

Children's Healthcare Is a Legal Duty, Inc.

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*Amish farmer
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Tetanus strikes unvaccinated Amish child

Late in 1997 an article was posted on the internet about medical treatment of an Amish child whose family had refused immunizations for religious reasons. Entitled "Tetanus: complications and management in a pediatric intensive care unit," it is written by Talaat Abdelmoneim et al. See <http://PedsCCM.wustl.edu/RARE/Tetanus.html>.

Tetanus is caused by bacteria that produce a neurotoxin. Generalized rigidity of facial muscles and reflex spasms rapidly occur. Spasms "may be

precipitated by minimal stimuli such as noise, light, or touch and last from seconds to minutes. They can be painful or dangerous, causing apnea, fractures or rhabdomyolysis," Abdelmoneim says.
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Feds reimburse CHILD's costs

In November the federal government agreed to pay CHILD nearly \$47,000 for the expenses and attorney's fees incurred in its lawsuit challenging Medicare and Medicaid payments for Christian Science nursing.

CHILD and co-plaintiffs Dr. Bruce Bostrom and Steve Petersen won the suit. *Children's Healthcare Is a Legal Duty, Inc., v. Vladeck*, 938 F. Supp. 1466 (D.Minn. 1996). The federal government declined to appeal. The Christian Science church filed notice of intention to appeal and did not withdraw it until Congress changed the statutes, thereby mooting the appeal.

CHILD then filed a motion for recovery of its costs. The federal government agreed to settle out of court.

CHILD has used the settlement money to pay costs of its second lawsuit against the federal government, which asks the court to rule the new statutes unconstitutional.

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Because a vaccine to prevent tetanus has been widely available for many decades, tetanus is a rare disease in the United States. It is a deadly disease with a case fatality rate of about 20-30%, which increases to 50% for those more than 60 years old.

Parents had seen tetanus before

The patient was a 12-year-old boy who stepped on a fish bone as he was walking barefoot outside his house. He did not seek medical attention at the time. However, five days later, he developed slight swelling of the left lower leg and started to limp. He had mild back pain and occasional leg spasms. Over the next two days, the patient developed generalized stiffness, back pain, difficulty with swallowing and jaw pain.

His parents recognized the disease as tetanus because another family member, also unvaccinated, had previously had tetanus. They took the boy to the emergency department of a local hospital. He was then transferred to a university hospital.

\$600,000 bill; no insurance

The boy was in the hospital for more than a month and then discharged. His parents still refused consent for immunizations for him. His medical bills were \$600,000.

The Amish community could not afford to pay, but also does not believe in accepting government assistance. They refused to apply for Medicaid, which would have paid \$60,000. The hospital and the physicians agreed to settle the account for \$60,000, and the Amish paid that amount over a 30-month period.

Surgery and weeks of intensive care

The child's life was saved only by prolonged intensive care. His foot was swollen. A bone biopsy following wound debridement showed evidence of necrosis and osteomyelitis. He had spasms every 5 minutes that produced apnea, cyanosis and cardiovascular instability. He was maintained on a mechanical ventilator under heavy sedation and analgesia for three weeks. After one week of

intubation, a tracheotomy was done. His muscle spasms stopped, but profound weakness continued.

And all because his parents would not take him to a public health clinic for free immunizations.

What do the Amish believe?

Whether the Amish have theological beliefs against medical treatment or immunizations is difficult to determine. The National Committee for Amish Religious Rights in Livonia, Michigan, says that the Amish have no religious beliefs against use of scientific medicine.

Yet in Iowa alone hundreds of Amish children claim religious exemptions from immunizations. The Amish, Mennonites, and Old Netherlands Reform Churches, who we believe have a common theological heritage, have had outbreaks of measles and polio in Iowa because of failure to immunize.

11 babies injured by rubella

Amish children in other states have also contracted vaccine-preventable diseases. In 1991 rubella spread through Amish and Mennonite communities in six states. In Pennsylvania alone, 11 Amish babies were born with heart disease, deafness, cataracts, seizures, and other abnormalities because of the rubella outbreak that year.

Polio imported to North America

The Old Netherlands Reform Church, which makes no secret of its opposition to immunizations, experienced a widespread outbreak of polio in the Netherlands in 1992-93. The disease was then imported to an Old Netherlands community in southern Alberta.

A physician wrote to our board chairman about her experiences with the Amish:

We care for a number of Amish in this hospital. For the most part, the relationship we have with them is productive and workable—we respect their views, and they respect our need to care for their children. I have found that with adequate

discussion, they usually come around to what we want to do. . . . There is quite a bit of variability within the Amish religion (old order vs. new), and one needs to respect their hierarchy of power in order to get things done [e.g. the elders and bishops]. They also have a (to me) strange tendency to bring their children for emergency treatment, then not want things to be done. At least they show up—then we generally figure a way to do what is necessary for the kid.

The same desire for others to make the decision has been observed among Jehovah's Witnesses and faith healing groups. Taking responsibility for decisions about medical care can be extremely difficult for members of some cultures and faiths.

The importance of working through the church hierarchy has also been noted by public health nurses. Some report that if they can obtain support for immunizations from a bishop and if they set up clinics so the Amish can easily come, participation in immunization programs increases substantially.

Prefer folk remedies

In his book *Amish Society*, John Hostetler states that the Amish have no religious dogma that forbids modern surgery, drugs, dental work, sedatives, or immunizations, but are attracted to folk remedies on the assumption that old methods are the best.

"In Amish society," Hostetler says, "both folk and scientific concepts of healing are utilized. When folk and scientific notions come into conflict, [some] maladjustment and stress are evidenced. The sick person who is caught between contradictory expectations becomes the victim of cultural systems in stress."

"Plain prey"

The Kansas City Star had a masterful series of articles on the attraction of the Amish and Mennonites to quackery October 20-23, 1996. Entitled "Plain prey," the newspaper described these simple, honest, hardworking people as particularly vulner-

able to charlatans and hucksters in the health care marketplace.

Some seek out fellow church members who claim a gift of healing called *braucha* or "powwow-ing." The healers say they feel the patients' pain through "electricity in their bodies." One healer ties a nail clipper to a string and suspends it over a patient, who holds bottles of vitamins, which she sells. If the clipper begins to move, the healer tells the patient to take the vitamins. If it does not, she recommends other vitamins.

The Amish rarely complain to public officials about quacks who abuse their trust.

Colorado mom charged for withholding insulin

Rebecca Ramirez, age 26, of Denver was charged November 14 with child abuse resulting in death. Her 8-year-old son Daniel died August 20 of diabetes.

Ramirez had been going to Disciple Fellowship Church for about two months before Daniel's death. On August 10, Pastor Paul Schell had "laid hands" on Daniel at the church. The next Sunday, August 17, Daniel and his mother participated in a healing ceremony at the front of the church.

Ramirez wrote on her calendar that day "Daniel healed" and "no shot." She told investigators, however, that she really meant "prayed for" rather than "healed."

"A high safe zone"

His blood glucose monitor showed the last time his glucose was checked was August 18.

After Daniel's death Ramirez told Disciple Fellowship church official Brent Ditton, according to an affidavit, that "in her own heart she believed Daniel was healed and he was in a high safe zone."

Rev. Schell disclaimed any responsibility for the boy's death. Schell said Ramirez was not a church member, that he did not know Daniel had diabetes, and he had never counseled her.



Rebecca Ramirez

Schell told authorities that Ramirez “dragged” Daniel to the front of the church on August 17 and said he was sick with a stomach ache. Schell said he “politely told her to sit down” and that he would “pray for Daniel” when he prayed for everyone else—after the service.

“Schell stated people line up thinking he has an ability he does not have,” according to an affidavit.

“We believe in divine healing,” said Schell. “But the church doesn’t believe in hyper-faith. I would never tell anyone on life-sustaining medication to stop unless the doctor said the patient is healed.”

Medicine burning services

Former church members, however, told the press that Schell characterizes medicine as evil.

“Schell conveys his ministry of faith over medicine through a compelling mixture of charisma and intimidation,” said Matthew Huerta of Denver, who attended the church for nearly three years. He “really discouraged medical treatment,” Huerta added.

Schell said “if you take synthetic drugs, that’s not God, that’s the devil,” according to Tony

Capozzola of Lakewood who attended the church in 1995.

Becky Taylor of Arvada said Schell urged them to bring their prescription drugs, asthma inhalers, etc. to church and throw them on a bonfire in “medicine burning services.”

A local television station aired an audiotape of a sermon by Schell, apparently taped by a former church member. “All other natural and evil powers are less than God,” the sermon said. “Chemotherapy is less than God. Twelve step programs are less than God.”

Minister defended

After Ramirez’s arrest Ditton defended the church at a service attended by several hundred. “My life has been transformed by the power of God,” Ditton said. “My wife and I tried to have children for six years. Pastor Schell prayed for us over Thanksgiving and within two weeks she was pregnant.”

Taken from *The Denver Post*, 17 and 18 Nov. 1997, and *The Rocky Mountain News*, 17 Nov. 1997.

CHILD loses motion in declaratory judgment case

On September 24, U. S. District Judge Arthur Spiegel issued a ruling against a motion by plaintiffs CHILD and Steven Brown to reinstate the Cincinnati city solicitor and Hamilton County prosecutor as parties in a declaratory judgment action, *Brown v. Montgomery*, 92 F.3d 1412, 1418 (6th Cir. 1996).

Religious defense to manslaughter

In 1994 CHILD and Brown filed the action on behalf of Brown’s children, Eve and Hillary, and also on their own behalf. Brown lives in New Hampshire while his children are being raised in Ohio by their mother, who believes in exclusive reliance on faith healing.

The suit challenged Ohio's religious defense to felony child endangerment and manslaughter, ORC2919.22a, which states: "It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body."

Discrimination against class of children charged

CHILD and Brown charged that the Ohio law deprives a class of children of equal protection of the laws in violation of the Fourteenth Amendment, violates due process rights guaranteed by the Fifth Amendment, and endorses and validates one religious belief over another in violation of the First Amendment.

ORC2919.22a was ruled unconstitutional on those grounds by two state courts. Unfortunately, the rulings were not appealed so they have effect only in Coshocton and Mercer Counties where criminal charges were filed in deaths of children because of religion-based medical neglect. See *State v. Miskimens*, 490 N.E.2d 931 (Ohio Ct. Common Pleas 1984), and *State v. Miller*, Mercer Cty. Ct. Com. Pl., Ohio #86-CRM30 and 31.

Case of first impression

CHILD and Brown v. Montgomery was the first case in which a federal court was asked to rule on the constitutionality of a religious exemption law that discriminates against a class of children.

However, the courts did not rule on the law. Instead, the suit was quashed on procedural grounds. The district court dismissed the prosecutors from the suit, but granted standing to proceed against the Ohio Attorney-General. The Sixth Circuit Court of Appeals, however, ruled that the Attorney-General had Eleventh Amendment immunity until she acted to enforce the religious defense to the detriment of the plaintiffs.

The Eleventh Amendment prohibits suits against states in federal courts. However, suits against state

officials representing the states are allowed in federal courts under certain restrictions.

Ohio's religious defense to manslaughter and felony child endangerment would be raised in court only when a child has died or been very seriously harmed. A declaratory judgment action cannot be brought in a death case because its purpose is to stop harm.

The Sixth Circuit's ruling allows suit only after a child has been seriously harmed and is in danger of further harm and a public official acts to "enforce" the religious defense.

Left unclear was how one enforces an exemption from the law. The Sixth Circuit rejected the plaintiffs' contention that the religious defense is self-enforcing and discriminates against a class of children whether they are sick or not.

CHILD and Brown filed a petition for certiorari to the U. S. Supreme Court. The National Task Force on Children's Constitutional Rights wrote an amicus brief supporting the petition. The amicus was also signed by the American Academy of Pediatrics, National Association of Counsel for Children, National Committee for the Rights of the Child, Council on Child Abuse of Southern Ohio, Inc., People Against Child Abuse, and others.

The Supreme Court denied the petition.

CHILD then returned to the district court and asked that the prosecutors be reinstated as defendants, but the court rejected the motion.

Judge's hope

Ohio is one of two states in the nation with a religious defense to manslaughter. In 1987 the Mercer County Common Pleas Court Judge concluded his ruling against the statute with a plea to the legislature: "It is the hope of this Court that these types of cases will not have to be pursued by the prosecution in the remaining eighty-six counties."

His entreaty fell on deaf ears. CHILD members worked for seven years in Ohio for repeal, but the Ohio legislature would not change the statute. To this day, Ohio has 86 counties where parents who

belong to certain churches can legally let their children die without medical care and two counties where they cannot.

When laws discriminate against a class of adults, they are generally challenged in the courts. Laws discriminating against a class of children are much more difficult to challenge.

North Carolina and Nebraska join rank of clean states

We are pleased to report that North Carolina and Nebraska can be placed on the short list of states with no religious exemptions to child abuse, neglect, or criminal charges.

Our compilation of state religious exemption laws had listed Nebraska as having a civil code exemption from child abuse and neglect charges for parents providing "nonmedical remedial treatment" in lieu of medical care. In 1997, however, we searched the Nebraska code again and could not find the statute.

Current Nebraska law clearly requires parents to provide needed medical care for children without exception for religious belief in both the civil and criminal codes.

Nebraska also does not have a religious exemption from metabolic testing of newborns. It does, however, have a religious exemption from immunizations.

Other remedial care—substitute for medicine?

North Carolina had an exemption in its definition of a neglected juvenile. The law used to say children must be provided "necessary medical care or other remedial care recognized under State law." The Christian Science church and other faith healing groups have said that wording like the North Carolina statute means parents can do one or the other. They believe their care is recognized by the state in the sense that it is legal to pray, that faith healers are exempt from medical licensure, that the Internal

Revenue Service allows bills for Christian Science treatment to be deducted as medical expenses, etc.

Furthermore, the North Carolina civil code's definition of a neglected juvenile is used in the criminal code to define the duty to report suspected child abuse and neglect. See N.C. Gen. Stat. 14-316.1. Thus, children receiving "other remedial care" in lieu of medical care would not have to be reported to protective services.

In 1997, however, the North Carolina legislature enacted a new definition of neglected juvenile, which makes it clear that parents cannot substitute "other remedial care" when the child needs medical care. The new law states that a neglected juvenile is

A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent. . . or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. N.C. Gen. Stat., Sec. 7A-517(21)

This modest change is actually an enormous improvement. By placing the semicolon between the medical care and the remedial care and by putting in the word "necessary" before "remedial care," North Carolina law indicates that parents cannot substitute remedial care for medical care and also that the "remedial care" the parent supplies must be a form that is necessary to the child's health by objective community standards.

Criminal exemption also removed

As an added benefit, the exemption for other remedial care, and possibly spiritual healing, has been removed from the criminal code as well because the criminal code incorporates the civil code definition of child neglect by reference.

The three other states with no religious exemptions from child abuse, neglect, or criminal charges are Massachusetts, Hawaii, and Maryland.