

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

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*Equal rights for children under the law*



*Ken Casanova*

## **Ken Casanova receives first Imogene Johnson award**

Ken Casanova of Jamaica Plains, Massachusetts, is the first recipient of the Imogene Temple Johnson award, which CHILD will give annually. The award honors child advocacy.

Ken became aware of religious exemption statutes through reading articles about Robyn Twitchell, a Boston-area toddler who died of a bowel obstruction in 1986; his parents withheld medical care because they were Christian Scientists.

Ken contacted CHILD and declared his intention to get the Massachusetts religious exemption repealed. *continued on page 12*

## **Oral arguments set in CHILD suit**

Oral arguments have been scheduled for April 16 in CHILD's suit against the federal government for its Medicare and Medicaid reimbursements for "religious non-medical health care." CHILD is represented by Robert Bruno of Burnsville, Minnesota.

Both plaintiffs and defendants have filed motions for summary judgment, asking the court to rule on the reimbursement statutes without going to trial.

Judge Ann Day Montgomery has the option of ruling the statutes unconstitutional as CHILD has requested, upholding them, or ordering the case to go to trial so that more information can be gathered. CHILD and co-plaintiffs Dr. Bruce Bostrom and Steve Petersen contend that Christian Science nursing is a religious activity that should not be paid for with public money.

CHILD cites the case of *Baumgartner v. First Church of Christ, Scientist*, 490 N.E.2d 1319, 1325 (Ill. 1986) in which a widow sued a Christian Science practitioner, nurse, and the church for negligence in her husband's death. In that

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case the church argued that its nursing had ecclesiastical immunity from tort liability. The court ruled in the church's favor, holding that her complaint against the church's nurse and practitioner "would require a searching inquiry into Christian Science beliefs and the validity of such beliefs," an inquiry that "is precluded by the first amendment."

The federal government and the Christian Science church, which petitioned the court to enter the case as defendant-intervenor, argue that secular benefits of Christian Science nursing can be "unbundled" from their religious activities and the government will be paying only for secular services.

### **No diagnosis**

The statute requires, they point out, that a covered patient in a Christian Science nursing home have "a condition such that the individual would qualify for benefits . . . for inpatient hospital services or extended care services."

The statute also, however, forbids the government from requiring a medical diagnosis of patients getting religious non-medical health care. The government has no way of knowing that these patients have a condition that would entitle them to treatment in a medical hospital or skilled nursing facility.

### **Kennedy supports CS church**

Sen. Edward Kennedy, D-Mass., submitted an amicus brief in support of the church and the federal government. Kennedy argued that Congress has "both the power and the obligation" to "enact legislation that allows individuals the free exercise of their religious beliefs. . . ."

"All Americans who have contributed to the Medicare and Medicaid programs," said Kennedy, "should be able to benefit from those universal programs if they become ill and otherwise qualify for benefits—regardless of religion."

Kennedy also argued that the religious objectors who are reimbursed for the costs of "religious non-medical health care" will "still collect substantially fewer benefits than a fellow taxpayer undergoing traditional medical treatment in a hospital."

### **Special benefit for religion**

CHILD feels that Attorney-General Janet Reno has already answered Kennedy's arguments in her January, 1997, memo to Congress. The Medicare and Medicaid programs are set up to provide medical care. The benefits of medical care are available for anybody who wants them. The statutes, Reno said, "change the content of the benefit being offered from medical services to non-medical care. The Supreme Court has not indicated that accommodation may extend to the provision of special benefits."

CHILD has submitted many affidavits in support of its motion for summary judgment. Most extensive is a statement by Ruth Cook, who worked as a Christian Science nurse for thirty years. Cook explains how religious doctrine impacts on the nurses' training and work and the nurses' dependence on the practitioners, who offer fee-for-service prayers called treatments.

### **Former CS nurse testifies**

Christian Science nurses are taught, states Cook, "that they must not administer anything to the patient that would promote healing, as healing is exclusively the result of the practitioner's prayers and study of Christian Science."

Practitioners frequently talk to the nurses about the patients. They offer their "spiritual insights" about the patients' problems. According to Cook, they sometimes discuss with the nurses what the patient should be thinking or saying, instruct the nurses to read particular passages from Christian Science literature to the patients, or make suggestions about patient care.

The nurses report the patient's physical, mental, emotional, and spiritual condition regularly to the practitioners. When the patient dies, the practitioner is the first one called before the family or coroner and the nurse reads Christian Science literature to the body until the practitioner releases the patient from his or her prayers, Cook says.

Congress and the church repeatedly emphasize that Medicare and Medicaid do not pay for the



practitioners' prayers. Nevertheless, the practitioners receive indirect benefits in that all patients in Christian Science nursing homes must retain and pay for spiritual treatments from a church-approved Christian Science practitioner.

### **Home refuses dying member**



*Suzanne Shepard and Daughter Marilyn*

Dr. Suzanne Shepard, a professor of social work in St. Louis, testified as follows:

*My mother Marilyn McCreary was a Christian Scientist. For a year she suffered extreme pain from an illness and retained Christian Science practitioners to pray for her healing.*

*When her abdomen became very swollen, she sought medical care. A doctor diagnosed her illness as advanced ovarian cancer. He drained fluid from her abdomen, but said there was no surgery or medical treatment that could stop the disease.*

*My mother then requested admission to PeaceHaven, a Christian Science sanatorium in St. Louis.*

*PeaceHaven refused to admit her because she had obtained medical care. PeaceHaven told her*

*she would have to wait a full year after obtaining medical care before she could have care at PeaceHaven. My mother was taking no medication, but PeaceHaven nevertheless insisted she must wait a full year after seeing a medical doctor before she could be considered for admission to a Christian Science sanatorium.*

*My mother died in July, 1974, a few months after being rejected by PeaceHaven.*

CHILD used her affidavit to show that the Christian Science sanatoria have doctrinal criteria for admission. Church members are punished for resorting to medical care even if they are in extreme pain.

The government responded that the law also allows secular hospitals to have discriminatory admission policies. CHILD feels, however, that the analogy is invalid. The government is not just *allowing* the religious nonmedical health care institutions to discriminate on the basis of church doctrine, but in fact *requires* them to do so. The statute says the institutions must have religious beliefs against medical diagnosis and treatment in order to receive Medicare and Medicaid reimbursement.

### **Physician directs care**

Dr. Jordan Holtzman, an internist and professor of internal medicine and pharmacology in Minneapolis, provided an affidavit testifying that "Medicare and Medicaid only cover the costs of acute care patients who are under the direct care of a licensed physician or surgeon. They must be receiving medically or surgically recognized diagnostic workup or therapeutic interventions."

Treatments get such recognition only after "evaluation through scientifically designed trials," Holtzman said.

Holtzman reviewed the services provided by Christian Science nurses. He said the services "are not rendered in medical hospitals without the signed orders of a licensed physician, surgeon, nurse practitioner, or physician's assistant."



"In my opinion," Holtzman concluded, "if a patient has a condition serious enough to be admitted to a hospital, there is no care which is appropriately rendered by a Christian Science nurse or other untrained person."

### **CS nursing never the same as medical care**

The defendants argue that the federal programs are paying only for services of Christian Science nurses such as personal care, food service, and help with mobility that are provided in medical hospitals. CHILD contends the activities of the church's nurses are not comparable to those of medical nurses because the church's nurses do not work under the supervision of physicians and do not know what disease the patient has.

Dr. Seth Asser, the chairman of CHILD's board of directors, also submitted an affidavit about an article entered into evidence by the church. The article, "Pressure Sores in a Christian Science Sanatorium" by J. H. Holmes, et al., *American Journal of Forensic Medicine and Pathology*, 1993, reports the medical examiner's observation that the bodies taken from the Christian Science nursing home in Dallas, Texas, were less likely to have pressure sores than those taken from secular nursing homes. The medical examiner concluded that the difference had to be due to better quality care by Christian Science nurses.

### **No control group**

Asser argued that the conclusion was not valid. "In medical and scientific research," Asser said, "there is always a 'control' group to ensure that the findings noted had no other explanation than the variable(s) under study. A requirement for such a control group is the need for its members to be as similar as possible to those in the study group. That is not true in this report. People in hospitals and many nursing homes have illnesses and conditions such as nerve disorders, diabetes, and atherosclerotic artery blockage, that predispose them to pressure sores. In addition, it takes time for such sores to develop after the onset of such conditions. Resi-

dents of the Christian Science sanatorium would have been unlikely to survive for very long without the medical care required for the conditions that increase the risk of pressure sores. Thus, the study group has a built in bias to select individuals who are unlikely to have sores. . . . The authors make no attempt to present evidence that the two groups were medically comparable and therefore the conclusions of the authors are not defensible."

### **Amici for CHILD**

The Minnesota Civil Liberties Union, Council for Secular Humanism, Americans for Religious Liberty, American Ethical Union, and the American Humanist Association entered the suit as *amicus curiae* in support of CHILD's position. Their argument begins as follows:

*This is an unusual Establishment Clause case. It does not involve the traditional dilemma of a conflict between Free Exercise Clause guarantees and Establishment Clause jurisprudence. . . . Aside from the religiously-based exemptions, Medicare and Medicaid are facially neutral, generally applicable programs and accordingly do not generate Free Exercise concerns. Employment Division v. Smith, 494 U.S. 872, 885 (1990).*

*Moreover, this case is unusual because even without the threat of any legally viable Free Exercise suit, the government is fighting this battle in an effort to spend rather than save money. Obviously Congress' effort here is a short-sighted attempt to appease Christian Science lobbyists.*

*The consequences of this legislation are profound. Secular health care facilities must spend the money necessary to satisfy Medicare and Medicaid standard of care requirements to be qualified providers while religious entities that provide non-medical care do not carry the same financial burden. . . . Most ironically, states battle in court to secure medical care in lieu of prayer healing for gravely ill Christian Scientist children while under the Medicare and Medicaid religious exemptions the government endorses and the public is forced to pay for Christian Science prayer healing.*



*In short, these statutory religiously-based exemptions are precisely the kinds of religious preferences that the Establishment Clause was intended to outlaw. They are unconstitutional violations of the separation between church and state.*

### **Second suit challenges new law**

CHILD, Bostrom, and Petersen first filed suit against the federal government over its Medicare/Medicaid reimbursements for Christian Science nursing in 1996. The court ruled the statutes providing such payments unconstitutional. Congress then passed new statutes mandating payment for "religious non-medical health care." CHILD filed a second lawsuit challenging the new statutes.

The oral arguments before Judge Ann Montgomery are scheduled for 1:30 p.m., April 16, in the U. S. District Court of Minneapolis. The lawsuit is cited as *Children's Healthcare Is a Legal Duty, Inc., et al. vs. Nancy-Ann Min DeParle, et al. and the First Church of Christ, Scientist*, U.S. Dist. Court, Dist. of Minnesota, civ. 97-1794. The citation for CHILD's first lawsuit challenging the payments is *Children's Healthcare Is a Legal Duty, Inc. v. Vladeck*, 938 F.Supp. 1466 (D.Minn. 1996).

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### **Nebraska toddler injured by religious fast**

Bruce and Julie Tharalson of Chadron, Nebraska, were arraigned February 17, on felony child abuse charges for depriving their daughter of food.

According to court documents, the unemployed parents say they conducted a 40-day fast for religious and financial reasons. They considered stopping the fast after two weeks, but they listened to a cassette tape which told them "not to cave in and not to quit."

Their 21-month-old daughter Ashley lost seven of her 26 pounds during the fast.

Ashley was taken to the Chadron Community Hospital December 5 after she developed a fever and

began having seizures. The next day she was placed into protective custody with the Nebraska Department of Health and Human Services.

A doctor told police that Ashley was suffering from severe malnourishment, and moderate to severe dehydration. She was "very lethargic and suffering from partial seizure activity."

### **Brain shrinkage**

She was transferred to a regional hospital in South Dakota and given neurological rehabilitation treatments five times daily.

Her prognosis is uncertain.

A December 23 CT scan and MRI continued to show a shrinkage of Ashley's brain and a large collection of fluid near a delicate membrane of the spinal cord and brain.

Mrs. Tharalson told police that Ashley was handling the fast real well, at least up to when she was taken to the hospital.

Mr. Tharalson said the fast was a large mistake, and that he and his wife are remorseful, court documents said.

Taken from *The Chadron Record*, January 13, 20, and 27, 1998.

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### **South Dakota keeps exemption to misdemeanor**

A bill to repeal South Dakota's religious exemption to non-support charges was defeated in the state senate on February 17, 1998.

In 1990 South Dakota became the first state in the nation to repeal religious exemptions in both the civil and criminal codes.

Five babies had died in the 1980s near Sioux Falls, South Dakota, in a Pentecostal sect called End Time Ministries that discouraged medical attention for disease or childbirth. Then the sect leader received a vision that the End Time members should move to Lake City, Florida. Nearly all did so. End Timers generally refuse to have contact with former members and relatives outside the group. A



support group of anguished, concerned relatives was formed in Sioux Falls. United Church of Christ pastor Geri Smith, now Geri Behringer of Beresford, provided hundreds of hours of counseling to support group members.



*Geri Behringer*

Joni Clark, who lost her first baby while a member of End Time Ministries, was willing to testify against the religious exemption laws, which encouraged parents in faith-healing sects to withhold medical care.

Rep. John Timmer, R-Sioux Falls, sponsored a repeal bill in 1990. It passed the legislature overwhelmingly in the glare of media attention and with hundreds of calls to legislators by the parent support group. The bill repealed religious exemptions to child neglect, felony child endangerment, nonsupport, metabolic testing of infants, and dependent adult abuse.

Advocates believed they had removed all religious exemptions from a duty to provide medical care for a sick child.

### **Exemption overlooked in 1990**

In 1994, however, legal scholar Jennifer Rosato reported that South Dakota still had one religious

exemption to nonsupport ("Putting square pegs in a round hole: procedural due process and the effect of faith healing exemptions on the prosecution of faith healing parents," *Univ. of San Francisco Law Review* 29 (Fall 1994). Legislative Research Services had not informed Timmer of the second exemption to nonsupport when he asked them for a list of all the exemption statutes.

The remaining exemption reads: "Any parent who chooses nonmedical remedial health services recognized or permitted under state law in the legitimate practice of religious beliefs in lieu of medical attendance is not for that reason alone in violation of 25-7-17 and 25-7-20 [laws requiring parents to support their children]." SD Stat. 25-7.17.1 Violation of the support statutes is a class 1 misdemeanor.

### **Endorsements for repeal bill**

In 1998 Assistant Majority Leader, Rep. Steve Cutler, R-Claremont, introduced a bill to repeal the exemption. Joni Clark, now a Sioux Falls attorney, and CHILD President Rita Swan testified for the bill in the House and Senate.

The bill was endorsed by the South Dakota Association of Christian Churches, South Dakota Chapter of the American Academy of Pediatrics, South Dakota Medical Association, South Dakota Nurses Association, South Dakota Health Care Association, Family Law Section of the South Dakota Bar Association, and South Dakota State's Attorneys Association.

Several of those organizations had representatives who testified for the bill and contacted legislators individually.

### **Healing of wasp stings described**

South Dakota has only one Christian Science church, located in Rapid City, and one church-accredited Christian Science practitioner, Eileen Gunderson. Gunderson testified in the House committee about the many healings her family had had because of Christian Science. As a school girl she was required to accept a vaccination, but prayed to know that the vaccine could not harm her and it



did not. Also, her daughter was stung by yellow jackets as a toddler. Gunderson told her daughter she had to love the yellow jackets because they were God's creatures. Gunderson also did metaphysical work to know that the yellow jackets had to love her daughter. The next day her daughter was well. Gunderson is a frail woman who looks well over 80 years old. The healings she related must have happened over half a century ago.

The House committee was not persuaded. They voted for the repeal bill by 12-0. It passed the full House by 43-24.

### **Eagle Forum attack**

The Eagle Forum, however, mounted a full-scale attack on the bill. We suspect that Eagle Forum acted at the request of the Christian Science church. Gunderson brought a man to the Statehouse who sat at a table; she and Eagle Forum's lobbyists fanned out to talk to legislators and then reported back to him many times a day.

In the Senate committee people with extreme anti-government views came to testify against the bill. Joel Fink said, "My Bible tells me children are an inheritance from my God. I take my children to a doctor, but that's my choice." He felt the state should not require any parents to get medical care for children.

### **Religious beliefs against insurance**

Joni Clark pointed out that the South Dakota Supreme Court ruled in *State v. Cosgrove* (1989) that a driver must get liability insurance for his car even if he had religious beliefs against insurance. The state has a legitimate interest in requiring car insurance and certainly should require medical care for children, Clark argued.

### **Kids belong to parents and God**

Such logic did not impress Fink. He said, "I didn't get my car from God, but I got my kids from God."

Gunderson's son-in-law, Jim Olson, testified against the bill. He is an attorney in Rapid City and,

reportedly, a prominent donor to Republican candidates.

### **Exemption a 1990 compromise, opponents say**

Olson claimed that the second religious exemption to nonsupport was deliberately left in the code in 1990 as a negotiated compromise with child advocates.

This is false. Rep. John Timmer and child advocates drafted the 1990 bill with no input from Christian Scientists. The bill never at any stage included provision to repeal the second religious exemption to nonsupport.

Clark distributed copies of the 1990 bill to the legislators, but the Rapid City Senators nevertheless believed Olson and gave his claim as their reason for opposing the bill.

Meanwhile, the Senators began receiving many calls and letters against the bill. One Senator said he received 200 calls against it. There probably are not 50 Christian Scientists in the whole state, so we believe Eagle Forum generated most of the calls.

### **Eagle Forum opposes vaccination registry**

A national organization founded and run by Phyllis Schlafly, Eagle Forum opposes women's rights, American participation in the United Nations, multicultural education, etc.

It opposes proposals to establish a central registry of children's immunization records.

The South Dakota callers claimed that the bill to repeal the religious exemption to nonsupport would force pregnant women to obtain state-licensed prenatal care, do away with the religious exemption from immunizations, and stop parents from using any "nonmedical means" to relieve a child's illness.

### **Legislators wait for more deaths**

Another argument against the bill was that no South Dakota children, to our knowledge, had died since 1990 because of religious beliefs against medical care. Several legislators thought they should not change the law again unless more children died.



Clark spent 10 days in Pierre lobbying for the bill at her own expense. Geri Behringer and members of the parent support group called senators. But the South Dakota Senate defeated the repeal bill by 26-9.



*Attorney Joni Clark*

Right-wing groups fought not only for the religious exemption but also for unlicensed midwives. Bills were introduced to exempt them from liability. Parents testified that home births were several times safer than hospital births. The bill that passed gave a family member the right to assist in a birth that does not occur in a hospital or medical clinic.

The new law exempts family members from charges of unlicensed medical practice, but may not exempt them from civil or criminal negligence charges.

In 1990 the legislature cared about those South Dakota babies who died in unattended home deliveries. It was sad to see at the Statehouse this year the fervent promotion of home births without medical attention.

## Lead poison screening fought

The Christian Science church is seeking a religious exemption from lead poison screening in Maryland. HB1388 provides that no "screening for lead poisoning" can be required "if the parent or guardian of the child objects to the lead poisoning screening because it conflicts with the parent's or guardian's bona fide religious beliefs and practices."

Lead is a significant health hazard to children because their developing intestinal tract cannot remove lead effectively. In 1991 the Centers for Disease Control reported that one in six U. S. children had elevated lead levels in their bodies.

Lead can cause developmental and intellectual delays, seizures, blindness, hearing impairment, and even death. See Julie McNamara et al., "Lead poisoning in young children: parent handout," National Association of School Psychologists (October 1995).

Lead-based paint, which was used until the late 1970s, is a primary source of lead exposure. Other sources are soils contaminated by gasoline or other industrial products, lead water pipes in older homes, preservation of some imported foods in lead-soldered cans, and lead used in some occupations and hobbies.

### Symptoms not obvious

Many children with lead poisoning do not show obvious symptoms, and the majority of cases go undiagnosed and untreated. Universal screening would, therefore, be highly desirable.

Preliminary screening simply involves questions by a health care provider. If there is reason to suspect lead poisoning, then a blood test is given. Lead levels in the body can be reduced with oral chelating agents. See American Academy of Pediatrics, "Treatment guidelines for lead exposure in children," *Pediatrics* 96 (July 1995): 155-60.

Supporters of Maryland's religious exemption bill point out that six states already have religious exemptions from lead poisoning screening: Massa-



chusetts, Rhode Island, New Jersey, Delaware, Maine, and Illinois.

The bill is sponsored by Delegate Ronald Guns, chairman of the House Environmental Matters Committee.

### **Screening of faith-healers' children causes public health emergency?**

The final paragraph of the bill states, "AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health and safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted."

CHILD does not believe that depriving a class of children of the benefits of lead poisoning screening preserves public health and safety.

The religious exemption is also opposed by child abuse organizations, mental health providers, physicians, health and safety organizations, the Maryland Parent-Teachers Association, and the Presbyterian Church.

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### **Child support award reversed on religious grounds**

In January a Minnesota Appeals Court reversed a child support award because of religious freedom rights in the Minnesota Constitution and remanded the case to the district court for another disposition.

Daniel Murphy and his wife Sandra Beck were active members of Christ's Household of Faith. The church requires its members to live and work full-time in its communal society. They may hold part-time jobs outside the church that do not interfere with church activities. In 1993 Beck left Murphy and filed for divorce. She was awarded custody of their five youngest children.

### **Fulltime work in commune required by church**

Since 1994 Beck and the children have received public assistance. At a hearing on Ramsey County's motion to establish child support, Murphy testified that he has never been paid for work in church businesses, the church provides him with housing and other benefits, and Beck and their children would be entitled to similar church benefits if they continued to live in the commune.

The administrative law judge ruled that he was "voluntarily unemployed and underemployed" and ordered him to pay child support of \$668 a month.

Murphy appealed. He argued that the state was interfering with his religious freedom and was not using the least restrictive means to do so.

The Minnesota Constitution, Article 1, Section 16, provides that "the right of every man to worship God according to the dictates of his own conscience shall never be infringed; . . . nor shall any control of or interference with the rights of conscience be permitted."

The Minnesota Appeals Court held that the provision is more protective of religious claims than the First Amendment to the U.S. Constitution. The state of Minnesota can restrict a religious practice only when the state has a compelling interest in peace or safety or stopping a licentious act and when the state imposes the smallest burden on religious freedom to achieve its interest.

The Court ruled that the state did have a compelling interest in assuring that parents provide primary support for their children. It questioned, however, whether the lower court's method of setting the child support was the least restrictive burden on Murphy's religious freedom rights. It therefore remanded the case for another hearing.

### **RFRA limits state options for protecting kids**

The ruling is similar to that of *Hunt v. Hunt*, 648 A.2d 843, 850-51 (Vt. 1994), in which the Vermont Supreme Court held that the federal Religious Freedom Restoration Act (RFRA) required overturning a contempt order. The Vermont father argued that paying child support was against his



religion. The Court held that the state had a compelling interest in ordering him to support his children, but overturned the contempt of court order against him because it might not be the least restrictive means to obtain the support payments.

CHILD Inc. and the American Professional Society on the Abuse of Children (APSAC) filed an amicus brief against RFRA in *City of Boerne, Texas vs. Flores*. They argued that child protection is so important that the state should be able to use a variety of means to achieve it, not just the one that is least restrictive of religious freedom. The U. S. Supreme Court overturned RFRA as unconstitutional on June 25, 1997.

The Minnesota support case is *In re the Marriage of: Daniel Charley Murphy, petitioner, Appellant, vs. Sandra Marie Murphy, n.k.a. Sandra Beck, Respondent*, Ramsey County District Court file # DMF9933457.

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## Religious objector issues raised at San Diego conference

The San Diego Conference on Responding to Child Maltreatment, held January 27-30, 1998, included several presentations dealing with faith-healing issues.

CHILD President Rita Swan gave a general session talk to the entire conference entitled "Religion-based Medical Neglect: Update on the Status of the Children We Abandon." She reported on developments since her general session address to the San Diego conference six years ago.

### Four recent developments

The most negative development, in Swan's opinion, is the religious exemption passed by Congress in 1996. It states that the federal child abuse law does not "establish a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian." PL 104-235, Sec. 112 See the CHILD newsletter 1994, #4.

A second trend of concern, Swan said, is the intense publicity given to so-called alternative medicine and the mind-body connection. Faith healers promote their methods as one more kind of alternative medicine that should be allowed in a free market.

A third negative development is legislators' indifference to the public welfare. Swan pointed out that Congress enacted the religious exemption and mandated Medicare/Medicaid coverage for "religious nonmedical health care" with no hearing or discussion. Legislators are often indifferent to concerns of constituents about child welfare.

A hopeful development cited by Swan was a Minnesota ruling that held a Christian Science practitioner and nurse responsible for the death of a child. *Lundman v. McKown*, 536 N.W. 807 (Minn. App. 1995).

### Value of prosecution debated

The San Diego Conference also included a point/counterpoint workshop on "Should religious objectors be prosecuted for medical neglect?" moderated by Judge Harry Elias of Vista, California.

David Dunn, Sonoma County Deputy District Attorney, of Santa Rosa, California, told about his prosecution of Christian Science parents who let their 8-month-old baby Natalie Rippberger die of meningitis without medical care. She suffered many convulsions and other alarming symptoms for two weeks. Dunn won a jury conviction of felony child endangerment that was upheld on appeal. *People v. Rippberger*, 231 Cal. App. 3d 1667 (1991).

UCSD law professor Paul Horton opposed prosecution of religious objectors. "We're not talking about abuse, neglect, or irresponsibility," he said. He characterized prosecution as a pointless waste of public resources that would not change any parent's behavior. He also attacked the motives of prosecutors. "These cases are fun for prosecutors. They get lots of publicity. They like to serve process on God," he claimed.

Jaap Doek, a professor at the Law School of Vrije Universiteit in Amsterdam, argued that the



parents' religious sincerity cannot be a bar to prosecution when it causes severe harm or death. The time for the state to take account of the parents' sincerity is at the sentencing, he said.

Christian Science public relations managers for northern and southern California attended the workshop. They pointed out that in the same year that three sets of Christian Science parents in California were indicted for letting their children die of untreated meningitis, other California children died of meningitis, but their parents were not prosecuted.

### **Grandchild endangered**

Imogene Johnson, a retired professor of education, spoke about the plight of her granddaughter Hayley. The child was born with a bone disorder. Her medical needs were a focus of tension between her parents because her mother is a Christian Scientist. Eventually the parents divorced.

Hayley has had several surgeries. Now living in another state, her father has had many battles in family court to compel follow-up care for her, Johnson said.

### **The mature minors issue**

Another workshop was entitled "Medical Care Decisions by 'Mature' Minors: Legal and Ethical Implications" and moderated by Cindy Fujii, a local pediatrician. Panelists discussed how adolescent development influences medical decision making, psychiatric and legal criteria for "competency," and the "mature minor doctrine" in case law.

Some ethical questions posed were:

1. When does an adolescent have the right to decide on and offer consent for treatment?
2. Does a teenager have the maturity to make such decisions? Who decides whether or not the teenager has sufficient maturity?
3. If the adolescent does not have autonomy, then who has the right to decide critical, potentially life-threatening healthcare issues for a teenager?
4. Can even a mature minor be free from coercive influences of his/her guardians?

5. What implications do such questions and their potential answers have for other arenas such as juvenile custody and prosecutions?

Sexually active adolescents are an obvious focus. Robert Madruga, San Diego County Deputy District Attorney, pointed out that a person under the age of 18 cannot get a tattoo or body piercing without parental consent, but a 12-year-old can get an abortion without parental consent. Texas pediatrician and CHILD board chairman Seth Asser said that a doctor can prescribe antibiotics to a minor for treatment of sexually transmitted disease without parental consent, but must have parental consent to prescribe the same drugs for other diseases.

Saul Levine, a psychiatrist at San Diego Children's Hospital, stated decisions should be highly individualized based upon the specifics of each case. He has testified in court that a 13½-year-old girl was competent to refuse a transfusion.

### **Guidelines for clearcut decisions**

Jaap Doek reported that in the Netherlands the policies are clearcut: all 16-year-olds can get medical treatment without parental consent, those under 12 must have parental consent, and those 13 to 15 years old must have both the parents' and the child's consent for medical treatment.

CHILD's concern is with minors or parents refusing medical care. We acknowledge that many teenagers have mature decision-making skills and personal religious convictions. We believe, however, that the state should order medical treatment for anyone under the age of 18 if it has a reasonable likelihood of preventing death or serious harm. See the CHILD newsletter, 1996, #3.

The last event in the conference directly related to CHILD's purposes was a roundtable discussion on religious objector issues, an informal question and answer session moderated by Asser and Swan.

This year CHILD had an exhibitor's booth. Eighty people took copies of Swan's talk, and CHILD acquired some new members and friends.





*Bob Steiner*

Thursday evening CHILD held a dinner attended by 59 people. The Imogene Johnson award was given (see page 1). Guests were also treated to a wonderful magic performance by Robert Steiner of Pinole, California. Bob is a past president of the Society of American Magicians.

Held each January, the San Diego Conference is one of the country's largest and most respected conferences on child abuse. This year 1600 people from every state and thirty-three foreign countries attended. CHILD is deeply grateful to the conference for offering these opportunities for public education on religion-based medical neglect of children.

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## **CHILD members publish**

The April issue of *Pediatrics*, the official journal of the American Academy of Pediatrics, will include an article by CHILD board chairman Seth Asser and president Rita Swan. Entitled "Child Fatalities From Religion-Motivated Medical Neglect," the article reviews 172 deaths of children between 1975 and

1995 whose parents deprived them of medical care and relied exclusively on faith for healing.

The March issue of *The Advisor*, a publication of the American Professional Society on the Abuse of Children, includes an article by Swan entitled "Religion-based Medical Neglect and Corporal Punishment." The article accompanies a "case conference" in which a psychiatrist, pastor, and social worker discuss a 9-year-old boy who was severely beaten by his mother's paramour. The abuser was a church deacon and claimed a biblical basis for his actions.

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The Christian Science church's international headquarters are in Boston Massachusetts. Ken is a single man with a chronic illness and limited financial resources. But Ken never wavered in his confidence that he could get the statute repealed.

Ken's state representative first introduced a bill to limit the exemption in 1988. Ken asked for endorsements from many organizations who declined, but he ultimately called upon Jetta Bernier, director of the Massachusetts Committee for Children and Youth. She became one of his strongest allies.

In 1991 a coalition to work for the repeal of the religious exemption was formalized. More than two dozen organizations endorsed repeal and sent representatives to regular meetings in Jetta's office. Ken wrote the coalition's major position paper, "Death by Religious Exemption," a 46-page statement.

After more than six years of hard work by Ken and other advocates, Massachusetts finally repealed the religious exemption in 1993.

The award for child advocacy service was established by Dr. Imogene Temple Johnson of Jackson, Mississippi. She is a retired professor of education, who now volunteers her services to an elementary school.

We have wanted for several years to honor some of our heroes. We thank Dr. Johnson for making it possible.