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Equal rights for children under the law



Ken Casanova

Struggle for children's rights in Massachusetts

CHILD members and other distinguished children's advocates have struggled for several years to enhance the legal rights of Massachusetts children to medical care. No-one expected the work to be easy because the international headquarters of the Christian Science church is in Boston.

The project began as the vision of one CHILD member, Ken Casanova. His state representative, John McDonough, D-Boston, agreed to sponsor an amendment to the religious exemption law. The amendment required parents to provide medical care when necessary to prevent serious physical harm to children.

Massachusetts acquired its religious exemption after a Christian Science mother on Cape Cod was convicted of manslaughter in 1967.

Dorothy Sheridan allowed her five-year-old daughter Lisa to die of pneumonia without medical care. The child was sick for three weeks, and an autopsy found more than a quart of pus in one of her lungs.

Law cited as defense to manslaughter

The Christian Science church pushed a religious exemption through the legislature in 1971. Needless to say, the church did not talk to legislators about the Sheridan case. But once the law was passed, the church claimed it was a response to the case and evidenced the legislature's intent to prevent prosecutions of Christian Scientists. (See John Kennedy, "Key to manslaughter case is 1971 law change," *Boston Globe*, 27 April 1988," and *Legal Rights and Obligations of Christian Scientists in Massachusetts*, 1983 edition, p. 19.)

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The law the church obtained in 1971 was an ambiguous exemption to a non-support charge. Although non-support is only a misdemeanor, the church promoted the exemption as a defense to manslaughter.

Protecting kids from serious harm rejected twice

McDonaugh first introduced his bill in 1989. It made the state's religious exemption read as follows: "A child shall not be deemed to be neglected or lack proper physical care for the sole reason that he is being provided remedial treatment by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof unless medical care is necessary to protect the child from suffering serious physical harm or illness."

Ken Casanova worked tirelessly to build support for the bill. Only four organizations endorsed it that year: the Massachusetts Medical Society, Massachusetts Chapter of the American Academy of Pediatrics, American Society of Law and Medicine, and the Massachusetts Committee on Children and Youth.

The Christian Science church responded with fact sheets, counterproposals, and massive amounts of legislative contact.

In 1990 the House/Senate Committee on Health Care held hearings on the bill. Rep. Chester Suhoski, D-Gardner, said the legislature had "no place interfering in family matters where neglect and abuse are not present." He insisted that Christian Scientists should have the right to withhold medical care from their children because they love them and are putting their faith in God. Another legislator complained that the bill subjected Christian Scientists to a different standard than other parents.

The bill died in committee.

An exemption to nothing

Ken obtained many more endorsements. A coalition of more than two dozen organizations began meeting regularly on the issue. They were surprised to realize that, late in 1986, the legislature had repealed the non-support law to which the religious exemption related. Likely because of cowardice, the legislators had left the

religious exemption in the code, but it was in a chapter all by itself. It was an exemption to nothing. In the judgment of some lawyers at a coalition meeting, it likely had no legal force.

Coalition to Repeal Religious Exemptions to Child Abuse Laws

Members of the Massachusetts Coalition to Repeal Religious Exemptions to Child Abuse Laws include the following:

American Jewish Congress
 Boston University School of Public Health
 Brightside for Families and Children
 Cambridge Family and Children's Services
 Children's Advocacy Network
 Children's Friend and Family Service Society
 Communities for People, Inc.
 Concord-Assabet Adolescent Services
 Harbor Schools (Newbury)
 Humanist, Atheist and Ethical Organizations of Massachusetts
 Italian Home for Children (Jamaica Plain)
 Jewish Big Brother and Big Sister Association of Greater Boston
 Jewish Family and Children's Service (Boston)
 KEY, Inc. (Framingham)
 Legislative Children's Caucus
 Massachusetts Adoption Resource Exchange (MARE)
 Massachusetts Chapter of the American Academy of Pediatrics
 Massachusetts Child Welfare League of America, Executive Group
 Massachusetts Civil Liberties Union
 Massachusetts Committee for Children and Youth
 Massachusetts District Attorneys Association
 Massachusetts Society for the Prevention of Cruelty to Children
 Massachusetts Medical Society
 Massachusetts Nurses Association
 New England Home for Little Wanderers (Boston)
 Office for Children, State Advisory Council
 Parents Anonymous of Massachusetts

The coalition decided to work for repeal of the exemption. With repeal, legislators could not complain that Christian Scientists were being subjected to a different standard than other parents.

Ken Casanova wrote the coalition's major position paper, "Death by Religious Exemption," a 46-page statement.

Children allowed to die for parents' beliefs

Hearings were held on a repeal bill in 1991. Doctors and other child advocates testified for the bill.

Dean Kelley of the National Council of Churches testified against it, but the Council has no official position on the issue. Kelley argued that those believing in faith healing should be allowed to withhold medical care from children because "medical science has its failures too" and because poverty, substance abuse, and child pornography were "more widespread perils."

In his conclusion, though, Kelley conceded that in cases "involving contagion," the "public health and safety may require civil intervention."

Like several legislators, he was willing for Christian Science children to die for their parents' beliefs and supported state intervention only when a child's illness might jeopardize *public* health.

No child abuse or neglect law

Meanwhile, others were concerned that Massachusetts did not have a criminal child abuse or neglect law. Assault and battery was the only crime that could be charged for non-fatal injuries of children. (If the child died, manslaughter or murder could be charged.) It took years of meetings to reach an agreement among advocacy groups on penalties and definitions for a bill.

The last section of the bill stated that "any person who, having care and custody of a child, willfully or negligently, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment, or who, willfully or negligently, permits physical injury to the child shall be punished by imprisonment in the state prison for not more than ten years or imprisonment in the house of correction for not more than two and one half years." But the

Criminal Justice Committee acceded to Christian Science lobbying and deleted the section.

In December of 1991, Rep. Douglas Stoddart, R-Natick, brought the repeal bill to the House floor and delivered his maiden speech urging its passage. Although new legislators usually receive applause for their first speech, Stoddart was booed by fellow legislators, who probably resented having to vote on the bill. They voted to send it back to committee.

In 1992, the coalition gave up on their effort to repeal the religious exemption and focused on working for a criminal child abuse bill that would require parents to provide medical care. They thought legislators would rather vote "for" something than "against" an existing statute.

Exemption added in Senate

A good bill passed the House without objection from the Christian Science church. But in the Senate, the church quickly derailed the bill. Senator Linda Melconian, D-Springfield, added an amendment on the floor with only a handful of Senators present. It stated that "any person who, having care and custody of a child, provides such child with health care by treatment solely by spiritual means through prayer in accordance with a recognized religious method of healing, shall not be considered to have caused or permitted such child to suffer any physical injury or serious physical injury or to have committed a criminal offense for the sole reason he did not provide medical treatment for such child. . . ."

The amendment put the coalition in a defensive posture. Ken had to prepare more fact sheets urging legislators to defeat it, spend days trudging around the Statehouse, and get others to write legislators.

Domestic violence groups oppose bill

Late in the fall, to our horror, domestic violence groups announced their opposition to the child abuse bill. They objected to a criminal penalty for caretakers who "negligently [permit] serious physical injury to a child." They argued that some women are so terrorized by their partners that they cannot prevent abuse of their children.

Boston attorney John Kiernan pointed out

that the crime of negligence presumes a capacity to act. If a woman was psychologically unable to protect her child in a violent household, she already had a defense. She could offer evidence of her state of mind to the court.

But the domestic violence groups insisted that the penalty for permitting serious physical injury should be dropped. In other words, every parent should have the right to sit around and let his or her child be beaten to a pulp.

On November 30 Bella English wrote a powerful column in *The Boston Globe* entitled "No excuses for child abuse" attacking the "Christian Science exemption" and the "battered women's syndrome exemption" (see column at right). It generated many angry phone calls to the Senate.

The domestic violence groups negotiated a compromise. They agreed to a criminal penalty for caretakers who "wantonly permit serious physical injury to a child."

Kiernan and other child advocates are not pleased. Kiernan points out four different standards that prosecutors can be held to in proving charges: negligence, gross negligence, wanton and reckless conduct, and willfulness. Negligence is the lowest, and willfulness is the highest. Kiernan says Massachusetts has a negligence standard for drunken drivers and ought to have one for those who allow child abuse.

The bill died again in 1992. It will be re-introduced in 1993.

Thanks to some diligent workers

Among several people who have worked for the rights of Massachusetts children to medical care, CHILD wishes to express appreciation to Jetta Bernier, Director of the Massachusetts Committee for Children and Youth; Wendy Mariner, an attorney and professor at the Boston University School of Public Health; and Dr. Jonathan Caine, a pediatrician. Caine has spent days at the Statehouse talking to legislators on this issue. Mariner has testified, written letters, and written articles.

Bernier has become nationally known for her work to end religiously-based medical neglect. She presented a workshop on the issue at the Kempe Center child abuse conference in 1991.

She has been a driving force of the coalition, which meets in her office.

No excuses for child abuse

by Bella English

Today the state senate will consider a long-overdue bill that would criminalize child abuse. Massachusetts is one of the few states in the country—indeed, one of the few places in western civilization—that has no such law, so people have literally gotten away with murder here.

In a rare show of unity, pediatricians, prosecutors and children's advocates all got together and pounded out a good plan for protecting children. It would make child abuse a felony, punishable by up to 20 years in prison. Currently, it is prosecuted as assault and battery, a misdemeanor. So you can shake your baby into a permanent vegetative state—as a father recently did in Essex County—and serve 15 months in prison.

You wouldn't think anyone would object to a bill that protects innocent children from danger or death. But this is the Massachusetts Senate.

Sen. Linda Melconian (D-Springfield) has slipped in a religious exemption to the bill, dubbed the "Christian Science exemption." It says that parents who provide their child with health care solely by spiritual means "in accordance with a recognized religious method of healing" shall not be considered guilty of any crime.

So, if you're unlucky enough to be born into a Christian Science family, and you develop a serious illness and die because of medical neglect, your parents are off the hook. This double-standard exemption carves out a whole category of kids who are not protected.

If you're an adult and rely on faith healing, fine. But it isn't fair to impose your possibly fatal belief on a child.

This is not a matter of religious freedom. This is a matter of child abuse and neglect. This is not a private matter. This is a public policy issue. The state must protect children from abuse and neglect in any way, shape or form. This includes protecting children from their

parents' religion, be it Christian Science, Jehovah's Witness, Catholic, Jew, Protestant or Holy Roller.

Last year, the Massachusetts Committee for Children and Youth conducted a study called "Death by Religious Exemption." The group found several fringe groups that don't believe in medicine, as well as the white, well-funded, mainstream Christian Science Church.

"We shouldn't be building a law around that particular church," said committee director Jetta Bernier. "What if the group called Jesus Through John and Judy, which doesn't believe in medicine either, decided to set up shop in Massachusetts? Would they be exempt too?"

The study documents a number of cases of children who have died because their parents refused to seek medical treatment, including 17 from the Christian Science faith. Most recently, 2-year-old Robyn Twitchell of Boston, whose parents are Christian Scientists, died of a bowel obstruction that doctors say could have been cured.

"It's just blood-curdling how these kids suffered," Bernier said. "There are kids with diabetes who got no insulin. They died slow, painful deaths. There are kids with operable cancer who went through suffering that was really unnecessary." Others, such as children who went deaf as a result of untreated ear infections, were left with permanent disabilities.

The question is, should the children of Christian Scientists have no protection against medical neglect in this state?" asked Geline Williams, a Norfolk assistant district attorney.

There's another troubling aspect of the bill, courtesy of Sen. Lucille Hicks (R-Wayland). It's known as the "battered women's syndrome exemption" because it exempts anyone who "willfully or negligently permits serious bodily injury to a child." In other words, it exempts from felony prosecution an accomplice, a witness or even a second party.

Some battered women's advocates support the exemption because they don't believe a victim of abuse should be held criminally responsible for child abuse inflicted by an abusive partner. Sorry, I don't buy it. How can you say you're responsible enough to have custody of your child,

but you're not able to protect that child? (In fact, many battered women leave their partners when the abuse extends to their children.)

"You can't argue that battered women's syndrome is absolute," said Helena Rees of the Victims Advocacy Network. "The bottom line is that people need to take responsibility for their own actions."

Prosecutors have been stymied by cases in which they know one partner committed the abuse, but other won't tell. And even without an exemption written into law, prosecutors may take into account mitigating circumstances, such as battered women's syndrome.

If you want Massachusetts to join the rest of the civilized world in protecting our children—and if you believe certain parents shouldn't be immune from the law—call your state senator today. The number is 722-1276. For some kids, it could be a matter of life or death.

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On December 9, a letter in the *Globe* from the Christian Science church accused English of playing "to the emotional side of the issue" and of ignoring "the serious nature and causes of child abuse and neglect."

Minnesota legislature maintains laws that let children die

Despite three years of massive efforts by CHILD members and others, Minnesota still has a law that allows parents to withhold lifesaving medical care from children. The law provides a religious exemption to criminal child neglect. It states that, "if a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute 'health care'" (Minn. Statutes 609.378).

The efforts to repeal this exemption were

motivated by the 1989 death of 11-year-old Ian Lundman in suburban Minneapolis. His mother and stepfather, Kathleen and William McKown, let him die of diabetes without medical care because of their belief in Christian Science.

Fifteen days before his death, the chairman of the Minnesota Senate Judiciary Committee, Senator Allan Spear, publicly stated that the legislature did not intend for Christian Science parents to be prosecuted if they let their children die without medical care.

The McKowns and a spiritual healer were charged with manslaughter. But the trial court dismissed the charges on due process grounds, citing Spear's statement and the statute recognizing prayer as health care. The Hennepin County Attorney's Office appealed the dismissal, but it was upheld by both the Minnesota Court of Appeals and the Minnesota Supreme Court. The U. S. Supreme Court refused to review the rulings.

Civil Liberties Union opposes law

The Minnesota Civil Liberties Union (MCLU) joined as an amicus, arguing that the exemption was an unconstitutional establishment of religion. The Minnesota Supreme Court commented:

Although we find the MCLU's arguments persuasive, our disposition based on due process grounds makes it unnecessary for us to consider the establishment clause issue at this time.

Strong arguments for repeal

The evidence for repeal could hardly have been stronger. A Christian Science child had died of diabetes. The courts had ruled that the law stripped him of his right to care. The Supreme Court had even said the law was unconstitutional.

But the Minnesota legislature had no interest in repealing the law.

Twin Cities CHILD members, including Marie Castle, Steve Petersen, and George Erickson, put in hundreds of hours to build support for a repeal bill. On March 11, 1991, Spear's Senate Judiciary Committee held hearings on a repeal bill sponsored by Senator Jane Ranum, DFL-Minneapolis.

MCLU Director Bill Roath, Rita Swan of CHILD Inc., and Doug Lundman testified for the bill.

Lundman was put through severe personal anguish in facing Spear and the other legislators who had made it legal for his ex-wife to withhold insulin from his dying son. He had to take days off work and write several drafts of his testimony.

Some child advocates thought Spear would publicly apologize to Lundman for promoting a law recognizing the prayers of Christian Science healers as health care. Instead, Spear was glib and arrogant.

Reporting law routinely disobeyed

James Van Horn, the Christian Science Committee on Publication for Minnesota, testified that Christian Scientists should have the right to withhold medical care from children. He further claimed that Christian Science practitioners had no obligation to report sick children to child welfare services.

Several senators were startled because they had passed a law in 1989 clearly requiring Christian Science practitioners and other professionals to report cases of sick children without medical care even when the medical care was being withheld on religious grounds.

One senator asked Van Horn whether he would rather the state require the healers to report or expose the parents to criminal liability. Van Horn complained that he was being asked to choose between the frying pan and the fire.

Spear had the repeal bill tabled without a vote in 1991.

Native American's position surprises church

The House held hearings on a companion bill sponsored by Rep. Phil Carrothers, DFL-Minneapolis. The MCLU, prosecutors, and medical organizations testified for the bill along with Lundman, Swan, and Joni Clark of Sioux Falls, South Dakota. Clark told about the death of her first child when she belonged to End Time Ministries, a sect that discourages medical attention for pregnancy and childbirth as well as medical treatment for disease.

Van Horn brought in a Native American who led healing ceremonies. But after listening to

Clark and Swan, he testified that he and his tribe disagreed with Christian Science beliefs. He explained that his healing rituals were compatible with medical care and that they certainly did not withhold medical care from children.

Van Horn also brought in a spokesman from the local Hmong community to testify about their use of shamans and folk medicine. But Dr. Carolyn Levitt, President of the Minnesota Chapter of the American Academy of Pediatrics, testified that she had treated many Hmong children and had always found their families willing to accept modern medicine.

Grief blamed on atheism

His other witnesses were Christian Scientists who related healings achieved through their belief system. Donna Lundman, grandmother of Ian Lundman and a Christian Science teacher and practitioner, testified against the bill. She asked legislators not to use the death of her grandson as a reason for limiting the rights of other Christian Scientists. She claimed that her son's grief over Ian's death was due to his leaving Christian Science and becoming an atheist.

The House tabled the bill.

Victim calls for protecting children

In March of 1992, the Senate Judiciary Committee held another hearing on its repeal bill. CHILD members Susan McLaughlin of Grand Forks, North Dakota, and Joni Clark testified for the bill. McLaughlin's Christian Science parents would not get her medical treatment for hypothyroidism. She suffered permanent organ damage and is only 4'2" tall. The disorder can be detected at birth through metabolic testing and is easily treatable.

Donna Lundman testified against the bill again. Some senators praised her courage; one reportedly called her testimony the most moving statement he had ever heard.

State mediator proposed

Long after the deadline for introducing bills, Spear presented his own solution at the hearing. His bill required the state to employ "a children's health care mediator." The mediator's role included the following duties among others:

regularly meet with designated representatives and other members of a religious or philosophical community affected by this section in order to be familiar with their beliefs and practices, serve as an intermediary between parents who use religious or philosophical healing practices and traditional medical providers and provide advice and information to parents, and provide materials that list or discuss symptoms of life-threatening conditions or a serious disability or disfigurement and the circumstances under which traditional medical treatment may be required.

His eleven-page bill further stated that "a parent who uses religious or philosophical healing practices shall contact the mediator if the parent believes that the child is in a life-threatening condition or faces a high probability of serious disability or disfigurement." However, the parents had no legal obligation to report.

The bill was promoted by Dr. Arthur Caplan, Director of the Center for Biomedical Ethics at the University of Minnesota.

"Permanent damage" proposals rejected

The repeal bill was defeated by the Senate Judiciary Committee. Its sponsor, Jane Ranum, proposed a solution adopted in Oklahoma of retaining the religious exemption, but adding the statement, "provided, that medical care shall be provided where permanent physical damage could result to such child." Spear also rejected that proposal.

Because of circulation problems, Sue McLaughlin's feet swelled during the marathon hearing. CHILD members had to carry her barefoot from the room and out into the snowy night.

Ranum fought for several improvements in Spear's bill without success. Finally at the end of a long night meeting, she asked for an amendment to repeal Minnesota's religious exemption from metabolic testing. The committee agreed. We called it the "Susie amendment."

The amended bill passed the Senate Judiciary Committee, but died in the Senate Finance Committee. Marie Castle had predicted such an outcome when the mediator bill was first introduced. She saw it as Spear's ploy to claim he was solving a serious problem, while simultaneously knowing the Finance Committee would not want to fund a multi-lingual mediator and staff

available around the clock and competent to diagnose children's illnesses over the telephone.

DFL platform endorsement

Through the efforts of CHILD members, the Minnesota Democratic Farm-Labor Party adopted a platform plank calling for the repeal of statutes "which cause death or serious impairment of children by allowing medical neglect for religious reasons." But the party's position has not changed the minds of key legislators.

Senator Spear is now President of the Senate. Dr. Caplan promotes the mediator concept in his nationally syndicated column.

Comment

The state of Minnesota could simply require Christian Scientists to obey the same laws that everybody else does. This fair play would promote respect for the law and for the responsibilities of parents throughout society.

Instead, Caplan and Spear patronize Christian Scientists and other devotees of spiritual healing by exempting them from the laws and then setting up a whole new level of bureaucracy to talk to them and be "sensitive."

Caplan told a prosecutor in the Hennepin County Attorney's office that his hidden agenda was to educate the Christian Scientists out of their belief system.

But it is not the government's business to educate people out of their religious beliefs, to maintain lists of all groups and individuals interested in "religious or philosophical healing," to meet regularly with them, or become knowledgeable on their beliefs.

Like many other religious exemption schemes, the mediator bill bolsters the elitism that contributes to deaths of children in faith-healing sects. It sets up a special standard for a particular type of religion. Certainly legislators would not want to fund mediators for every church with reservations about public policy.

Caplan's mediator bill will provide employment for ethicists, but it entangles church and state and provides substandard protection for one class of children.

Mediator bill: unconstitutional, unworkable, unwise

by Susie Morgan, Esquire

The mediation bill introduced in the Minnesota legislature is fraught with administrative and practical difficulties, as well as violations of the constitutional separation of church and state. The system envisioned by the Act would require a cumbersome mechanism of state bureaucracy which is unlikely to work as planned.

First, involvement of the state, through the mediator, would depend upon the parent who uses religious or philosophical healing practices contacting the mediator, if the parent believes that the child is in a life-threatening condition or faces a high probability of serious disability or disfigurement. This is unlikely to happen.

Second, the mediator must have "an understanding of and sensitivity to religious and philosophical healing practices and beliefs," while at the same time being a licensed medical practitioner with sufficient training to be able to identify and assess a child's symptoms. Christian Science and other faith healing sects reject medical explanations for the cause and cure of disease. Appointing a mediator who is "sensitive" to these theologies and predisposed to sanction religious healing practices could further endanger a child's life rather than protect it.

The bill would unconstitutionally place state officials in the middle of state and church controversies in a manner which is unwise and unacceptable. Furthermore, removing protection of children's rights from the judicial system and placing it in the hands of a mediator would be an abdication of the state's responsibility to protect its young citizens. Wrong decisions on the part of the mediator could expose the state to liability for injury or death of a child.

Under the bill, if, and when, the mediator decides that a child's condition is life-threatening or that a child faces a high probability of serious disability or disfigurement, the mediator must then deal with the practical problem of gaining physical control of the child from his or her parents. This appears to set the stage for volatile and harmful confrontations, without the controls

that would be available in a judicial setting.

The many issues which must be addressed and resolved by the mediator, i.e., the good faith of the parents in using religious or philosophical healing practices, the child's medical condition, the child's need for immediate or emergency medical care, are an indication that the court system ultimately will be involved in these situations regardless of the intent of the bill. In my opinion, it would be better to entrust this important function with the judicial system than to create a state bureaucracy that is directed to be understanding and sensitive toward religious beliefs instead of the rights of the state's children.

The provisions regarding the family's involvement in treatment may leave the treating physician or other health care professional in an awkward position with respect to exercising independent medical judgment. The parents are allowed to continue to input into the treatment and to continue to attempt to influence the child to receive and rely on faith healing.

Under the bill, the mediator must determine whether the child is in a life-threatening condition or faces a high probability of serious disability or disfigurement. The bill does not specify in what manner, where, or when the mediator is given access to the child to make these decisions. It is not stated whether and in what manner the mediator may use traditional medical diagnostic tools found in clinics or hospitals. The mediator could not be effective unless his authority were set forth in more detail.

In summary, there are many practical disadvantages in setting up a governmental entity designed to analyze and reconcile legal and religious theories. Coupled with this are the constitutional problems encountered when involving the state in deciding religious issues. State involvement in such controversies may lead to allegations that the state is favoring one religion over another. These problems convince me that a mediator bill of the type proposed in Minnesota is unwise and unworkable.

CHILD member Susie Morgan is a partner in the firm of Wiener, Weiss, Madison, and Howell in Shreveport, Louisiana.

Religious exemption pushed for Michigan criminal code

In 1992 the Michigan Senate voted to add a religious exemption to the criminal code. It allowed parents to withhold medical care from children when they relied "upon treatment by spiritual means through prayer alone. . . in accordance with the tenets and practices of a recognized religious method of healing."

The bill died in the House.

In 1993 it has been reintroduced as SB 272 by Senator Michael Bouchard and currently awaits action by the Senate Committee on Family Law. The committee chair is Senator Jack Welborn; the vice-chair is Senator Doug Carl. Other committee members are Senators Robert Geake, Christopher Dingell, and Virgil Smith, Jr.

We urge Michigan residents to write Senator Bouchard and the other committee members and express opposition to this bill. The address for all Senators is P. O. Box 30036, Lansing MI 48909-7536. Michigan does not have a religious exemption in the criminal code, and we would like to keep it that way. Religion should not give people the right to abuse or neglect children.

Jehovah's Witnesses and surgeons: a collusion?

by Warren Guntheroth, M. D.

Although the courts have established the right of children to medical care, regardless of parents' religious beliefs, children continue to die in the United States from medical neglect. Surprisingly, some in the medical profession have contributed to this sacrifice of children by agreeing to restrict the care of children to accommodate parents' religious beliefs, specifically depriving the child of needed blood transfusions.

Jehovah's Witnesses and the "eating of blood"

In 1944, the U. S. Supreme Court reached beyond the case before them, a rare occurrence, in *Prince v. Massachusetts*.¹ This case did not

initially involve medical neglect. The Court was simply upholding a Massachusetts law against child labor, applied to a child selling religious tracts for the Jehovah's Witnesses on the streets of Boston at night.

The Court held that neither freedom of religion nor parental rights under the due process clause of the Fourteenth Amendment overcame the state's interest in protecting a child's well-being. The Court ruling reads in part:

[T]he family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard general interest and youth's well-being, the state as *parens patriae* may restrict the parent's control for requiring school attendance, regulating or prohibiting the child's labor, and in many other ways.

In a further statement that seems prescient—it was a year later that the Jehovah's Witness church announced its opposition to blood transfusions—the court added:

Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.²

Challenge to physicians

The attitude of Jehovah's Witnesses toward blood transfusions presents a challenge for physicians that is unique among religions. Whereas some fundamentalists and Christian Scientists are "faith healers" and reject most if not all medical care, Jehovah's Witnesses seek conventional medical care for their children, with blood or blood products as the only exception.

Physicians first sought permission from a juvenile court to transfuse a child in Illinois in 1952. The court ordered the state to take temporary guardianship of the child so that she could be given the transfusion. The state's action was upheld on appeal to both the Illinois and U. S. Supreme Courts.³

Today courts in all states grant physicians permission to administer life-saving transfusions to children, regardless of the religious beliefs of their parents and regardless of statutory religious

exemptions.

I was personally named in a suit filed in 1967 by the Witnesses' Watchtower Bible and Tract Society⁴ against several Seattle-area physicians and hospitals who had previously obtained court orders to permit emergent transfusions. The complaint was that the physicians had violated the parents' civil rights; the plaintiffs sought to enjoin the practice of emergency judicial hearings and non-voluntary transfusions. The three-judge federal panel rejected the request for injunctive relief. The decision was affirmed by the U. S. Supreme Court in 1968, who cited *Prince v. Massachusetts*.

In the face of these reversals, the Jehovah's Witnesses' church has not altered its opposition in the slightest. The church suggests that the truly faithful will find ways to circumvent transfusions even if it means defying the courts.⁵ Its tract on transfusions refers approvingly to the paradigm of "whole families" of early Christians preferring death by lions in Roman arenas to violating their beliefs.⁶

New strategies

When faced with a non-emergency decision on medical care that ordinarily would require transfusions, such as open-heart surgery, the Jehovah's Witnesses have adopted an effective strategy to circumvent the *Prince* ruling. The church has developed a list of surgeons who will agree to operate on children without the use of blood or blood products.

The list includes some internationally respected surgeons, such as Dr. Denton Cooley. He and his colleagues have gone so far as to state in a 1985 article that "a surgeon who is unwilling to respect a patient's beliefs should refer the patient elsewhere,"⁷ e.g., to their center. It is clear from the text, which deals exclusively with cardiac surgery in children, that they refer to the *parent's* beliefs and that they are prepared to allow a child to die of blood loss if they have agreed in advance of surgery not to give blood.⁸

In fact, they list the deaths of three children "complicated by blood loss and anemia." Their defense is that their mortality rates under these restrictions are "acceptable"—they don't lose *many* children through this form of medical neglect. In

addition, they argue that if they did not agree to these restrictions, the parents would take the child elsewhere.

Neglect if not collusion

An agreement to deprive a child of a necessary transfusion that results in the death of the child appears to be relatively straightforward medical neglect, if not collusion. Although the parents, acting on their religious beliefs, may escape punishment because of religious exemption laws, a physician or surgeon would appear to have no shield against neglect charges.

Apart from legal considerations, it seems unethical for a physician to make a contract that allows the preventable death of a child. In the 1948 Declaration of Geneva from the World Medical Association, two passages are pertinent:

The health of my patient will be my first consideration.

I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient.

A contract between a physician and the patient's parents to withhold needed treatment not only violates these ethical imperatives, but also undermines the position of other physicians. Many physicians will agree to accept a degree of morbidity through anemia, but not imminent death. Many will agree not to use blood during cardiac surgery unless it is truly necessary to save the life of a child. But these compromises are unacceptable to Jehovah's Witnesses when they know that the surgery can be done elsewhere with a verbal contract to avoid blood even if death results.

End the sacrifice of children

The medical profession clearly has a legal and ethical obligation to end the sacrifice of children in the name of religious freedom. Physicians, social workers, and nurses in institutions where infants and children are injured or die because of withholding transfusions are required to report such cases to child protection services. They should demand to know what steps the agency took in response.

Physicians could contribute to the welfare of infants and children by conveying disapproval to their colleagues who deny necessary medical care to children because of parents' religious beliefs. I have attempted this by means of written submissions to several medical and ethical journals with zero acceptance though I have more than 200 publications on less controversial biomedical subjects.

On the national level, there is renewed hope for ending religiously-based medical neglect of children. Bill and Hillary Clinton wrote *CHILD* that "there is nothing that gives parents the right to abuse or neglect their children."⁹

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A Christian Science child's death: a look at the system

by Rita Swan

Early in 1992 the Los Angeles County Sheriff's Office concluded an investigation of a Christian Science child's death in Los Angeles County and recommended that no further state action be taken.

The child, Kristin Wingert, was the daughter of Diane and Jeff Wingert in LaMirada, California. She was born March 3, 1988.

We first heard of her on December 18, 1990, when her aunt called from Louisiana and told us of Kristin's serious, undiagnosed illness.

A lifelong Christian Scientist, the aunt read a *Good Housekeeping* article about the loss of our son to meningitis when we were Christian Scientists. A few weeks later her own daughter became sick with "all the symptoms of meningitis." She engaged a Christian Science practitioner to pray for her daughter. Eventually, she told the practitioner about her fear of meningitis because of reading the article. The practitioner told her, "If that's what you believe, that's what is going to happen." She and the practitioner did "metaphysical work" arguing against the "suggestions" of meningitis that she had let enter her thinking and soon the daughter was healed.

In the short run, her faith in Christian Science was reinforced by her daughter's supposed healing of meningitis. But the more she thought about what we had gone through in losing our son, the more doubts she had. Reading the article was, she told me, "the beginning of the end" of her faith in Christian Science.

She was also very shaken by Kristin's illness. She said Kristin became unable to walk in June. She and her husband visited in August. They saw Kristin just lying on the floor unable to get up. Her eyes were dilated. Later she talked to Kristin on the phone. Her speech was distorted; she lacked her previous mental awareness and responsiveness.

In December Kristin's grandparents and Christian Science practitioner came from out of state to be with her. The Christian Science Committee on Publication (COP) for Southern

California had called the Wingerts a number of times.

I told Kristin's aunt that the Wingerts could be charged with felony child endangerment and explained the California law. She did not believe me. The case, I said, must be reported to California Children's Services. She finally promised to report it.

The next night, December 19th, I called to ask if Kristin's case had been reported to the state. The aunt was out, but her husband, who had never been a Christian Scientist, spoke with me. His wife, he said, had begged her sister to get medical care. Though the sister had refused, his wife still could not bring herself to report on her sister.

We agreed that the case must be reported to Children's Services. He said it would be easier on his wife if I reported and gave me the Wingerts' address.

I then attempted to contact California's 800 number child abuse hotline about thirty times, but it was always busy. I obtained the number for the sheriff who handled law enforcement for LaMirada and reached an officer. He promised to go out to the Wingerts' home right away. But a half hour later he called back and said he could not locate the street.

Hours of calling between California, Louisiana, and Iowa followed as we attempted to get more information about the location.

The next day, December 20, I called the sheriff's office again and asked if they had gone out to the Wingert home. The officer said no, that they had never been able to figure out where the street was and that furthermore the aunt had called from Louisiana and told them not to investigate because the child was not very ill. "You two had better get your stories straight," he said.

I then called a California prosecutor who advised me to get the street location from the Fire Department. Sure enough, the LaMirada Fire Department located the street on their maps. But I didn't dare return to the sheriff's office for help. The prosecutor advised me to contact Children's Services. The 800 number was still busy, but after much calling around, I finally was able to get a number for the child abuse "command center" and get to an intake worker.

There were still more calls as officials expressed their confusion about whether the case was in Los Angeles or Orange Counties and how to get to the street, but a social worker did get to the Wingerts' home around midnight Pacific time. She could not do a full examination, but said she would return the next day with a medically trained worker.

CHILD phone records show that we made 24 completed calls between December 18 and 21st to get help for Kristin. On January 15 we learned that the parents had taken Kristin to a hospital on their own volition December 21, but she had died there December 24th.

The death certificate listed as causes of death a posterior fossa brain tumor of six months duration and increased intracranial pressure during the last four days. It also showed that Children's Hospital had released the body to the parents without an autopsy.

About nine months later the sheriff decided to investigate Kristin's death. His office interviewed everybody who had seen her during her illness. The parents provided videotapes and photographs of Kristin which showed that she was able to walk after the aunt and uncle visited in August. Also, the parents reportedly told the investigator that they would have obtained medical care if they had known their daughter was seriously ill. The evidence led the sheriff's office to conclude that the case should not be prosecuted, and it was dropped.

Comment

The Christian Science church complains bitterly that society expects its members to have "a perfect record" and that they are prosecuted for every one of their losses. But the fact is that few deaths of Christian Science children are prosecuted.

In a large city like Los Angeles all systems are overloaded. Law enforcement has massive problems with violent crime. Fatal child neglect is not nearly as sensational and will often slip through the cracks.

When anyone dealing with the case "screws up," publicity becomes inconvenient and embarrassing. If Kristin Wingert's death had been prosecuted, the doctors at Children's Hospital

would have had a hard time explaining to a jury why they did not refer the case to the coroner. The jury would have to wonder how the parents could be guilty beyond a reasonable doubt when the doctors did not see it as a possible crime at the time.

Also, the sheriff's office would have had mud on its face trying to explain why they could not locate a street in a town they are supposed to be protecting.

The fact that Kristin could walk at times between August and December 21 hardly proves that the parents had no notice of a serious illness before they dashed to the hospital.

There were, in our view, at least three indications that the parents recognized Kristin was seriously ill. One was the fact that her Christian Science practitioner had flown from Denver to be with her for the last two weeks of her life. The church advises practitioners to visit seriously ill children. Second was the fact that a church nurse had been retained at one point to care for the child. Third were the calls from the church's public relations manager to the parents.

The case of Kristin Wingert also illustrates why society cannot completely rely on reports to state agencies to protect children. Proponents of religious exemptions claim that parents do not need a legal duty to take care of their children because the state can court order care for them. Many illnesses of children in faith-healing sects, however, will not come to the attention of those who want them to get medical help. And even when they do, it can take extraordinary tenacity to get a state agency to intervene.

Child abuse: the big picture

by Teddi Forsyth

In our concern over the deaths of children due to their parents' religious beliefs, let us not lose sight of the sad fact that death is only one of many cruelties inflicted in the name of religion. It is in fact only one part of a bigger picture.

Growing up in a strict Christian Science home often means both child abuse and denial.

Refusing to relieve a child's pain with medication is abuse, be it the minor pain of a bee sting or the major pain of a ruptured eardrum after prolonged ear aches. What normal, caring, loving parent would not be thrilled to be able to relieve her child's pain with an aspirin? The same kind of parent who would tell her child that illness does not exist except in the child's mind?

What kind of a parent would put his child to bed with a book like *Science and Health* (the Christian Science textbook by Mary Baker Eddy), and tell the child that she had to study it and pray for a healing?

What kind of a parent would tell a child screaming with pain that it was his own fault because he had not prayed hard enough or had not removed all evil thoughts from his mind?



Teddi Forsyth

As a child, I was subjected to this type of treatment on a regular basis. The school nurse was not allowed to do anything for me except call my mother and send me home. The nurse could not do so much as give me an aspirin for the relief of a headache. All in the name of religion.

Fortunately, most childhood disease is self-limiting and will eventually improve without any medical attention. However, the amount of suffering to which I was subjected was considerable. It grieves me to think of the number of children, even in this day and age, who are

subjected to the same abuse and neglect. Some will live and some will die while the parents who wish to do so play a dangerous form of Russian roulette in the name of religious freedom.

Who will know about the suffering of the children who survive? Only deaths come to the attention of authorities. To try and legislate this problem out of existence will not work. The laws can be written so that medical care is mandatory, but who will enforce them?

Children are vulnerable to abuse of every kind, but to me there is a special cruelty when the abuse is disguised as religion and the abusers are protected from punishment because they are just practicing their particular brand of religion.

So let us not forget when we fight for the rights of children, we must figure out a way to fight for the thousands of children who will not die, but will suffer alone with a book, wondering why they are unloved and why they aren't good enough to be healed. These children suffer in silence because they have been told they deserve no better.

Please consider the plight of these children when you think about the lack of medical care in Christian Science homes. These children—all children—deserve better.

CHILD member Teddi Forsyth is a freelance writer who lives in Bellaire, Texas.

CHILD's regular columnist, Dr. Scott Sokol, is on vacation.

About CHILD, Inc.

CHILD, Inc. is a tax-exempt organization dedicated to the legal rights of children. CHILD focuses especially on injuries caused by religiously-based abuse and neglect of children.

CHILD opposes religious exemptions from parental duties of care. CHILD affirms that all children have a constitutional right to equal protection of the laws.

CHILD provides information to the public about religiously-based abuse and neglect. CHILD also provides a support group for victims of ritual healing belief systems.