

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

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*Equal rights for children under the law*



*Judge Richard Kyle*

## CHILD wins ruling against public money for Christian Science nursing

On August 7 a federal court in Minneapolis struck down laws and regulations providing Medicare and Medicaid payments for Christian Science nursing, declaring them unconstitutional, invalid, and unenforceable.

Judge Richard Kyle granted CHILD's motion for summary judgment in a taxpayers' suit filed by CHILD and two of its Minnesota members, Steven Petersen of Little Canada and Dr. Bruce Bostrom of St. Paul, against the U.S. Department of Health and Human Services (HHS). The Christian Science church later elected to enter the case as a defendant-intervenor.

Robert Bruno of Burnsville represented CHILD, Bostrom, and Petersen.

The Minnesota Civil Liberties Union submitted amicus briefs in support of CHILD's position.

### Payments and exemptions from standards mandated by Congress

Congress mandated the payments when it established Medicare and Medicaid in 1965. Medicare pays for care in church-certified sanatoria. Medicaid pays for home visits of Christian Science nurses as well as sanatoria care. The programs pay both for extended care and what the church calls intensive care.

To make these payments, the government has to classify the sanatoria as "hospitals" and "skilled nursing facilities" and then exempt them from standards of care, quality control, and cost control.

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*CHILD's attorney, Bob Bruno*

### **Government favoritism toward Christian Science**

CHILD's suit charged that Christian Science nursing is a religious activity and the sanatoria "pervasively sectarian institutions." It also charged that payments from public money for Christian Science nursing represent government favoritism toward the Christian Science religion and a sect-specific direct subsidy of Christian Science rituals. It noted that all staff in the church care facilities must be members of the Christian Science church and all patients must retain church-accredited healers for prayer-treatments.

CHILD further complained that Congress had delegated to a particular church the power to decide which institutions and nurses are eligible to receive public funds, since certification by the First Church of Christ, Scientist, in Boston, Massachusetts, is an eligibility criterion by federal law.

### **Nursing "never about maintaining bodies."**

Finding evidence for the religious nature of Christian Science nursing was easy. In recent civil and criminal suits over deaths of children the church and Christian Science nurses themselves have emphasized that their care of the sick is dictated only

by religious belief and not by what the public or state-licensed providers would consider reasonable. To cite one nursing newsletter, "Christian Science nursing is never about maintaining bodies." See *Overlook House Messenger* Spring 1996. CHILD submitted hundreds of pages to the court from Christian Science literature and court testimony.

### **A substitute for services in medical hospitals**

When Congress was developing the Medicare/Medicaid programs, the church testified that some of its nursing homes would henceforth be designated as sanatoria and that the sanatoria would care only for persons whose conditions would require in-patient care in medical hospitals if they were not Christian Scientists. See Letter of J. Burroughs Stokes to Senator Harry Byrd 18 May 1965.

The House Ways and Means Committee Report #213 accompanying HR6675, the Social Security Amendments of 1965, stated that "payment would only be made for bedfast patients who, except for their religion, would have to have been admitted to a [medical] hospital." Taxpayers would be paying only for Christian Science nursing services "comparable" to those for which medical hospitals receive Medicare/Medicaid reimbursements, and the payments were intended by the Committee to be a substitute for services in medical hospitals not an addition to them. See p. 1971.

However, neither Congress nor HHS prohibited patients from receiving reimbursements for both medical care and Christian Science care. Nor was thought given to how people without medical training would determine whether a patient required hospitalization. Furthermore, the criteria for hospitalization have changed radically since 1965.

### **Other custodial care not paid for by Medicare**

Church nurses submitted affidavits in CHILD's suit affirming that their services included cleaning, dressing, and bandaging wounds using nonmedicated supplies; using equipment, such as a mechanical or hydraulic lifter, and various lifting techniques to move patients in bed or to and from bed, wheelchair etc.; making bedfast patients comfortable with

alternating pressure pads, bed cradles, fleece padding, etc.; regularly turning immobile or injured patients, using pillows to maintain position and protect sensitive areas; giving bedbaths, shampoos, incontinence care, nail care, etc.; assisting bedfast patients with toileting; using bathtub equipment with hydraulic lifts; assisting with use of walkers, canes, wheelchairs, etc.; making beds, feeding patients and assisting them in taking nourishment, and reading to patients who cannot read for themselves. See affidavit of Robyn Filbert.

All of these services are in our view custodial care, for which Medicare does not reimburse except as ancillary to hospitalization.

Indeed, the Christian Science church itself admitted that the services were really custodial. They are "to a degree, similar to those in personal care nursing homes," the church's public relations manager wrote to Congress. "The distinction between sanatoriums and personal care nursing homes is found not in the services provided, but by the physical needs of the patients. Sanatorium patients are suffering from diseases which would require hospital care if they were not Christian Scientists." See Letter of J. Burroughs Stokes to Senator Harry Byrd, 18 May 1965.

### **Need for hospitalization determined by Christian Scientists**

The public relations manager claimed that the church's spiritual healers and an admissions committee composed of church members would exclude from the sanatoria persons "who, although unable to care for themselves, are not in need of healing."

CHILD believes that people without medical training will not likely be able to make such distinctions. CHILD further believes that the church's nursing homes consciously violate those purported standards in many cases. As mentioned in the CHILD newsletter 1996 #1, a patient in a Christian Science sanatorium was charged \$225 per day for the first 60 days. After the Medicare reimbursements expired, the patient was moved to another wing and charged \$80 a day for the same services.

CHILD submitted to the court the records of a church sanatorium that got Medicare payments for "intensive" care of a patient with a rash.

Christian Science nurses have no training in medicine or first-aid and are not state-licensed.

### **Provision of custodial services not sufficient to qualify as Medicare provider**

CHILD retained Jenean Erickson, an expert witness on nursing home care, who testified through affidavit that the services of Christian Science nurses are "ordinary custodial care services" provided by many nursing homes both secular and religiously-affiliated.

However, she wrote, the mere provision of such services "is not sufficient to qualify any institution as a Medicare provider under the statutes and regulations which apply to all institutions except Christian Science sanatoria. . . ."

She also noted that the government's *Medicare Hospital Manual Supplement* stipulates that the covered services must be ones that can be provided only by or under direct supervision of a Christian Science graduate nurse and can reasonably be furnished only in a Christian Science sanatorium.

Erickson testified that she was aware of no physical condition for which it is reasonable or necessary to provide care on an inpatient basis in such a sanatorium. "If it is true that Christian Science graduate nurses have no training in medicine or first aid," she continued, "then I am aware of no physical condition, disease, illness or defect of the human body which requires the attention of a graduate Christian Science nurse."

### **Government duty to promote religion?**

The church was represented by Michael McConnell, a prominent advocate of government benefits for parochial institutions. McConnell argued that it was the government's "duty" to "promote" religion. He claimed that Congress determined that Medicare/Medicaid reimbursements for Christian Science nursing were required by the U.S. Constitution.

### **Appropriate accommodation for religion**

HHS and the church argued that the reimbursements were an appropriate means of "accommodating" the unique beliefs of Christian Scientists. The public money does not benefit the church because it is expended only for secular services of the nurses, they said. The government pays for military chaplains, prison chaplains, and care in hospitals affiliated with churches. Indeed, Medicare even paid for a pastoral care training program at Baylor University Hospital because pastoral care has been proved to be an important component of physical health. The GI bill pays for veterans to get theological training at divinity schools accredited only by churches.

The defendants also cited *Sherbert v. Verner*, 374 U.S. 396 (1963), in which the U.S. Supreme Court ruled that Seventh Day Adventists must be paid unemployment benefits even though they refuse to work on Saturday. They cannot be deprived of these financial benefits because of their religious beliefs. Likewise Christian Scientists have paid into Medicare and Medicaid for thirty years and should not be deprived of benefits because of their religious beliefs.

### **One denomination cannot be preferred**

Judge Kyle's ruling against the reimbursements relied heavily on *Larson v. Valente*, 431 U.S. 434 (1977), in which the Supreme Court struck down a law that discriminated against the Unification Church. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another," said the Court.

Kyle ruled that the government had a legitimate interest in ensuring universal participation in a comprehensive welfare system. However, he said, the means by which it has accommodated Christian Scientists are unconstitutional. It has carved out special exemptions for one religion only from the standards of the programs.

The judge also ruled that other government benefits for religious activity and for health care provided in church-affiliated hospitals did not justify

the payments for Christian Science nursing. Other church-affiliated hospitals meet secular standards of care and licensing.

Public funding for chaplains in prisons and in the military has been upheld as constitutional because the government is requiring people to be in a certain location and therefore must make opportunities for religious worship available to them.

### **Order stayed pending appeals**

Because of the impact of his ruling on sick Christian Scientists, Judge Kyle suspended injunctive relief until the appeal process is exhausted. That is, he did not order the Medicare/Medicaid payments for Christian Science nursing to end immediately.

On August 19 the church asked the court to order the federal government to extend Medicare and Medicaid reimbursements to any nurse or care facility providing "nonmedical nursing care to patients who, for reasons of religious conviction, do not accept medical treatment or care and who are pursuing nonmedical healing."

The court denied the request without comment.

### **Both church and government appeal**

The church and HHS have appealed to the U.S. Court of Appeals, Eighth Circuit.

HHS has not had time to respond to a Freedom of Information request we made more than a year ago, but it has enough time and taxpayers' money to defend its policy of spending \$8 to \$10 million a year for Christian Science nursing.

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## **Why CHILD brought suit**

CHILD decided to challenge the Medicare/Medicaid reimbursements for Christian Science nursing because the church relentlessly presents them to legislators as evidence that Christian Science methods should be a legal substitute for medical care of sick children and because the 104th Congress tried to expand payments for Christian Science services.

We know of too much suffering of children under the care of Christian Science nurses. We know, for example, that in 1988, 12-year-old Ashley King spent the last three weeks of her life in a Christian Science nursing home with a tumor 41" in circumference eating through her thighbone and no sedatives. We know that the church's nurses made 71 calls to a church practitioner for prayers about Ashley's pain during those three weeks.

### **Comparable care?**

Some argue that Christian Science nurses should have Medicare/Medicaid payments for services that are performed in medical hospitals and would be reimbursed in those settings. CHILD contends that no services of Christian Science nurses are comparable to those in medical hospitals because the Christian Science nurses do not work under a doctor's supervision. They do not know what disease or type of injury their patients have. Yes, they feed patients, but that may be exactly the wrong thing to do, as when the Christian Science nurse force-fed toddler Robyn Twitchell, who was dying of a bowel obstruction and vomiting fecal material. Yes, they clean patients, but that may be a grotesquely inadequate thing to do as when uremic poisoning built up so much pressure that an Illinois man's entrails were forced through his rectum and the Christian Science nurse simply washed the protruding mass and put a bandage around it.

Public money should not be paying for such services.

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## **Sixth Circuit rules against CHILD and father**

On August 5 the U.S. Court of Appeals, Sixth Circuit, in Cincinnati ruled that the Ohio Attorney-General has eleventh amendment immunity in the case of *CHILD and Brown v. Deters and Montgomery*.

In 1994 CHILD and Steven Brown filed a declaratory judgment action challenging Ohio's

religious defense to felony child endangerment and manslaughter, ORC2919.22a, and a religious exemption in the juvenile code, ORC2151.03b.

CHILD and Brown are represented by Robert Bruno of Burnsville, Minnesota, and Scott Greenwood of Cincinnati, Ohio.

Brown filed the suit on behalf of himself and his two minor children, Eve and Hillary, who live with their mother, a Christian Scientist, in the Cincinnati area.

### **Unconstitutional laws still stand**

Brown and CHILD are asking the court to rule the two religious exemption laws unconstitutional because they deprive children of their fourteenth amendment right to equal protection of the laws and establish religious privilege in violation of the first amendment.

The religious defense to felony crimes was ruled unconstitutional by judges of Mercer and Coshocton Counties in Ohio, but the rulings were not appealed so they affect only those two counties.

The U.S. District Court held that the plaintiffs had standing to sue and that Attorney-General Betty Montgomery was a proper defendant in the case. Montgomery appealed to the Sixth Circuit, claiming eleventh amendment immunity.

The eleventh amendment to the Constitution provides that a state may not be sued in federal court without its consent.

### **State officials can be sued, but not state**

In 1908, however, the U.S. Supreme Court held in *Ex Parte Young*, 209 U.S. 123, that state officials may be sued in federal court under certain circumstances when a law is alleged to be unconstitutional because the Constitution must be above state law.

The Sixth Circuit held in CHILD's action, however, that *Ex Parte Young* applies only when the state official has commenced or threatened to commence proceedings to enforce the unconstitutional law to the detriment of the plaintiffs. It further held that the Attorney-General has no power to commence legal proceedings. The Court therefore concluded that the eleventh amendment protects the

Attorney-General from having to defend the religious exemption statutes and prevents CHILD and Brown from obtaining a federal ruling on the merits of the statutes.

The Sixth Circuit denied CHILD's petition for a rehearing by the entire bench.

CHILD is now preparing a petition to the U.S. Supreme Court for a writ of certiorari.

*CHILD and Brown v. Deters and Montgomery* is the first case in which a federal court has been asked to rule on the discrimination against children posed by religious exemption statutes.

### **When can discrimination against children be litigated?**

In CHILD's view we should not have to wait until children have been seriously harmed to obtain a ruling on a blatantly discriminatory law.

ORC2919.22a is a religious defense to felony child endangerment and manslaughter. It allows parents to withhold medical care when the withholding causes death or serious harm.

The purpose of a declaratory judgment action is to prevent future harm. Such an action cannot be filed on behalf of plaintiffs who have died. Thus, the only window the Sixth Circuit has allowed for a ruling on the constitutionality of the law is after the Brown children have been seriously harmed by medical neglect on religious grounds, after a state official has enforced or threatened to enforce the law that allows the harm, and when further harm is imminent.

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## **Oregon dad convicted in medical neglect death**

On April 22 Loyd Hays of Brownsville, Oregon, was convicted of criminally negligent homicide for the death of his 7-year-old son Tony. His wife Christina was acquitted. Mr. and Mrs. Hays are members of the Church of the First Born, which opposes medical care.

During a family trip in September, 1994, Anthony "Tony" Hays complained of back and stomach pain, vomiting, appetite problems, a swollen abdomen, lumps on his neck, bruises, and bleeding, including one nosebleed that lasted four hours.

The parents testified in court that they thought Tony was just carsick, that the nosebleeds came from being in the Rocky Mountains, and bruises came from playing with his cousins. But his maternal grandfather, Arnold Jensen, testified that Loyd and Christina called him during the trip and told him that Tony was seriously ill. Jensen said he suggested that Tony might have Rocky Mountain spotted fever or leukemia.

### **Deputy refused entry**

After they got home, Loyd and Christina called upon fellow Church of the First Born members to anoint Tony with oil and pray for his healing, but did not take him to a doctor because of their religious beliefs.

Christina admitted that her son was very sick the last two weeks of his life. He suffered from a severe sore throat and had no appetite. He bled from his nose and mouth—one nosebleed lasted all day—and had red blotchy bruises over his body. He died of acute lymphocytic leukemia on November 4.

On November 3, a sheriff's deputy went to the Hays' home to check on the boy after a family member called authorities to say the couple had been calling relatives to come to Oregon for Tony's funeral. Christina started to let the deputy in, but Loyd Hays refused to let him come in. He said his son was ill, and the family was praying for him.

### **Unnecessary pain and death**

At the five-day trial a pediatric oncologist testified that the disease is 80% curable. Dr. Steven Fletcher, who did the autopsy, called the boy's blood counts staggering. His white blood cell count was almost 500,000, more than 50 times above normal. He also testified that Tony probably suffered considerable pain because the disease doubled the size of

his liver and increased his spleen to more than six times its normal weight.

Jensen and a church elder's wife, however, testified that they never heard the boy complain of pain. "The last couple of days he wasn't as perky," she admitted however.

In 1981 the Oregon Supreme Court upheld an order for brain surgery for Jensen's infant daughter Sara, who was hydrocephalic. The surgery was successful; Sara lives with relatives in Washington.

### **Oregon exemption laws cited as defense**

Both Loyd and Christina Hays testified they thought Oregon law allowed them to use prayer as the sole means of treatment for their son until state officials intervened. Mr. Hays cited the handling of Sara's case as an example.

The defense attorneys argued that the parents met every element of Oregon law. "They sought treatment. They chose God as their treatment provider," one said.

Christina said she would have taken Tony to a doctor if he had asked to go. But Loyd testified, "Because of my beliefs and the admonitions of the Lord, I would have instructed him not to ask [for a doctor]."

See Steven Duin's column, page 16, on the choices Tony was given.

### **Some medical care allowed**

Mr. Hays wears a hearing aid and glasses, but justifies them as merely mechanical aids. He also admitted going to a doctor once because of his back pain. One of his daughters got a physical exam so she could play high school sports.

As Carmel Finley reported in *The Oregonian*:

It's a religion in which it's permissible to call a veterinarian to see a sick cow, but not a doctor to treat a dying child.

It's a religion where one child can see a doctor for a physical to play high school sports, but his brother will die of cancer with nothing besides prayer to ease the pain.

Some church members will go to a dentist but refuse to accept medication to deaden the pain. . . .

They admit that their cures are individual and seemingly random. It does not bother them. It is a matter of faith. And they have seen wonderful things, they say.

"Our children are born at home," Jensen said. "And with the help of the Lord, they die at home."

A jury of 6 men and 6 women deliberated 12 hours before voting 10-2 to convict Hays of criminally negligent homicide. He was acquitted of first- and second-degree manslaughter.

### **Life more precious than religion**

Juror Juanita Sossie, a great-grandmother, said that while our country was founded on freedom of religion, "a human life is more precious than religious beliefs."

While Hays loved his child, he "seemed to think that putting his own soul in jeopardy was more important than his son," she said.

"I'm as religious as anybody," said another juror, "but I couldn't stand by and watch a child of my own die and not do what I could."

Jurors said they acquitted Mrs. Hays because she was dominated by her husband. She herself did not refuse to let the sheriff's deputy in, a juror pointed out.

Mark Campbell, public relations manager for Christian Science churches in Oregon, condemned the verdict. "To compound the tragedy and grief of losing a child with prosecution for being as good a parent as you could see your way to being—that's not justice."

### **Pastor opposes "extreme religious rights"**

However, Rev. Gary Peterson, pastor of Gresham's Powell Valley Covenant Church, called the verdict heartening. "There are so many extreme religious rights," he said. "Some need to be taken away. We're talking about the sanctity of life. That is to me the issue. I think we've got to fight for life, whether it's the abortion issue, the assisted-suicide issue or the faith issue, with capital punishment included."

"I think that when I'm going to neglect the entire scientific field because God is going to do what I want Him to do, I'm in trouble with God," he said.

Prosecutor Reid Dinsmore wanted Hays sentenced to 18 months in prison. "Religion like politics is neither always right nor always wrong. The thought that if it's done in the name of God, it's always right, is ludicrous," Dinsmore said.

Linn County Circuit Judge Daniel Murphy sentenced Hays to five years' supervised probation. He ordered Hays to promptly report to his probation officer if any child in his care suffers a serious injury or life-threatening illness and to allow the state to check on the child's welfare and remove the child if necessary. Hays said he would abide by the terms of probation. He has four surviving children, all older than Tony.

He is appealing his conviction.

## **22 deaths among 20,000 church members**

CHILD has documentation of 22 deaths of children and infants between 1975 and 1995 inclusive whose parents withheld medical care because of their adherence to Church of the First Born doctrine. Arnold Jensen, Mrs. Hays' father and the local congregation's spiritual leader, said Church of the First Born has between 15,000 and 20,000 members nationwide.

CHILD believes that the 22 deaths represent a disease-related childhood mortality far above that of the general population. And we suspect that many deaths of Church of the First Born children do not come to our attention.

Taken in part from *The Oregonian* 21, 22, and 23 April 1996.

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## **Parents let another child die for religious belief**

On September 10 Dennis and Lorie Nixon of Altoona, Pennsylvania, were charged with involuntary manslaughter and child endangerment for letting a second child die without medical care.

This year it was their 17-year-old daughter Shannon who died of untreated diabetes after four days of increasingly serious symptoms. She complained of thirst, headaches, dizziness, nausea, and excessive weakness. On the morning of June 27, she could not get out of bed, then slipped into a coma that afternoon, dying in the evening.

The Nixons are lifelong members of the Faith Tabernacle Church, which opposes medical care and recommends trusting only in God to heal disease.

In 1991 their 8-year-old son Clayton died of severe malnutrition and dehydration after contracting ear and sinus infections, which caused him to vomit repeatedly. He was 49 inches tall and weighed only 32 pounds at his death.

## **Lenient sentence after son's death**

The Nixons were found guilty of manslaughter and endangerment for letting Clayton die without medical care. By a plea agreement Blair County Common Pleas Court Judge Hiram Carpenter fined them each \$150 and sentenced them to two years' probation with 125 hours each of community service work in the pediatric ward of a local hospital. The judge said such work would "expose" them to medical care of children.

Blair County District Attorney William Haberstroh requested a much larger fine and the maximum term of probation. He argued that the church would pay the fine and thereby be motivated to prevent future deaths of children.

At sentencing Haberstroh publicly implored Rev. Charles Nixon, minister of the local Faith Tabernacle church and Clayton's paternal grandfather, to advise his parishioners to seek medical care for their children. The minister did not respond.

In asking for leniency when Dennis and Lorie Nixon were sentenced for Clayton's death, defense attorney Charles Wasovich said that "they have to live with themselves, with their God, with their family knowing what happened, which is far more serious than [the court's sentence]."

The Nixons have had two more babies since Clayton died. After Shannon's death, they have 10 surviving children.

Blair County Children and Youth Services (CYS) sought a court order for medical examination of the surviving siblings after Clayton died. Judge Carpenter declined to issue an order, in part because of Pennsylvania's religious exemption in the juvenile code. Presumably, his rationale was that the state would have to have evidence that the siblings were sick before he could order medical examinations over religious objections.

CYS has not attempted to obtain a court order for medical exams of the Nixon children this year. The fact that Shannon died of diabetes might give them a better chance of obtaining one in that the disease often runs in families.

At a preliminary hearing on Shannon's death Haberstroh argued that Pennsylvania law makes parents responsible for providing needed medical care until their children reach age 18.

### **Teenager chose faith-healing**

The Nixons' current lawyer Steve Passarello argued that Shannon was old enough to obtain a driver's license, to be charged with a crime in adult courts, and to decide whether to go to a hospital.

"She chose not to go, never asked to go," he said, because she held the same religious beliefs as her parents. She attended a school run by the Faith Tabernacle church.

Passarello also pointed out that the Pennsylvania legislature in 1994 expanded the religious exemption in the civil code. It now states that withholding necessary medical care is not child abuse if done "because of seriously held religious beliefs."

It reflects the most recent opinions of lawmakers and overrides the criminal statutes, he argued. "If it's not child abuse, then it's not a crime," he said.

### **Constitution not designed to hide behind**

Haberstroh responded that the civil exemption does not impact on the criminal code. "The Constitution is not designed to hide behind," he said.

Haberstroh said he will probably seek jail terms for the Nixons this time.

Shannon's death has brought to light the fact that the Nixons did not do their community service work at a hospital as ordered by the judge because no hospital would accept them.

Shannon Nixon's death is the third religion-based medical neglect case that Haberstroh has prosecuted. He won convictions in the deaths of Clayton Nixon and Melinda Friedenberger. Melinda's parents also belonged to Faith Tabernacle and let the 4-month-old baby die of severe malnutrition and dehydration secondary to an infection.

Taken in part from *The Altoona Mirror* 28 June and 12 Sept. 1996.

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## **New Zealand deals with religion-based medical neglect**

Three families have recently been in New Zealand news for refusing medical care on religious grounds.

Joseph Liu, 13, was blind in the left eye and had a partially detached retina in the right eye. He had had 9 operations on the left eye, but physicians were unable to reattach the retina because of scar tissue.

Doctors testified that Joseph would lose all sight in his right eye within a few weeks if the retina were not surgically reattached. They said surgery offered a 70 to 80% likelihood of permanent improvement in vision.

The Lius opposed surgery on the right eye partly because they believed it would be no more successful than the surgeries on the left eye.

### **A special child**

They also opposed it because of their religious beliefs as devout Baptists. They believe God told them that Joseph was a special child and they should use him to glorify God. At the time of the surgeries when they lived in Taiwan, God told Mrs. Liu that He would heal the boy and the doctors would not.

Later, God told them to move to New Zealand and He would heal Joseph there.

Both parents left their employment in Taiwan and moved to New Zealand. They believe that a miracle for Joseph began in July, 1996. For three days, they testified, he had no sight in his right eye, but then his sight began to improve.

### **Family believes divine healing in progress**

Joseph himself testified:

"I do not want to have the operation on my right eye because I believe that God is curing my right eye. I believe that this miracle has already begun. Since I was examined by Dr. Hadden on 4 July 1996, the vision in my right eye has improved. I believe that this improvement will continue and therefore there is no need for me to have an operation. I have had explained to me that the doctors say I will go blind if I do not have the operation. I understand this but believe God will cure me."

High Court Judge J. Tompkins ordered immediate surgery over the religious objections of the family.

### **Religious practice must not harm children**

The New Zealand Bill of Rights adopted in 1990 gives persons of all ages the right to refuse medical treatment and the right to express their religious beliefs "in worship, observance, practice or teaching either individually or in community with others and either in public or in private."

The Guardianship Act, however, requires that parents provide children with necessities for their health and welfare and recognizes the child's interests as paramount. Courts have ruled that parents' religious practices must "exclude doing or omitting anything likely to place at risk the life, health, or welfare of their children." See *MJB v. Director-General of Social Welfare* NZFLR 349 (1996).

The Guardianship Act gives children at or above the age of 16 the right to consent to medical procedures. Children below that age cannot legally consent to or refuse medical procedures, Tompkins ruled.

### **Child's fate predetermined**

At the Auckland Starship Hospital a girl identified as Patient A and her parents cited their religious beliefs as the basis for refusing a two-year course of chemotherapy treatment for lymphatic cancer.

"They believe that the child and all children are divine gifts from God and as he has given, so can he take away," said their lawyer, A'eau Semi Epati. They believe that the fate of all individuals is predetermined by God's will.

Auckland Healthcare Services petitioned the High Court to assume guardianship of the girl and consent to medical treatment. A lawyer appointed to represent her interests had long discussions with her and concluded that her personal views were not cogent. She did not categorically say that she knew she had a life-threatening illness or that she wanted to refuse treatment and die.

Also, Epati persuaded the family to withdraw their objection to chemotherapy by arguing that it was irrelevant if fate was predetermined. "Cooperate unless you are sure God has told you chemotherapy is not the answer," he said.

Doctors testified that chemotherapy has a 60 to 70% chance of success in the case. The High Court ordered the treatment.

### **Blood ordered in Witness case**

In April a Court of Appeal upheld the court guardianship of a 3-year-old boy whose parents refused consent for a blood transfusion because of their Jehovah's Witness faith.

Taken from *The New Zealand Herald Weekend Magazine* 17 Aug. 1996 and *Auckland Healthcare Services Ltd. v. Amy Yang Liu and Paul Liu*, High Court of New Zealand M.812/96.

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## **Jehovah's Witnesses indicted in Spain**

Jehovah's Witness parents in Huesca province of Spain have been charged with manslaughter and neglect in the death of their 13-year-old son. Marcos Alegre Valles suffered from leukemia. His father and mother initially sought medical treatment for him, but then withdrew him from hospitals in Gerona and Barcelona because blood transfusions were required with the treatment.

In September 1995, the boy became comatose, and his parents rushed him to the hospital. Because Marcos was then in imminent danger of dying, the physicians asked a court authorization to do a blood transfusion. The authorization was immediately granted, but the treatment arrived too late, and he died on September 16, 1995.

Although manslaughter is punished with imprisonment from 10 to 15 years in Spanish Criminal Law, Huesca Province Prosecutor Fernando Garcia Vicente is asking for a prison sentence of 4 years for each parent. Vicente thinks that they were "mentally blinded" by their faith, so there was a "mitigating circumstance."

### **First prosecution in child's death**

The Valles case is believed to be the first criminal charges filed against a parent for religion-based medical neglect in Spain. Ironically, though, a Spanish Jehovah's Witness was convicted in 1990 for contributing to the death of an adult. A Witness woman was admitted to a hospital in a coma after a car accident. She was transfused, but a Jehovah's Witness man came into the room and took out the catheter. He was sentenced to four years in prison for contributing to her death.

In a 1980 divorce case a Spanish court gave custody of a child to her Catholic father ruling that her Jehovah's Witness mother might endanger her life or health because of her religious objection to transfusions.

### **Physicians can be liable**

Spanish physicians have learned to obtain court orders for transfusions when Jehovah's Witness are in imminent danger of dying, but did nothing to stop

the Marcos' parents from withdrawing him from hospitals when his illness was not at a crisis stage.

Two experts on bioethics, Carlos Romeo Casabona at Deusto University and Jose Manuel Martinez-Pereda, Supreme Court criminal judge, warned that in future cases doctors themselves may be charged with neglect if they fail to petition courts for medical treatment of a degenerative illness.

"A pluralistic society that encompasses different religions," says Martinez-Pereda, "has a common social morality built upon personal dignity, which is what turns medical neglect of a child into a crime."

Taken from *Diario Medico*, August 1996.

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## **CHILD members address abuse conference**

In May CHILD President Rita Swan and members Norman Fost and Bonnie Deckerhoff spoke at a conference on "Child Abuse in our Time" sponsored by the University of South Florida at Sarasota.

Fost gave accounts of suffering and preventable deaths of children because of Christian Science beliefs. He discussed the Christian Science church's claims of supernatural healing. He also responded in detail to Yale law professor Stephen Carter's condemnation of the damage award in *McKown v. Lundman*, 530 N.W. 2d 807, *rev. den.* (See *The New York Times* 31 Jan. 1996.) Fost is a pediatrics professor at the University of Wisconsin and this year a visiting professor of bioethics at Princeton.

### **Deaths of sisters in Christian Science family**

Deckerhoff spoke about the deaths of her two younger sisters while she was growing up in a Christian Science family. Neither sister got medical care. Deckerhoff is on the state child protection team in Jacksonville, Florida.

Swan talked about the dangers to children posed by religious exemption laws both because they mislead parents and public officials.

Two attorneys represented the Christian Science church's position. In 1992 San Diego attorney

Kathleen Murphy Mallinger wrote an amicus brief in support of California when HHS ruled the state out of compliance for federal child abuse money because of its religious exemption statutes and other problems. See *People v. Shalala*, U.S. Court of Appeals, 9th Circuit, case #93-15700 and -15936.

She later worked as a lobbyist for the Christian Science church in attempting to get a religious defense added to homicide by abuse charges.

Mallinger argued that medical science should not be the only legal system for treating sick children. She claimed there is no national consensus that children should get medical care. If there were, we would have national health insurance, she said.

### **Church tries to stop slides of CS kids**

The night before the conference the Christian Science church demanded that Rita Swan be prevented from using any audio-visual materials. The conference chairman replied that the university had to honor academic freedom.

The church officials then said they would not speak at the conference. The chairman said she had to offer a set amount of programming to meet requirements for continuing education credits, so she would have to give Swan and Fost twice as much time to talk.

Finally the church agreed to speak and Swan was allowed to show slides of Christian Science children during her talk.

Deborah Georgatos works for the church's office of federal lobbying and public relations. She said that Christian Science has a consistent 125-year history of healing children's diseases, while medicine has many failures.

Though critics accuse Christian Scientists of "doing nothing" about a child's illness, several medical doctors have recently written books indicating that prayer does heal disease, she pointed out.

### **Will ruling change church practice?**

She argued that Christian Scientists should have the legal right to withhold medical care from children. Most disturbingly, she argued that the ruling in *McKown v. Lundman* will not change church

practices. "It does not change our statutory protections," she claimed, because it was based on common law negligence.

Technically, she is correct that the *Lundman* ruling is based on the common law, that is case law established by court rulings, rather than statutes. However, the ruling may have more national impact based on common law than on a particular state statute.

Does the Christian Science church intend to ignore the message of *Lundman*? We gather from Georgatos, the answer is yes.

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## **Lundman a step closer to his money**

Douglass Lundman, who filed the first successful wrongful death action against the Christian Science church and its agents in 1991, is a step closer to collecting what the courts awarded him. On October 1, Judge Isabelle Gomez of the Hennepin County District Court in Minneapolis ruled that the company which put up the bond to guarantee the settlement during appeal must pay the entire award of \$1.5 million plus interest in *Lundman v. McKown*, 530 NW 2d 807, *rev. den.*

In turn, the bonding company will likely get the money from the Mother Church in Boston, which posted the bond.

In 1993, a jury awarded Lundman \$14 million in compensatory and punitive damages against the church, his ex-wife and her husband, a church practitioner, church nurse, and other church officials for their role in letting his 11-year-old son Ian die of untreated diabetes. The appeals court eliminated the damages against the church, but left standing a \$1.5 million award against the practitioner, nurse, Ian's mother, and his stepfather.

### **No help for church healer and nurse**

The church publicly abandoned the four remaining defendants, calling the award "an extraordinary burden" for them, but did not offer to help them pay it. Victor Westberg, manager of church public

relations, said the ruling was not a threat to the church. "We'll still continue to practice our religion as we have done for over 100 years," he said. (See *The New York Times* 23 Jan. 1996.)

Lundman's attorneys have not been able to collect any money from the four remaining defendants, and practitioner Mario Tosto indicated he would file for bankruptcy to protect his assets.

The church has fought Lundman's efforts to get the money from the bond posted by the church and will likely appeal Gomez's ruling.

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## "The children we abandon"

An outstanding contribution to legal scholarship on religious exemption statutes appears in the June, 1996, issue of *North Carolina Law Review*, v. 74, pp. 1321-1478. Entitled "The children we abandon: religious exemptions to child welfare and education laws as denials of equal protection to children of religious objectors," it is written by James G. Dwyer, a professor at the Kent School of Law in Chicago. Dwyer has a law degree from Yale and a Ph.D. in philosophy from Stanford.

Dwyer argues both with passion and meticulous research that religious exemption laws are unconstitutional because they violate the Fourteenth Amendment rights of children to the equal protection of the laws.

### Exemptions from vaccines and school regs

He focuses particularly on religious exemptions from immunizations and the lack of state regulation of church-affiliated schools. For example, Title IX of the federal Education Amendments of 1972 prohibits sex discrimination and sex bias in public education, but allows them in parochial schools. Many states exempt parochial schools from all teacher certification and curriculum requirements. Alabama requires church schools merely to file an enrollment and attendance report with the local public school superintendent.

Dwyer advocates bringing an equal protection challenge on behalf of the children affected by religious exemptions. Such a challenge, he says, "would force states to do something they have never been called on to do—to articulate in court a legitimate reason for their practice of *de jure* discrimination among different groups of children." It would "impose on the state the burden of showing that *it* (and not just the parents) has a sufficiently strong interest in *denying* protection to the child."

### Discrimination de jure: for children only

"In searching for such a rationale," Dwyer continues, "state officials and judges would have to confront some very difficult questions about the moral, political, and legal standing of children born into minority religious communities, about the state's responsibility for these children, about the permissible bases for state decisionmaking in this realm, and about the coherence and legitimacy of a notion of parental authority and entitlement that precludes treating all children as equal human beings."

For several decades, Dwyer concludes, America has been working for equality for minorities and women. Nevertheless, the state has in that same period "denied some groups of children equal protection of the laws to an *increasing*, rather than decreasing, degree, and few persons have noticed, because these children cannot speak for themselves and their parents do not seek equal treatment for them. We in the legal profession should pause from our discussions of affirmative action hiring of law professors and corporate managers to ask whether these children deserve our immediate attention and our efforts to secure equal treatment for all."

### Affirmative action for executives

"Liberals and conservatives alike should begin to think less about what kind of world *they* want to live in when they discuss children's upbringing and more about what kind of world is best for a child born today whose parents have religious views opposed to the types of benefits that we collectively have decided children need. That child alone has fundamental interests in her health and education,

and that child is therefore whom the law should put first."

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## "Religion and child abuse"

Bette Bottoms, a professor of psychology at the University of Illinois at Chicago, and her co-authors, Phillip Shaver, Gail Goodman, and Jianjian Quin have published "Religion and child abuse" in *The APSAC Advisor*, v. 9, #2 1996, page 11-17.

It is adapted from their article "In the name of God: a profile of religion-related abuse," *Journal of Social Issues*, v. 51, 1995, pages 85-111, which was reviewed in the CHILD newsletter 1996, #1.

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## Fraser reviews books on Christian Science church

Caroline Fraser reviews four books on Christian Science and its founder in *The New York Review of Books* of July 11, 1996. They are the trade edition of the church textbook, *Science and Health with Key to the Scriptures*; *'With Bleeding Footsteps': Mary Baker Eddy's Path to Religious Leadership* by Robert David Thomas, *Christian Science* by Mark Twain, and *The Life of Mary Baker G. Eddy & the History of Christian Science* by Willa Cather and Georgine Milmine.

### New Age marketing pitch

Among other topics Fraser has a valuable discussion of how Christian Science fits in American cultural history. She sees the contemporary Christian Science church as capitalizing on New Age alternative healing systems. The church has recently issued its textbook in a paperback trade edition. It has developed a mass-market campaign that describes the book as "non-denominational" and does not even mention Christian Science. Their ads speak

of "Mary Baker Eddy's best-seller" and promise "Spirit, Mind, [and] Health" without "limits."

This is quite a switch for a church that only a decade ago became indignant if anyone compared Christian Science to positive thinking. At the time the church insisted that Christian Science was a religion distinct from other religious and secular mental healing systems.

Caroline Fraser is the author of "Suffering children and the Christian Science church" in the April 1995 issue of *Atlantic Monthly* and has a contract with Holt, Rinehart, Winston to write a book on the history of the church.

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## On choices for children

*Thoughts by Rita Swan*

When should the state allow children to make their own choices about medical care? Our CHILD newsletters this year have had articles about two girls, one sixteen and one seventeen, who died of diabetes because of religious beliefs against medical care. The parents were criminally charged in their deaths. They and their attorneys say the girls made their own decisions to refuse medical care.

This newsletter issue also reports on a New Zealand case in which the state ordered medical care for a 12-year-old because children below the age of 16 cannot legally consent to medical procedures. But children 16 and older can give their own consent to medical procedures, and the right to consent usually includes the right to refuse.

### Adult rights for children

A sociology professor who followed me to the podium at a conference said that my work for "the rights" of children would lead to "the adultification" of children. Society is demanding that children be tried as adults in the criminal courts, he continued. In 1985 cases of 534,000 juveniles were transferred to adult courts by state statutes; the number is much

higher today. We are one of only a handful of countries that allow execution of minors.

Many want adolescents to have the right to get an abortion without their parents' consent. Many physicians advocate the right of adolescents to consent to medical procedures in general. If adolescents do not have this right, physicians can be charged with assault and battery for treating without parental consent.

The Jehovah's Witness church has long argued that "mature minors" should have the right to refuse blood transfusions. It has used abortion rights of adolescents as an analogy for this right.

What is a mature minor? Should the state allow a minor to refuse lifesaving medical care?

### **Choice without information**

In many cases of religion-based medical neglect there is no contact with physicians. Neither the parents nor the child know what disease the child has or what treatment options medical science has available. Under such circumstances a child's desire to continue with what pleases the parents and peer group is not an independent, mature decision. There is no freedom of choice without information.

Even when a minor knows the diagnosis and has been given information about outcomes with and without treatment, there are enormous pressures to do what other church members preach and practice.

### **"You can do it"**

After 7-year-old Jessica Dubroff died trying to become the youngest person to fly across the United States, her mother said letting Jessica plan and take the flight was a fundamental constitutional right.

Bela Karolyi said he gave Kerri Strug the choice of whether or not to make the final vault at the Olympics on an injured ankle. But that was not the way I saw it on television. I heard him yelling, "You can do it" twice, and I did not see him consulting with her.

Kerri Strug will get an estimated \$10 to \$14 million in product endorsements for that vault. Years of training and the expectations of millions of

fans were also at stake. For adults to say they gave Kerri her choice in that stadium is disingenuous.

Certainly many teenagers and even children have formed personal religious convictions. Many have thought just as deeply about their faith as adults. They have first amendment rights to freedom of religious expression.

### **Gravity and finality of decision weighed**

In CHILD's view, however, they should not have the right to die or incur permanent disability because of their religious objections to medical care. The recent Fordham University conference on legal representation of children sensibly recommended that a child's competency to consent and decide should be on a sliding scale with the gravity and finality of the decision weighed in. See 64 *Fordham Law Review* (1996), Ethical Issues in the Legal Representation of Children. If medical care has a reasonable prospect of preventing death or serious harm, the state should order it for anyone under the age of 18.

Indeed, we wonder if the line for life and death decisions should not be set even higher than 18. We do not allow 18-year-olds to drink alcohol or play the lottery.

Some have questioned the point of forcing a 16-year-old to have medical treatment. When she is 18, she'll have the same religious beliefs and will then be free to refuse treatment, they say.

### **Child's value to society**

But a 16-year-old is a work in progress. Our daughter has just turned 18. There are light years of difference between her attitudes and decisions at 16, 17, and 18.

Even if we knew for a fact that the 16-year-old diabetic would still have the same religious beliefs at 18 and would still rather die than accept insulin, should not the state order insulin for the 16-year-old as a statement of the child's value to our society?

Children are our most precious natural resource and the only future we have. If we told them that more often, maybe more of them would believe it.

## Disappearing into that dark attic alone

by Steve Duin

Reprinted with permission from *The Oregonian* 21 April 1996.

Tony Hays, we now know, could have saved himself. All he had to do was ask.

All the poor kid had to do was stare up into the glistening faces of the adults praying over him, swallow hard, wet his lips, and—going against every childhood instinct and all that he'd been taught—beg to see a doctor.

Beg his parents to allow chemotherapy, the chance to heal what prayer had not.

That's all. Like another unfortunate 7-year-old, Jessica Dubroff, Tony died with his life in his hands, long before he was capable of maintaining a decent grip.

The child's complicity in his spiritual healing was only a small part of the tragedy that unfolded last week in the Linn County trial of his parents, Loyd and Christina, on charges of manslaughter and criminally negligent homicide. . . .

After a monthlong struggle with lymphocytic leukemia—after weeks of vomiting, nosebleeds, and stomachaches—Tony, his parents said, still felt little pain, and still had a heart for prayer.

That's what they told Linn County Detective James Salsbery when he arrived at their Brownsville home on the morning of Nov. 4, 1994, an hour after Tony's death.

"The only thing they said was [not calling a doctor] was Tony's decision," Salsbery said. "If he had asked, they would have taken him."

Not right away, of course. "I would have been pretty persistent in asking him not to," Loyd Hays testified. . . .

But if Tony insisted? "My son would not have done that," said Loyd Hays, an elder in the Church of the First Born, a congregation that doesn't believe in seeking medical care. "I know my son. He would have fought tooth and nail."

He would have made his parents proud. He would have chosen all that he knew of them over what little he knew of death.

Does that surprise anyone? Does anyone out there have a young son who begs to visit the emergency room or a daughter who appreciates her own mortality?

"A child of 7 doesn't understand the threat of death," Arnold Jensen, the boy's grandfather, said. . . . They plan on living forever. What they do comprehend is pain. Any time he asked us to pray, it was obvious that it brought him relief."

Whether Tony felt that relief in the pit of his stomach, he surely saw it in the faces of the church elders.

Jensen, unlike his grandson, has been through all this before. A church elder, he's lost a child to illness. He's lost a child to the state: in 1981 the Oregon Supreme Court ordered emergency brain surgery for his year-old-daughter, Sara.

He understands the importance of accepting "no" as an answer to prayer.

"If we're willing to trust God, we need to accept a 'no' answer as well as a 'yes' answer," Jensen said. "We have normal mentalities. If we didn't see results, our minds would rebel."

They've seen results. They've seen hearing aids rendered unnecessary and twin calves born when the stock is running low.

They've seen miracles and prayer put so many kids back together that they no longer panic when they watch a disease tearing a child apart.

Loyd Hays made that clear. By the time he reached the witness stand, he didn't remember seeing Tony suffer all that much. Even though he admitted sleeping on the floor of Tony's room so that he could replace the covers on the child's swollen and thrashing body in the middle of the night.

Even though, on that final morning, he stood over Tony while his son frantically tried to wrap his arms around his father's neck while he still had the strength.

Loyd, believed, through it all, that prayer was sufficient. That prayer alone was a holier response than the chemistry of medicine and devotion.

That by praying for his son whenever Tony thought to ask, he was doing all that God the Father would ask a father to do.

Tony, he would have us believe, didn't waiver when the leukemia and that "no" answer began squeezing the life from his body. When his nose wouldn't stop bleeding or his stomach cease hurting, Tony only cried out for the elders.

A doctor? He never thought to ask.

"I doubt he ever considered that an option," Jensen said. "It was like if you never tried olives, you wouldn't consider olives a part of your diet. We just don't go to doctors. It's like going into a dark attic. Our kids are adverse to it."

The parents of the Church of the First Born have taught their children well. They never wonder how old you have to be to have your faith tested. They never even ask.

## What rights to life do kids have in religious families?

by Boulden Griffith



Boulden Griffith is a patent attorney and CHILD Inc. member. His letter appeared in the April 26th *Oregonian*.

How did you feel about the recent conviction of Loyd Hays? He was convicted of criminally negligent homicide in the death of his 7-year-old son after withholding medical treatment from the boy for religious reasons.

Leukemia, the disease that killed Anthony Hays, is usually quite treatable. According to trial testimony, the child suffered a great deal, but he stuck by his parents' religion and never asked for a doctor.

Having grown up in a faith-healing family, I want to speak out on behalf of the children in such situations.

Withholding medical care hurts. It also frightens. It terrified me.

My parents belonged to the most established faith-healing sect of all, the Church of Christ, Scientist, the Christian Science church.

Like Anthony, when I was ill I was told to pray, not to ask for a doctor. In my parents' religion, praying meant thinking that God had created me to be perfect, "in his image and likeness," and that all I had to do was realize that and I would be ill. That sounded pretty good.

But I found that when you are in pain and very afraid, it is awfully hard to feel perfect. If you can't do it, you become part of the problem. You are blamed for making yourself sicker. You must have wrong thoughts, put there by the devil.

"Pain comes from fear," I was told. If you feel pain, you must have a fear that's causing it. "Stop being afraid and your pain will stop."

But frequently the pain didn't stop. But I always tried to do what my parents thought best, so I hid my pain and prayed. Apparently, from the trial evidence, that is what Anthony did too.

Fortunately, when I stepped on a nail and the resulting infection made me extremely ill, my parents panicked and took me to a doctor. I sustained a minor limp, but survived, unlike little Anthony Hays. I don't think the average Oregonian really wants to see more Anthony Hayses.

Regrettably, Oregon has a number of religious exemptions in its laws. The state allows parents to "intentionally" and "knowingly" withhold "necessary and adequate" medical care from a child if they have religious beliefs against it.

But there is no religious defense to letting your child die under state law. No wonder the Hays family was confused. . . . If a child dies, the responsible adults can be charged with manslaughter. This doesn't seem rational or fair.

Moreover, the Oregon Legislature's inclusion of a religious defense to the new crime of murder-by-abuse adds to the confusing message. Even more strangely, the Oregon District Attorneys Association supported the inclusion of this defense in the bill, a position that seems somewhat at odds with the prosecution of Loyd and Christina Hays.

As long as the Oregon Legislature partially condones withholding medical care on religious grounds, the legal confusion and the deaths and injuries that result are a predictable consequence. As long as we tolerate this situation, we will share in the responsibility for those bad consequences.

Please help do something about this. Ask your state senators and representatives to repeal Oregon's religious exemption laws. You can and should send a healthy message that we will not condone this type of abuse, that we need to protect all children equally.

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Boulden also wrote his U.S. Senators and Congresswoman asking them to urge HHS not to appeal for reinstatement of Medicare/ Medicaid payments to Christian Science nurses.

**"As a taxpayer who is strongly opposed to the use of my tax dollars to support unconstitutional accommodations of religion, particularly when that accommodation lends credibility to practices that endanger minor children," he said, "I want to ask you to encourage the Health Care Financing Administration to save the public's money and withdraw from this litigation. The government should stay neutral, rather than pursuing an appeal that further aids the interests of the Christian Science church."**

Way to go, Boulden, and many thanks. Unfortunately, the government did not listen.

## Special Treatment

by Mary Musgrave

Musgrave is a CHILD member in Glen Carbon IL. Her letter appeared in *The St. Louis Post-Dispatch*.

I am writing in response to the Aug. 20 letter from W. Riley Seay [Christian Science lobbyist for Missouri] regarding Christian Science Medicare coverage.

When Medicare came into being in 1965, special provisions to accommodate the beliefs of Christian Scientists were written into the law. It was unconstitutional then and, as Judge Richard Kyle ruled, it still is. It is a blatant violation of the Establishment Clause of the First Amendment.

Seay concedes that the only care given patients in a Christian Science facility or by Christian Science "nurses" is custodial—that is, bathing, walking, feeding by mouth, bandage changing, etc. This type of care can be furnished by an untrained person and is disallowed for any person eligible for Medicare *except* Christian Scientists. I quote from the Medicare Handbook:

"The only type of 'nursing home' care Medicare helps pay for is skilled nursing home

care. Medicare does not pay for custodial care when that is the only care you need. Custodial care is that which untrained people can provide."

A Christian Science sanatorium or those engaged in the care of its patients are providing custodial care only. Everything else is the practice of religion, namely faith healing. Should I or any other Medicare enrollee put in a claim for this type of care, it would be denied.

Medicare and Medicaid are only two of scores of federal and state medical plans allowing this Christian Science bypass of the Constitution. And contrary to Seay, some of them do reimburse practitioners.

Christian Scientists believe they deserve this special treatment because they pay taxes.

By the same rationale, an Amish person who also pays taxes could expect the government to build him a special road because the federally funded highways are dangerous to one traveling in a horse and buggy. Ridiculous, isn't it?

## End funds for Christian Science care

by Rita Swan

From *The Chicago Tribune*  
20 Sept. 1996.

As a plaintiff in the taxpayers' suit against Medicare/Medicaid reimbursements for Christian Science "nursing," we wish to respond to your Sept. 4 editorial defending them.

You argue that Christian Scientists should not have to pay into Medicare because they "shun conventional medical care." All of us, however, pay taxes for policies and programs we disagree with.

You recommend that Congress authorize reimbursements for all care of the sick and injured given by unlicensed nurses as part of a religious ministry. You have no suggestions as to how the government could set standards for care given by those who believe that disease is an illusion.

The limited skills of Christian Science nurses could not possibly rise above the level of custodial care, but the church has gotten the federal government to classify its facilities as "hospitals" and "skilled nursing facilities" in order to qualify them for Medicare money.

Though Medicare and Medicaid programs do not directly pay bills that Christian Science healers send for their prayers, they indirectly promote the healers' business in that all the patients in Christian Science nursing homes must receive prayer treatments from church-certified healers.

The federal government has to exempt Christian Science care facilities from many standards in order to make payments to them. For example, Christian Science care facilities are exempt from the requirement for other Medicare/Medicaid beneficiaries to provide at least one hour of skilled nursing care in a 24-hour period.

Christian Science nurses are not state-licensed. They have no training in recognizing contagious diseases. They cannot take a pulse, use a fever thermometer, give an enema, or even a backrub.

They have been retained to attend sick children and have sat taking notes as the children suffered and died, but they have not called for medical care nor recommended that the parents obtain it. Their notes 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.

One nurse who let a child die of diabetes was asked in court what training the church had given her specific to the care of sick children. The only thing she could think of was that she had been taught how to cut sandwiches in interesting shapes.

Public money should not be used to support such activities.