booklet of legal guidance for Massachusetts members, the church quoted the exemption and then stated: "This is a criminal statute and it expressly precludes imposition of criminal liability as a negligent parent for failure to provide medical care because of religious beliefs." (See *Legal Rights and Obligations of Christian Scientists in Massachusetts*, 1983, p. 19.)

Twitchell death followed

The moral thing to do would have been to let Sheridan's appeal go forward and obtain a higher court ruling on the status of prayer as a legal alternative to medical care of sick children.

Instead, the church continued to encourage its parents to withhold medical care from children. What Damore calls the ticking time bomb of the Dorothy Sheridan case exploded in the prosecution of Ginger and David Twitchell in 1990.

The paperback edition of *The Crime of Dorothy Sheridan* adds a chapter on the recent prosecutions and the work of CHILD Inc. The account of the Twitchell trial is a disappointment. Neither the medical nor legal issues are lucidly presented. The discussion lacks the sharp focus that Damore had as a practicing journalist attending the Sheridan trial.

Nevertheless, this book is mandatory reading for anyone concerned about the children lost because of a powerful institution devoted to its own self-aggrandizement. Damore spent eight years writing the original edition. He read all the published writings of Christian Science founder Mary Baker Eddy. His book includes citations to all cases in American jurisprudence up to 1967 for which religious belief was raised as a defense to manslaughter.

The Crime of Dorothy Sheridan remains a seminal statement, a clarion and courageous voice on behalf of helpless children.

The Crime of Dorothy Sheridan: a personal odyssey by Rita Swan

"Then you won't want a notice in the newspapers."

That was the first thing the funeral home director said when, frozen with the horror of our son's death, we told him we were Christian Scientists.

Something in my gut said at once that was wrong. I was not ready to tell the world that Matthew had died because of our Christian Science faith. But I wanted to say something—He was here. He climbed the ladder of the highest slide on the playground. He swung from the rod in the closet and jumped into my arms. He was a wonder to his parents, his big sister, and two wise dogs.

But the funeral home director was fatherly and reassuring. He knew all about how to handle funerals for Christian Scientists. So there was no notice in the newspaper nor any other press coverage for more than two years.

Why had it happened?

We moved from Detroit to the prairies of North Dakota where forty-mile-an-hour winds howled for three days at a stretch. We had another baby. But the death of Matthew still followed us everywhere.

Why had it happened and how? Day after day I wrote out my memories and feelings trying to understand. Were we the only ones who had lost a child? Maybe it was all our fault for not understanding Christian Science well enough.

Another death recalled

Eventually I recalled a Christian Scientist somewhere in Massachusetts had lost her daughter and been convicted for it in the 1960s. I wrote the Attorney General and other state law enforcement officials, but they did not know of the case.

Several weeks after writing the Barnstable County Clerk, however, we received a letter from Leo Damore telling about the book he had recently published on the case.

We ordered it from the publisher at once.

We each read it virtually non-stop. Suddenly we were no longer alone.

Who speaks for the children?

The book's final ringing question, "Who speaks for Lisa Sheridan?" was a banner that we marched under in those early days. I was determined that when the world asked, "Who speaks for Matthew Swan?" there would be an answer.

Many others also have found their reality validated by *The Crime of Dorothy Sheridan*. CHILD member Ken Scheck discovered it when his wife was dying of a respiratory disease set off by untreated infections during her childhood in a Christian Science home. "My wife was Lisa Sheridan, only she survived," Ken said a few months before she died at age 42.

Documentation of trial well used

We have given or lent copies of *The Crime of Dorothy Sheridan* to dozens of prosecutors. It has shown them that they are not alone and neither are the deaths of children. Especially in the early days of the forty prosecutions during the past decade, the book was highly valuable trial preparation.

Damore made the only extant transcript of the Sheridan trial, which he has given to us. If Sheridan's conviction had been appealed, a transcript would have been officially filed with the court. But neither the state, the trial court, nor the defense has a copy of the transcript.

Other documents he preserved were helpful in building the prosecution's case against Ginger and David Twitchell. The Christian Science church claims that the Massachusetts legislature was so offended by the conviction of Dorothy Sheridan in 1967 that they passed a law in 1971 to prevent future prosecutions of Christian Scientists. But letters in Damore's possession show that the church did not ask the legislators for a defense to manslaughter nor discuss the Sheridan case with them. Instead, the church asked only for an exemption to a misdemeanor carrying a \$200 fine. It was presented as a trivial little consideration.

Leo Damore was a pioneer. Nothing like his book had been published before, and it took

years to sell the manuscript to a publisher. Damore worked as a salesman in a shoestore for four years to pay for writing *The Crime of Dorothy Sheridan*. The cost was high, but the benefits have been many. We hope that the book will reach a much wider audience as a Dell paperback.

Upcoming media coverage

The July issue of *Yankee* magazine includes an article by Edie Clark about the Christian Science church and the child advocacy work of Rita and Doug Swan.

The July-August issue of *American Health* carries an article entitled "Swan's Way" by Lori Miller Kase, which profiles Rita Swan and her work against religiously-based medical neglect of children.

Swan testifies before U.S. Advisory Board

Rita Swan, president of CHILD, Inc., was invited to testify at hearings of the United States Advisory Board on Child Abuse and Neglect held in Los Angeles on April 3, 1992.

The 15-member board was created by Congress in 1988 in response to a steady growth in reports of suspected child abuse and neglect.

Swan discussed the many problems caused by religious exemptions. She said the Christian Science church tells members that legislatures gave them the exemptions because Christian Science heals all disease just as effectively as medical care.

She told of cases in which religious exemptions have discouraged reporting and discouraged state agencies from acting on reports they receive.

Swan also spoke of cases in which religious exemptions have prevented the state from examining surviving siblings in families whose

child has died because of religious beliefs against medical care.

Swan recommended the following:

1. That the U.S. Department of Health and Human Services (HHS) require the removal of all religious exemptions from child abuse and neglect charges and, if possible, the criminal code.
2. That the reporting standard be made objective. Laws requiring reporting when the mandatory reporter knows, suspects, or believes that the child is seriously ill will not be effective with religious healing groups. Such groups claim to heal disease by denying its existence, by positive thinking, by arguing belligerently that the disease is unreal. They have to believe that the child is well in order to make the child well. Reporting laws should set forth a duty to report if a lack of medical care may cause imminent and serious danger to the child's health. The standard should be objective rather than subjective.
3. That HHS should enforce federal and Constitutional law. Federal law makes no mention of a religious exemption from child abuse and neglect. The Constitution prohibits establishing religious privilege or favoritism. Spiritual healing should not have statutory recognition as a system of health care.
4. That HHS move faster. It has been reviewing the religious exemption issue for more than a decade. Only about half a dozen states have so far been found out of compliance because of their religious exemption laws.

CHILD was honored to be invited to testify and hopes the board will act on its recommendations.

CHILD has a fax machine

A member has recently donated a fax machine to CHILD. It works on our 712-948-3500 number. You can either send a fax or leave a voice message on that number.

Euthanasia and medical neglect

by Scott Sokol, M. D.

The media does not seem to understand. The American public does not seem to understand. I certainly do not understand. The media always seems to be reporting on the wrong story.

Recently there was national press coverage of a case involving the "suicide doctor." After his last escapade, the case was ruled a homicide rather than a suicide. The "good doctor" will be held accountable for his actions.

Whenever a case of euthanasia occurs, public officials state their abhorrence of such an act and the need to uphold the letter of laws against it. I'm certain that most if not all public officials would agree with the need to enforce laws prohibiting euthanasia.

It seems odd therefore that these same public officials cannot see the forest for the trees. They do not understand somehow that laws exempting religious groups from providing basic medical care to children legalize manslaughter. They are as guilty of reckless endangerment as those who are being prosecuted for acts that smack of euthanasia. It is hypocrisy of the highest order. Only when these officials begin to enforce an equal standard in all spheres will this hypocrisy be erased.

Sokol, a pediatrician in Floral Park, New York, serves on CHILD's board of directors and writes a regular column for the newsletter.

Changes of address needed

Please notify us if your address changes. The bulk mail is not forwarded. It is expensive and time consuming to send you duplicate copies of the newsletter at first class postal rates. We need to get your address changes into the computer as soon as possible.