

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

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*Equal rights for children under the law*

## **1995 ANNUAL REPORT OF CHILD INC.**

1995 was a year of solid, though laborious progress for CHILD Inc. We took in 27 new members. We now have members in 45 states and Canada. Our income increased from \$19,671 in 1994 to \$22,635 in 1995.

Two federal lawsuits were a major percentage of our work.

### **Equal rights of children to health care**

*CHILD and Brown v. Montgomery*, #C-1-94-556, was filed in August, 1994, in the U.S. District Court in Cincinnati. The suit challenges the constitutionality of Ohio's religious defense to felony child endangerment and manslaughter. Brown's children are being raised in Ohio by their mother, whose religion objects to medical treatment of illness. We and Mr. Brown charge that the Ohio statute deprives a class of children of equal protection of the laws in violation of the 14th amendment to the Constitution. We are asking the court to rule the religious defense unconstitutional, that is, to grant declaratory and injunctive relief from the statute.

The lawsuit is an unprecedented effort to establish civil rights of children in federal law. Beginning in 1903 American courts have consistently ruled that the first amendment does not confer a right to withhold medical care from children. Nevertheless, legislatures have given caretakers rights that the Constitution and case law have not given. Forty-two states have religious exemptions either to child abuse, neglect, or criminal charges.

*CHILD v. Montgomery* raises the question of whether a religious exemption from a parental duty of care is a legitimate act of legislative discretion. The circuit courts of Coshocton and Mercer Counties, Ohio, ruled the religious exemption in Ohio's penal code unconstitutional in 1984 and 1987 respectively, but the rulings were not appealed. Four other state courts have ruled such exemptions unconstitutional either on first or fourteenth amendment grounds, but federal courts have not yet ruled on the question.

In 1995 CHILD President Rita Swan put in hundreds of hours assisting with preparation of briefs, gathering six affidavits, and writing her own 27-page affidavit.

On July 11, U.S. District Judge Arthur Spiegel ruled in our favor on the issue of standing, which is, according to several legal scholars, the greatest challenge of our case.

The Ohio Attorney-General appealed our victory to the Sixth Circuit Court of Appeals. We are still waiting for their ruling. We remain convinced that we will win if the courts reach the merits of our case for the civil rights of children.



### **Church/state entanglement in public funding for unlicensed providers**

Our second lawsuit is a taxpayers' suit against the federal government for using Medicare and Medicaid funds to reimburse unlicensed health care providers. When the Medicare and Medicaid programs were set up in 1965, Congress authorized reimbursements to care facilities accredited by the Christian Science church.

The facilities, called sanatoria by the government, are staffed by "nurses" who have no state licensure, medical training, or even first aid training. They do not work under supervision of any state-licensed personnel. All sanatoria employees must be members of the Christian Science church. All patients must retain Christian Science healers for spiritual "treatments."

Federal laws exempt the sanatoria from requirements to provide a minimal level of care. A federal official has told CHILD privately that the government cannot set standards for the kind of nursing done in the sanatoria.

CHILD argues that it is unconstitutional for the government to delegate to a church the power to determine which institutions shall receive public money and for the government to pay for "pervasively sectarian" activities.

CHILD's main concern, however, is that the Medicare/Medicaid reimbursements for Christian Science care facilities encourage endangerment of children.

Christian Science nurses cannot take a pulse or use a fever thermometer. They have no training in recognizing contagious diseases. They will not do even simple, non-medical procedures to relieve discomfort, such as applying heat or ice or giving backrubs.

They have been retained to attend sick children and have sat taking notes as the children suffered and died, but have not called for medical care nor recommended that the parents obtain it. The notes of these nurses indicate that they observed the children having "heavy convulsions," vomiting repeatedly, and urinating uncontrollably. They have seen the children moaning in pain and too weak to get out of bed. They have seen their eyes roll upward and fix in a glassy stare. One Christian Science nurse force-fed a toddler as he was dying of a bowel obstruction.

And even though Congress talks about reducing Medicare and Medicaid coverage for the general public, bills introduced in 1994 and 1995 would have expanded Medicare/Medicaid coverage for Christian Science services. Substitute HR3600 included coverage both for prayers by Christian Science healers and for services by Christian Science nurses in the "guaranteed national benefit package." See *Congressional Record* 10 Aug. 1994: H7509 et seq., at H7530.

Much research and drafting on our suit was done in 1995. It was filed on January 19, 1996 in the U.S. District Court in Minneapolis as *CHILD, Bostrom, and Petersen v. Vladeck and Shalala*, civ. file # 3-96-63.

CHILD owes great appreciation to our attorney, Robert Bruno of Burnsville, Minnesota, who is willing to handle these suits for a fraction of his normal fees.



### **Efforts with new Congress and state legislatures**

The Republican sweep of both houses of Congress in 1994 posed new challenges for us. People with whom we had built working relationships were no longer on committee staffs.

Deep cuts in social welfare programs were proposed. The Child Abuse Prevention and Treatment Act (CAPTA) was up for reauthorization in 1995. New leaders in Congress proposed repealing CAPTA and discarding virtually all federal standards for state child abuse and neglect programs.

As in past years, CHILD greatly enhanced its effectiveness through the American Academy of Pediatrics' support for its public policy goals. The AAP's Washington DC office held two breakfast meetings at which CHILD President Rita Swan presented the prospects for federal action to representatives of religious groups and child advocacy organizations and tried to enlist their help against a religious exemption to medical care of children.

Nevertheless, most child advocacy groups were too burdened with defending their core programs to be willing to help us protect children associated with faith-healing sects.

In 1995 congressional leaders described the federal government as inefficient, misguided, and massively over-regulating state programs. They also promoted "family values" and the Christian right's social agenda. In this climate, the position of CHILD and the AAP that the federal government should require states to remove religious exemption laws was virtually impossible to communicate to Congress.

Our most effective argument was analogy to the "Baby Doe" issue. The conservative leadership of Congress wanted the federal government to require medical care for handicapped infants, but did not want to interfere with a religious practice. CHILD kept reminding legislators that they ought to require medical care, when needed, for all children without exception for religious belief.

On 24-hours notice, the Senate Labor and Human Resources Committee scheduled a staff briefing on the religious exemption issue and invited the AAP to present its position. The AAP asked CHILD President Rita Swan to represent the AAP's position at the staff briefing, which she did.

Congress was determined to include a religious exemption from child abuse charges when parents withheld medical care on religious grounds. But CHILD and the AAP continued to lobby for reporting, investigation, and court-provision of services in such cases. The committee report on the bill finally passed by Congress explicitly mandated that states under the grant program could not have a religious exemption from the obligation to report medical neglect cases to child protection services.

CHILD's work in Congress to enhance and protect rights of children to medical care took many hours. We sent legislative alerts to members in the districts of key legislators. We distributed information to advocacy organizations. We worked with the AAP's law firm negotiating language in the bill and in the committee report.

Because of the importance of our struggle at the federal level, we undertook no initiatives for statutory reform in state legislatures in 1995. We successfully opposed bills to expand religious exemptions that were introduced in the state legislatures of Maryland, Massachusetts, Michigan, and Iowa.

We tried to stop the Christian Science church from obtaining a religious defense to a homicide by abuse charge in Oregon, but were unsuccessful. Also, the church obtained a religious defense to homicide by abuse in Delaware, which we did not learn about until months after the fact.



### **Publications and research**

In 1995 Swan's essay, "Discrimination de jure: religious exemptions for medical neglect," was published by the American Professional Society on the Abuse of Children in its journal, *The Advisor*.

CHILD also provided considerable information to Caroline Fraser and *The Atlantic Monthly* for her distinguished article in the March, 1995, issue, "Suffering children and the Christian Science church."

Swan worked on revising and updating her 1990 publication, "The Law's Response when Religious Beliefs Against Medical Care Impact on Children." CHILD published it as a 66-page softcover booklet in 1990. We submitted an updated version to pediatrics journals in hopes of reaching a larger audience. Early in 1996 *Advances in Pediatrics* accepted it for publication.

Dr. Seth Asser, a pediatrics professor on CHILD's board of directors, began research that we hope will have a significant impact on public policy. He is evaluating the deaths of children in our files. CHILD has gathered information on nearly 200 children who died since January, 1975, after medical care was withheld on religious grounds. Asser has developed a case file on each child and is making clinical judgments on the probability that the child's condition would have been successfully treated with prompt medical care. Asser and Swan hope to publish this research in a forum that will give national media attention to this problem.

CHILD continued to give information to many journalists and scholars in 1995. The broadcast media, for example, had strong interest in the death of an Oregon child; CHILD handled many press requests for information generated by that case.

CHILD continued to publish and distribute its respected newsletter on religion-based child abuse and neglect. We were able to use Morningside College's scanner for our photographs.

### **Court cases**

CHILD continued to provide information to prosecutors, social workers, and other professionals who encounter cases of child abuse or neglect related to religious belief. In 1995, the majority of our work in this area was assistance to a prosecutor in Shasta County, California. Church of the First Born members Earl and Catherine Northrup withheld medical care as their baby Jordan died of meningitis. They retained an attorney who had represented defendants in other California faith deaths and who openly stated his intention to attempt to obviate the California Supreme Court's holding in *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988). CHILD gave the prosecutor considerable research assistance, and both parents were convicted.

### **Workshops**

In 1995 CHILD President Rita Swan was invited to conduct four workshops for child abuse investigators, thereby expanding the respect that CHILD enjoys among social service professionals.

**Support group**

CHILD held its sixth annual meeting for members who have experienced physical or emotional harm in childhood because of Christian Science.

**Development**

CHILD wrote proposals for grants from two foundations, but did not receive funding. CHILD also sent letters to 2,000 members of National Association of Counsel for Children offering sample issues of the newsletter and invitations to join. We did gain several members through that mailing.

**Conclusion**

We are proud of what CHILD has accomplished with very limited resources. Legislatures continue to be our most difficult arena. We must carefully weigh how much of our resources to commit to legislative work. Our two federal suits may be a much more promising avenue for a historic breakthrough in children's rights.

We continue to believe this should be a simple issue. Children are helpless. They cannot assert their own civil rights. Their parents have custody of them and must therefore have a legal duty to provide them with the necessities of life regardless of their religious beliefs.