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Robert Bruno, Rita Swan, and Leonard Nelson

Oral arguments held in CHILD suit

On October 18, oral arguments were heard by the Eighth Circuit, U.S. Court of Appeals, in CHILD's appeal from summary judgment of its lawsuit over Medicare and Medicaid payments for "religious non-medical health care." *CHILD et al. v. Min de Parle et al.*, civ. 98-3521, 8th cir.

When Congress established the Medicare and Medicaid programs in 1965, it provided payments to Christian Science sanatoria and, in Medicaid cases, to Christian Science nurses who care for sick patients in their homes. These nurses are not state-licensed and do not work under the supervision of

physicians. Christian Science theology teaches that matter does not heal, so its nurses are forbidden to give "any physical application beyond the normal measures of cleanliness."¹ They cannot, for example, use any lotion or soap containing anti-bacterial agents. Because Christian Science teaches that matter is evil, its nurses cannot use anything material to relieve discomfort, such as applying ice or heat to an injury or giving laxatives. The nurses are forbidden to touch the patients with the motivation of promoting healing or relieving pain. They are not allowed to give a backrub or massage. Because Christian Science theology prohibits "material" evaluation of disease, the nurses cannot take a pulse or use a fever thermometer. They are not trained to recognize the symptoms of contagious disease. They feed patients, but are not allowed to prepare diets tailored to the patients' symptoms.

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In 1996 CHILD and two of its Minnesota members, Dr. Bruce Bostrom and Steve Petersen, filed a taxpayers' suit against the federal government challenging the payments. Later that year, a federal district court ruled them unconstitutional.

In 1997 Congress removed references in the statutes to Christian Science and substituted "religious non-medical health care." CHILD, Bostrom, and Petersen filed a second suit against the federal government challenging the new statutes. Robert Bruno of Burnsville, Minnesota, has represented CHILD in both suits.

Minnesota Federal District Judge Ann Montgomery ruled against CHILD in 1998, granting summary judgment for the government and the Christian Science church, which entered the case as defendant-intervenor.

Many amici for parties

CHILD filed an appeal to the Eighth Circuit, U.S. Court of Appeals. The American Academy of Pediatrics, American Medical Association, American Nurses Association, and the Iowa Medical Society filed an amicus brief in support of CHILD. It was prepared by David Leitch, Stephan Lawton, and Christopher Yoo of the Hogan and Hartson law firm in Washington DC.



Joanne Brant

A second amicus brief in support of CHILD was filed by the Minnesota Civil Liberties Union, American Humanist Association, Americans for Religious Liberty, and the Council for Secular Humanism and written by Joanne Brant, a professor at Ohio Northern University College of Law.

Two amicus briefs were also filed in support of the defendants, one by Senator Ted Kennedy, D-Massachusetts, and another by the Christian Legal Society, National Council of Churches of Christ in

the U.S.A., Christian Medical and Dental Society, National Association of Evangelicals, General Council on Finance and Administration of the United Methodist Church, and Presbyterian Church (U.S.A.).

The statutes enacted in 1997 and challenged by CHILD define hospitals and skilled nursing facilities (SNFs) to include "a religious non-medical health care institution" (RNHCI). Federal law requires that the RNHCI provide on a 24-hour basis "only nonmedical nursing items and services exclusively to patients" with religious objections to medical care and "exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients." Federal law also requires that the RNHCI have "religious beliefs" against providing "medical items and services" to its patients and that it have no affiliation with a medical provider or anyone with an ownership interest in medical treatment or services."

No diagnosis

To receive Medicare or Medicaid reimbursement for a patient's care, the patient must have "a condition such that the individual would qualify for benefits" for care in a medical hospital or skilled nursing facility. But federal law prohibits requiring any RNHCI patient to undergo "medical screening, examination, diagnosis, prognosis, or treatment" or subjecting a RNHCI or any of its staff "to any medical supervision, regulation, or control."

Feds rely on Christian Science committees

Determinations about whether the RNHCI patients have "a condition" that would admit them to a medical hospital or skilled nursing facility and how long they would be allowed to receive treatment in those facilities are made by the RNHCIs utilization review committee. Federal law requires that the committee include RNHCI administrators and nursing supervisors, but not anyone with medical training.

Congress released the RNHCIs from scores of requirements that medical hospitals and skilled nursing facilities must meet. Congress did give the

Secretary of HHS authority to hold the RNHCIs to "other" standards that she finds necessary "in the interest of the health and safety" of patients, of "quality of care," and of making "coverage determinations." However, the Secretary may determine that the RNHCI is satisfactory in all these respects on the basis of "reasonable assurances" by an association that accredits the RNHCIs.

"Resorts for the so-called sick"

Christian Science sanatoria were established to carry out church founder Mary Baker Eddy's wish for "a Christian Science resort for the so-called sick."² They were originally accredited by the First Church of Christ, Scientist, in Boston. In the mid-1990s, the church transferred this responsibility to a body called Association of Organizations for Christian Science Nursing. All the commissioners and the executive director of this accrediting association are members of the Christian Science church.

RNHCI patients must sign a statement that they are "conscientiously opposed" to medical treatment and that it is inconsistent with their "sincere religious beliefs."

Special benefits vs. normal benefits

CHILD's suit rests on the argument that the Medicare/Medicaid payments to the RNHCIs are special benefits provided on the basis of religious belief rather than normal benefits generally available to taxpayers. CHILD points out, for example, that Medicare is expressly prohibited from paying for custodial care except as incident to hospitalization for medical treatment. The average stay in a Christian Science sanatorium exceeds 25 days for each admission. Few diseases today are treated in a medical hospital for more than 25 days with care reimbursed by either private or public health insurance.

Christian Science literature describes the reimbursement scheme in its sanatoria as follows:

Medicare is a type of insurance and as such carries a deductible. Coverage typically is as fol-

lows: The first sixty days of room, board, and nursing are fully paid, minus the initial deductible. The next thirty days are called co-insurance days. Medicare pays an amount toward the daily rate and the patient pays a portion (the co-insurance amount). At the end of ninety days of coverage the patient's benefits are exhausted. But only for that "spell" of illness.³

Since no medical diagnosis is made, patients can be, and reportedly have been, sent home for thirty days and then they return to the sanatorium to get more Medicare-reimbursed care for another "spell" of illness.⁴

The defendants argue that RNHCI patients have paid taxes into the Medicare fund throughout their working years and should be entitled to a portion of benefits from the program. They argue that Christian Science nurses are providing some secular services separate from their religious ministry and that the government is paying only for the secular services. They also argue that custodial care in medical hospitals can be "unbundled" from medical care.

Subset of medical care

Minnesota Federal District Judge Ann Montgomery agreed with the defendants. Her ruling was, she wrote,

premised on the notion that nonmedical nursing services, including such things as feeding, cleaning, clothing, and other aspects of physical maintenance, can be "unbundled" from medical nursing services. As such, a resident of a RNHCI would not be receiving "special" benefits. Such an individual would receive basic care without any medical component, meaning that they would receive a *subset* of normal services rather than "special" benefits *above and beyond* the norm.

Relying on *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to evaluate the suit, she held that the challenged statutes had "a clear secular purpose" to "ensure more egalitarian access to health care benefits."

On appeal to the Eighth Circuit, CHILD argued that the services provided in RNHCIs cannot rationally be classified as a subset of services provided in medical hospitals. Even the most menial aspects of patient care in a medical hospital are under the control of physicians and are carried out in response to a medical diagnosis. Hospitals do not feed or clean patients in total ignorance of the patients' medical condition.

"Standard training" for Christian Science nurses

Christian Science nursing cannot be regarded as more skilled than custodial care. A state court has said that "standard training" for Christian Science nurses "covers only how to bathe and feed patients and how to change bed linen." *Quigley v. The First Church of Christ, Scientist*, 76 Cal.Rptr. 2d 792 (1998).

Before the Medicare and Medicaid programs were established by Congress, Christian Science care facilities were called nursing homes by the church and its members. But Medicare was not supposed to pay for nursing home care. In 1964 the church officially designated some of their facilities as "sanatoria" and testified before Congress that they were "only for the care of patients who would be confined in a hospital if they were not relying entirely on Christian Science for healing."⁵

"Christian Science sanatoria," the church admitted, "perform services that are, to a degree, similar to those in personal care nursing homes."⁶

"The distinction between sanatoriums and personal care nursing homes," the church testified, "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; personal care nursing homes do not require the same skilled professional attention."⁷

"Christian Science as a healing method cannot be scientifically compared to medicine using medical standards because Christian Scientists do not diagnose medically. However, a Christian Scientist knows when he is very sick or bedfast just as well as

any other individual, and we believe that [our standards for establishing a need for sanatorium care] are adequate to exclude the senile, recuperatives, malingerers, hypochondriacs, and persons only moderately ill."⁸



Christian Science Sanatorium in Minneapolis

Govt.: CS cannot be compared to medical care

The federal government used the church's standards for determining coverage in a U.S. Health Care Financing Administration (HCFA) manual, which stated:

To be covered under Medicare, sanatorium services must be: (1) reasonable and necessary for the treatment of the individual's condition; and (2) it must be reasonable to provide the needed care on an inpatient basis in a Christian Science sanatorium, rather than in a less costly facility or on an outpatient basis. In determining whether an individual requires a covered level of sanatorium care, it is *irrelevant* to consider whether the individual would be covered in a hospital or skilled nursing facility, *since the two systems of healing are not parallel*. The need for the continuing availability of skilled Christian Science nursing services; that is, services which can only be

provided by or under the direct supervision of a graduate from an accredited Christian Science nursing training course, is a determining factor in deciding whether sanatorium services are covered. (emphasis added)⁹

CHILD argues in its briefs that only a Christian Scientist would think the church's nursing services were "reasonable" and "necessary" for the treatment of a disease. The government has no objective standards for making such determinations. Registered medical nurse Jenean Erickson submitted an affidavit in the suit stating, "If it is true that Christian Science graduate nurses have no training in medicine or first aid, 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." She also stated that she was aware of no physical condition "for which it is reasonable or necessary to provide needed care on an inpatient basis in a Christian Science sanatorium."

When the federal manual was written, "Christian Science graduate nurses" were those who had graduated from the church's three-year training program and were listed as graduate nurses in *The Christian Science Journal*. Today the *Journal* does not list any people as "graduate nurses" because the church has cancelled its training programs and does not require formal training for *Journal* listing. Some Christian Science care facilities offer short-term training courses, but they are not a prerequisite for *Journal* listing.

Custodial care should not be reimbursed

HCFA relied on the sanatorium's admission committee to determine that the patient required care in a church-accredited facility by a church-accredited "graduate nurse." Although HCFA said it would not pay for custodial care in Christian Science sanatoria, it never described what care the graduate nurse rendered that was above the level of custodial care or what conditions required the care of a graduate nurse. And although the church testified that the sanatoria would care only for patients with diseases that would require medical

hospitalization, HCFA made no attempt to verify their eligibility for medical hospitalization, saying that it was "irrelevant."

After CHILD filed its second suit, the federal government cancelled its manual on coverage for Christian Science nursing. HCFA now claims that it is covering only patients with a condition that would qualify them for treatment in a medical hospital or SNF, but has not explained how it verifies the condition of patients without a diagnosis.

Proven therapeutic value of treatment is a prerequisite to benefits under Medicare and Medicaid. In Christian Science sanatoria, the only "treatment" allowed is prayer by Christian Science practitioners. The nurses are prohibited from doing anything to heal the patient because the healing must come exclusively through the practitioners' spiritual treatments. The government has no way of determining the therapeutic value of prayer and should, CHILD argues, therefore not be paying for Christian Science nursing care.

Govt. promotes spiritual treatment

CHILD also argues that the state is paying for and promoting religious activity in violation of the Establishment Clause. Medicare and Medicaid are paying for the total costs of the sanatoria per patient not simply for specific services of feeding or bathing patients. All nurses and administrative staff in Christian Science sanatoria must be members of the Christian Science church. All patients in Christian Science sanatoria must pay for prayers by church-accredited Christian Science practitioners. By reimbursing sanatoria with such a requirement, the government indirectly augments the practitioners' fees for their prayers, CHILD argues.

Justice warns of constitutional problems

The U.S. Department of Justice has sent Congress at least two letters advising them that statutes mandating payments for Christian Science care may be unconstitutional. The first, signed by Attorney General Janet Reno (January 23, 1997), was reprinted in the CHILD newsletter 1997, #1, and dealt with the statutes ruled unconstitutional in CHILD's first

suit against the federal government. In the letter she refused to defend the prior statutes on appeal, a decision that provoked bitter criticism from some U.S. Senators.

The second letter by Assistant Attorney General Andrew Fois (June 13, 1997) warned Congress of potential violations of the Establishment Clause in its draft legislation to amend the statutes.

The defendants argue that all constitutional problems were remedied by the legislation passed in August, 1997, that substituted "religious non-medical health care institutions" for "Christian Science sanatoria" in the statutes mandating Medicare and Medicaid reimbursements.

CHILD believes that Congress did not correct all of the constitutional problems pointed out by the Attorney General's office. Fois's letter complained that the bill provided payment for stand-alone nursing care for a select class of religious believers. "Many ailing persons—whether religious adherents or not—no doubt would like compensation for the expenses they incur for nursing care unaffiliated with medical care, or for other alternative treatments that they choose in lieu of medical care," he wrote, but Medicare does not pay for such care unless the patient has certain religious beliefs.

Fois also warned that "non-religious criteria" must be used to identify institutions qualified to provide reimbursable nonmedical services. Eligibility may not be limited to institutions organized on the basis of religious beliefs "or any other sectarian consideration." Nevertheless, the statutes passed by Congress in 1997 require the RNHCIs reimbursed under the Medicare/aid programs to have institutional "religious beliefs" against providing medical services. "This," said Justice, "creates additional problems under the Establishment Clause in that it creates a preference for religious institutions over nonreligious institutions and cedes civil authority to such religious institutions."

The statutes also prohibit the eligible RNHCIs from caring for any patients who lack religious objections to medical care whether the care of those

patients is reimbursed by Medicare or not. Congress ignored Justice's warning about the prohibition.

The Attorney General's office also pointed out that the government has no way to determine whether patients have a condition requiring hospitalization when there is no medical diagnosis.

"We think," her office wrote, "that limiting the benefit to religious objectors to medical treatment would be unconstitutional" and proposed a conscientious objector class instead.

In Reno's letter on the prior statutes, she complained that they "significantly advance the interests of the official church by requiring members who seek Medicare or Medicaid benefits to receive their nursing services in locations approved by the official Church under the supervision of nurses and prayer practitioners endorsed by the Church. Eligibility turns not only on the need for or the quality of services, but also on whether the services provided bear the Church's stamp of approval."

"A disaffected Christian Scientist, a Christian Scientist too ill to travel, or a Christian Scientist who either does not wish to use, or cannot afford to pay for, the services of a listed prayer practitioner (and is thus unable to gain admission to an official sanatorium) has no claim to Medicare or Medicaid benefits," Reno pointed out. "The Establishment Clause concerns triggered by such provisions are accentuated by the fact that they also are in sharp tension with Medicare's guarantee of free choice to patients in selecting health care institutions."

Although the church no longer accredits the sanatoria, the new accrediting association is composed entirely of Mother Church members, and the care and treatment must still be given by nurses and practitioners approved by the church through *Journal* listing.

The main point, in CHILD's view, is that the Attorney General repeatedly characterized the RNHCI reimbursements as special benefits not generally covered by Medicare and complained that giving such benefits on the basis of religious belief violated the Establishment Clause. Significantly, Congress did not claim that the statutes they passed

in 1997 met with the Attorney General's approval. Yet after CHILD filed its second lawsuit challenging the payments, the Attorney General concocted the argument that the RNHCI benefits were a subset of services performed in medical hospitals and therefore "normal benefits" available to the general public. Of course, the Attorney General is obligated to defend federal statutes and her refusal to do so in January, 1997, was unusual.

The defendants see a secular purpose for the RNHCI statutes. Most importantly, they say, Congress wanted the Medicare and Medicaid programs to be universally available, and the RNHCI program makes it possible for a group of people to participate in the program who otherwise could not. They feel the prohibition against a RNHCI having patients getting medical care or being owned by a medical provider prevents fraud. The requirement that the RNHCI have institutional religious beliefs against medical care makes it more likely, they say, that the institution is operated ethically.

Protestant churches support defendants

The amicus brief filed by the Protestant churches along with the Christian Legal Society and Christian Medical and Dental Society expressed a desire to uphold "governmental tolerance for all faiths, which is threatened by the plaintiffs' attack on the constitutionality of the amended Medicare and Medicaid provisions." The amici defended "the ability of legislatures and administrators to make reasonable accommodations to enable citizens with particular religious scruples to participate in general programs of government benefits." They also expressed concern that CHILD's suit threatened Medicare and Medicaid payments for religiously-affiliated medical hospitals.

Curiously, the National Council of Churches expressed its disagreement with some examples used in the amicus brief as written by the Christian Legal Society. The NCC stated in the brief that it believed "sections of the Act for Better Child Care (42 U.S.C. § 98581) and the Personal Responsibility and Work Opportunity Reconciliation Act or 'Charitable

Choice' as it is commonly known (42 U.S.C. § 604) which allow religious discrimination in the employment of persons who provide services funded directly and entirely by the government" to be unconstitutional.

Nevertheless, the NCC is firmly convinced that the federal government should be allowed to reimburse Christian Science sanatoria, which also practice "religious discrimination" in employment.

Senator Kennedy's amicus brief expressed his interest in "upholding congressional authority to enact constitutionally sound legislation that supports the free exercise of religion in the United States." He also expressed interest in "ensuring that all Americans who have contributed to the Medicare and Medicaid programs should be able to benefit from those universal programs—regardless of religion." The brief was written by Washington lawyer Donald Bliss, a graduate of Principia College for Christian Scientists.

Physicians and nurses say statutes encourage child neglect

The amicus brief filed by the American Academy of Pediatrics, American Medical Association, American Nurses Association, and the Iowa Medical Society cited three reasons for opposing public medical insurance benefits for religious nonmedical nursing:

First, amici are gravely concerned that these laws—by providing federal support for decisions by adults to forego medical care for their children—may prevent children from obtaining medical care that would mitigate or avoid serious physical harm, suffering, or death. . . . Amici believe that parents and other guardians have the legal obligation and the moral responsibility to seek necessary medical treatment for their children. . . . Amici are aware of several children who have died [under the care of Christian Science nurses], and are concerned that the laws at issue in this case support and encourage just such activity by funding alternatives to medical care that are

expressly and avowedly religious and which may be antithetical to the physical well-being of the child.

Second, amici object to the implication in the laws at issue that the care received in RNHCIs is equivalent to medical care and to the endorsement of such care that occurs when RNHCIs are permitted to participate in a program otherwise dedicated to medical treatment. . . .

Third, amici object to the fact that Medicare and Medicaid payments have placed the imprimatur of the federal government on efforts to secure special treatment for religious healing under state and federal laws. For example, the Christian Science Church pointed to the existence of federal reimbursements when lobbying Congress for a religious exemption in the Child Abuse Amendments of 1984, Pub. L. No. 98-457, 99 Stat. 1749. . . .

Amici are also aware of instances in which the Christian Science Church has pointed to the availability of Medicare and Medicaid reimbursements when lobbying state legislatures for exemptions to child abuse and neglect laws, and several such exemptions are directly affected by the federal legislation at issue here. The child neglect statutes in Colorado and West Virginia, for example, include exceptions for cases in which the child is undergoing treatment “in accordance with a recognized method of religious healing,” defined as one which is reimbursable by private health insurers. Because the reimbursement policies of private insurers often follow the lead of the federal government, the extension of Medicare and Medicaid payments increases the likelihood that more cases will fall within these exemptions.”

The amici strongly disputed the district court’s ruling that Christian Science nurses provide a subset of medical care.

Civil libertarians and humanists oppose statutes

The amicus brief by the civil liberties and humanist organizations argued that the district court erred in applying the *Lemon* test rather than strict scrutiny to the challenged statutes. Strict scrutiny is required when a law differentiates between religions. CHILD argues that the RNHCI statutes give a benefit of custodial care only to people with certain religious beliefs.

However, the amici argued, even using the *Lemon* test, which requires that an accommodation for religion have a secular purpose, not have a primary effect of advancing religion, and not cause excessive entanglement between church and state or delegate a governmental power to religious institutions, the RNHCI statutes fail.

The Minnesota Civil Liberties Union et al. cited case law for the proposition that the state “can provide individuals with financial assistance which then flows to a religious provider, so long as the government funds are awarded based on neutral criteria” with no connection to religion and so long as the religious provider offers the same services as secular providers do. The RNHCI statutes, however, fail this test, the amici argue.

By letting Christian Scientists make initial admission decisions, “the government has delegated the determination of medical status to persons who by definition lack professional medical training and deny the reality of conventional illness,” the amici point out. “Accordingly, by the terms of a Christian Scientist’s own beliefs, the conditions for which patients seek and receive treatment in a sanatorium are spiritual conditions.” The government is reimbursing for spiritual ailments. The patients are “ill only because of their (hopefully temporary) failure of faith,” which must be cured by prayer. To describe this as a “subset” of necessary medical treatment is, say the amici, “both an offense against common sense and (ironically) a contradiction of the sincerely held religious beliefs of Christian Scientists.”

The RNHCIs “are not participating in a public welfare program under the same rules applicable to nonreligious providers: they are providing a diffe-

rent service entirely, and are governed by none of the critical standards ensuring quality patient care," the amici conclude.

Oral arguments held at law school

One day during each term, the Eighth Circuit, U.S. Court of Appeals, meets in a law school auditorium. The appeals court chose CHILD's suit as the first of three cases to be heard at the William Mitchell College of Law in Minneapolis on October 18. Several hundred law students were present; extra chairs had to be brought in.



William Mitchell College of Law

The American Medical Association petitioned the court to be allowed to speak at the oral arguments, representing the four medical associations with amicus status. The Christian Science church objected, but permission was granted.

The three-judge panel who will rule on CHILD's suit are Chief Judge Roger Wollman and Judges Donald Lay and James Loken.

CHILD's three main points

CHILD's attorney Robert Bruno presented three main points in oral argument:

1. Since 1965 HCFA has been reimbursing the Christian Science sanatoria through Medicare for custodial care in violation of statutes excluding custodial care from Medicare coverage.

2. Many courts have ruled that any public funds given to religious institutions must be for the same services that are provided by covered secular institutions. More than a hundred years ago the courts ruled in *Bradfield v. Roberts* that religiously-affiliated hospitals could receive public funds because they are providing state-licensed medical care. But the care in RNHCIs is not medical care nor a subset of medical care.
3. Courts have ruled that public money cannot be paid to "pervasively sectarian" institutions.

Judge Loken objected to the point on HCFA violating the custodial care exclusion in statutes. He said the judges were here to rule on First Amendment issues, not on whether the administration is violating federal law.

Judge: Congress can define medical care

Loken also stated that Medicare reimburses menial services in both hospitals and RNHCIs. "They change the sheets in a hospital, don't they? And they change the bedding in these sanatoria. That's a service in common."

Bruno replied, "We don't think it's the same services. We think that for patients who are seriously ill, and that's what Medicare is about—patients who need to be hospitalized, we think that even environmental services such as mopping floors or changing sheets has got to be done by someone who has an appreciation for the patient's condition. . . . Even feeding patients can have a disastrous effect if you don't realize what they're suffering from. . . . Even helping people walk without an appreciation for what they're suffering from can hurt the patient. And so to suggest that medical training is irrelevant to the providing of personal care to a seriously ill patient. . . ."

Loken interrupted, "I don't understand that there's some sort of magic quality to the existing categories in these service facilities."

Loken went on to say that the Secretary of HHS and Congress have "created" a third category of care as provided in the RNHCIs and the court was "obligated to defer" to it as a matter of adminis-

trative law and regulation unless the plaintiffs could convince him that the First Amendment was violated thereby.

Bruno argued that the Establishment Clause requires that the care in RNHCIs be available to all, not just persons with certain religious beliefs, if it is going to be reimbursed with public money. The district court ruled that the RNHCI care was a subset of normal services available in medical hospitals in order to reach her conclusion that the care was religion-neutral. The plaintiffs challenge that ruling.

Harm to children raised

Leonard Nelson then spoke for the medical organizations. "Organized medicine," he said, "opposes laws which have the effect, directly or indirectly, of diminishing the level of medical care available to children."

"The Medicare/Medicaid system does not ordinarily reimburse for custodial care, or physical maintenance—not in general. . . . If we're going to start paying for the cost of old age homes in general, the cost to the Treasury would be enormous."

Medicare/Medicaid pays for custodial care that is integral to medical care in a hospital or skilled nursing facility, but it cannot be disassociated from medical care, he argued. Even changing bed sheets should not be done without knowledge of the patient's condition.

Loken retorted, "You're making a legislative argument, Counsel. You can address it to Congress or you can address it to the Secretary. But that's not our job to figure out whether—in what facilities does the changing of sheets raise sufficient characteristics as to be medical care."

Nelson replied that just because a legislative body says creationism is science, doesn't make it science and just because Congress says that changing a bedsheet is the same in a RNHCI as in a hospital doesn't make it so.

Nelson also spoke about the defendants' argument that religious indoctrination does not take place in the RNHCIs. He said a child cared for in a RNHCI would be just as likely to be indoctrinated

by the theology governing the institution as a child in a parochial school.

Court challenges govt. on admissions

Lowell Sturgill spoke for the government. He cited *Zorach v. Clausen*, 343 U.S. 306 (1952), for the proposition that public programs should be adjusted to accommodate religion so that members of minority faiths can participate.

The judges asked how RNHCI admission decisions were made and reviewed.

Sturgill said the fiscal intermediary, Blue Cross of Tennessee, reviews them and "makes a determination about whether the person really was sick enough." The "provider of reimbursement review board" and the HHS Secretary "look at that question also."

Judge Loken asked what evidence was in the court records about the reviews. Sturgill admitted the government had put nothing in the record, but said it was not the government's burden to do so.

The judges continued to press Sturgill about how the government could determine that the RNHCI patients qualified for coverage in a medical hospital without a medical diagnosis.

Sturgill repeated that Secretary Shalala had the right to review the decisions.

Loken: "Is the Secretary a doctor?"

Medical diagnosis not needed in 99% of cases

Sturgill: "I actually did talk with [the Christian Science nurses]. They make a functional analysis of this kind of a question, and I think that really takes care of almost all real life cases I can think of. Somebody comes into a RNHCI and has a bone sticking out of her leg, you don't need a doctor to know that kind of person is sick and would need medical care. If somebody comes in disoriented and throwing up or—I think in 99% of the cases, a layman's description of the symptoms a person has would be sufficient to meet this kind of a test."

Lay: "What prevents the situation here where the sanatorium suddenly determines this person needs hospitalization. . . , and they can just stay there till they die if the practitioners say so. In other

words, Medicare is specifically designed not to pay for custodial care. And whatever determines the duration, or that you can cut this off and say, you've been here long enough. It's pretty hard to stay overnight in a hospital even if you want to. The doctors say, you've gotta get out. Now what determines that here?"

Sturgill replied that the RNHCI nurses decide when the patients should be dismissed.

Lay: "But here we have a non-medical institution making that judgment."

Sturgill: "Congress made a judgment that again in the great majority of the cases, this is not a problem. Congress's judgment was that a functional analysis looking at what the person's symptoms are—a lay person can make that kind of a judgment."

Analogy to Amish exemption offered

Michael McConnell, representing the Christian Science church as defendant-intervenors, argued that the statute says the RNHCIs must meet any other requirements that "the Secretary finds necessary in the interest of the health and safety" of their patients.

McConnell defended the RNHCI reimbursements by analogy to the Amish's exemption from paying social security taxes. Federal law allows those who belong to a denomination with religious objections to accepting public assistance and that provides for the welfare of its elderly members to be exempt from paying social security taxes.

It is constitutional, McConnell argued, for the government to lift "a burden, an obstacle to freely chosen religious beliefs" of the RNHCI patients.

Judge Lay asked if it was constitutional to give a benefit to a religious adherent that is not given to others.

RNHCI services a subset of medical care

McConnell insisted that RNHCI patients only get benefits that are already available to others. "The only difference," he continued, "is that these benefits are unbundled or provided independent of medical involvement. Now obviously our friends

from the American Medical Association have policy problems with that. They don't think that's a good idea. But Congress resolved the policy questions in the other way. And there's nothing in the First Amendment that prevents Congress from recognizing that these Americans are in need [and] need a means to obtain this generally available benefit without being forced to violate their religious convictions."

In rebuttal, Bob Bruno pointed out, as Attorney General Janet Reno has in the past, that a legal burden on religion exists in a government-benefit program only when the state puts up obstacles that prevent a religious believer from accepting the benefits.

Do programs burden religion?

The benefits that Medicare and Medicaid are set up to provide are medical care. But the Christian Scientists "don't want the benefits. . . . They want a separate set of benefits that's divorced from the medical regulations."

"The mere fact that Medicare and Medicaid exist," Bruno said, "is a burden on religion" according to the defendants. "To say that the existence of a government program is a burden on religion, I think would throw the doors wide open to huge numbers of challenges to all sorts of government programs."

HHS published its "proposed rule" for the RNHCIs on November 30.¹⁰ The public is invited to make comments on it; comments must be received by January 31. After considering the comments, HHS will issue a final rule.

Rules on patient safety and rights

The proposed rule takes far more interest in the safety and rights of Christian Science nursing patients than the federal government has ever shown before. It spells out requirements for food preparation, size of rooms, pest control systems, etc. It prohibits corporal punishment, physical restraints, and seclusion of these patients. Patients must be told of their right to obtain reimbursed care in a medical hospital. Patients must sign a notarized advance directive.

Considering, however, that federal law authorizes HHS to promulgate regulations to “insure” patients’ health and safety and quality of care in RNHCIs, the proposed rule is woefully inadequate. HHS has required nothing that would stop the suffering and preventable deaths which have occurred in the sanatoria. The proposed rule does not interfere with the way the Christian Science church wants its “health care system” operated.

No requirements for nurses’ training

It says the nurses must have adequate education and training, but makes no effort to explain what these would include. For example, should the nurses have training in first aid or in recognizing the symptoms of contagious diseases? Christian Science nurses do not have such training, and the government does not require them to have it.

Should the nurses encourage a patient to walk when he may have a fracture? Should they give all patients the same food regardless of their “condition”? Should they call Child Protection Services when children are sick? The government is silent.

It does not explain what functions the Christian Science nurses perform that are above the level of custodial care.

No way to determine need for hospitalization

The proposed rule does nothing to resolve the core issues of CHILD’s lawsuit. It gives no guidance as to how Christian Scientists will determine that patients have “a condition” that requires treatment in a medical hospital or how long the patients would be allowed to stay in a hospital.

Indeed, HHS says in its rule, “One key challenge is to identify a system whose classification mechanism can be adapted to use the information available in the RNHCI setting, i.e., functional status and resource use but not diagnosis or other medical information. At this point, we are not sure how that can be achieved fully. . . .”

Thirty-four years after Congress mandated Medicare and Medicaid reimbursements for Christian Science nursing, the government still has not figured out how to set standards for a health care

system that has no medical diagnoses or medical oversight.

¹ “Facts about Christian Science” (Boston: Christian Science Publishing Society, 1959): 9.

² Norman Beasley, *The Continuing Spirit* (NY: Duell, Sloan & Pearce, 1956): 212.

³ Sunland Home Foundation, “Admissions, Medicare, and Health Maintenance Organizations,” <http://www.sunland.org>.

⁴ Statement by Mark Gilman, WMUZ Radio, Detroit.

⁵ Testimony of J. Burroughs Stokes, Hearings before U.S. Senate Committee on Finance, 89th Congress, on H.R. 6675, May 1965: 698.

⁶ Stokes testimony: 699.

⁷ Stokes testimony: 699.

⁸ Stokes testimony: 698.

⁹ Health Care Financing Administration (HCFA), *Christian Science Sanatorium Hospital Manual Supplement* § CS-204B (1983).

¹⁰ HCFA, “Medicare and Medicaid Programs; Religious Nonmedical Health Care Institutions and Advance Directives; Interim Rule,” *Federal Register*: November 30, 1999 (v. 64, # 229): 67027-67052].

¹¹ HCFA, “Interim Rule”: 67038.

Other sources are the briefs and affidavits filed in *CHILD v. deParle*, the district court’s ruling in the case, and the statutes challenged by CHILD.

Arden Wood to leave Medicare program

Arden Wood, one of the most prominent Christian Science sanatoria, announced in 1998 that it is phasing out its participation in the Medicare program. Located in San Francisco, Arden Wood was established in 1927 and was for decades run directly by the church as a training center for Christian Science nurses.

In Arden Wood’s newsletter “Heart to Heart,” Fall, 1998, the sanatorium administrators complain that Medicare’s primary emphasis is on “repairing the body.”

They say further,

“Medicare requires tracking the conditions of the patients, noting any progress or deterioration, and then keeping the information on file for future review by federal officials. In addition, Medicare requires biweekly meetings of our key staff to discuss physical conditions of the patients, as if we were doctors and nurses in a medical institution reviewing bodily changes, material conditions and physical problems—all with the goal in mind of obtaining financial reimbursement.”



Postcard of Arden Wood Interior

Arden Wood points out that Christian Science founder Mary Baker Eddy never said a nurse should carry out such tasks. Instead, Eddy said nurses should be “cheerful, orderly, punctual, patient, full of faith,” and in the very next paragraph issued a scathing indictment of observing the body:

It is mental quackery to make disease a reality—to hold it as something seen and felt—and then to attempt its cure through Mind. . . . Mental practice which holds disease as a reality, fastens disease on the patient, and it may appear in a more alarming form. (*Science and Health with Key to the Scriptures*: 395)

Feds require Christian Scientists to be quacks

“It is ‘mental quackery to make disease a reality,’ yet in order to participate in the Medicare program,” the Arden Wood administrators say, “we have been required by law to spend time doing just that on a regular basis.”

“No amount of money is worth compromising our radical reliance on the healing power of Truth,” they concluded in announcing their decision to withdraw from the Medicare program no later than January 1, 2001.

Comment

We respect Arden Wood’s recognition that Christian Science participation in Medicare and Medicaid is fundamentally hypocritical.

It is noteworthy, however, that even the very minimal requirements placed upon Christian Science nursing by the federal government offend Christian Science theology. Few outsiders comprehend how radical this theology is with its insistence that “there is no life, truth, intelligence, nor substance in matter.” (*Science and Health*: 468) The material body is not alive; the brain does not think; nothing cognized by the five physical senses is truthful, etc.

Arden Wood’s disclosure that Medicare requires Christian Science nurses to track patients’ conditions, their progress, and deterioration raises another interesting question discussed in the next article.

Double standard on charting?

“At the time of Ian’s death,” Quinna Lamb Giebelhaus testified, “I was still operating under the old system.” A Christian Science nurse, Giebelhaus was explaining to the jury her graphic notes as she watched 11-year-old Ian Lundman waste away in a diabetic coma for five and a half hours near Minneapolis in 1989. *Lundman v. McKown*, 503 N.W.2d 807 (1995).

Then the church hierarchy "thought it was wise to write down what the physical appearance of the condition was in order to assist the practitioner in knowing what to specifically pray for and handle," she said. So she sat by her comatose patient taking notes: "eyes rolled back," "breathing labored," "facial spasms," "patient vomiting brownish fluid," "every other breath gritting teeth," "shallow irregular breathing," "eyes fixed," "patient color white," "passing possible."

"We were expected to accurately chart what the physical senses were telling us," Giebelhaus said. She insisted, of course, that Christian Scientists do not make a physical diagnosis of disease; the church takes elaborate steps to avoid charges of unlicensed practice of medicine.

Giebelhaus was not the only Christian Science nurse whose notes were a bombshell in court. There was also Linda Blaisdell who wrote that two-year-old Robyn Twitchell was "moaning in pain," "rejecting all food," and unable to walk. She lost her notes the day before the judicial inquest, but disclosed their existence under questioning in open court at the trial of Robyn's parents. *Commonwealth v. Twitchell*, 617 N.E.2d 609 (Mass. 1993).

Nurses not allowed to record patient's condition

After the indictments of several Christian Science parents in the 1980s, the church changed the charting system. Giebelhaus testified in 1993 that the new system required the nurses to record only the services they performed for the patient without mention of the patient's condition.

In CHILD's suit against the federal government over Medicare/aid reimbursements for Christian Science nursing, the government testified that the nurses make "a functional analysis" of the patient's condition, keep written records of their observations, and use them to determine whether the patient has a condition that would qualify him for Medicare/aid-reimbursed care in a medical hospital and how long he could receive covered care in a hospital.

Furthermore, the Christian Science sanatorium Arden Wood (see previous article) complains that Medicare requires them to keep written records of the conditions of the patients, noting any progress or deterioration.

Is there a double standard on charting? Do the Christian Science nurses keep one type of records for patients receiving Medicare and Medicaid reimbursement and another type of records for other patients, especially children?

Another Followers of Christ child dies

A Canadian couple affiliated with Followers of Christ has recently been indicted for letting their son die of juvenile-onset diabetes without medical treatment.

Callahan Douglas Shippy, 14, died on December 28, 1998, after several weeks of illness. Crown Prosecutor Ian Frazer has charged his parents, Ruth Shippy, 37, and Steve Shippy, 44, of Rembey, Alberta, with criminal negligence resulting in death and failing to provide the necessities of life to a dependent.

The Followers of Christ, which advocates exclusive reliance on religious rituals for healing disease, has congregations in Oregon, Idaho, Oklahoma, Alberta, and elsewhere.

Frazer, whose office is in Wetaskian, 50 miles south of Edmonton, said the Shippys knew that Canadian law required them to get medical care for sick children because his office prosecuted another Followers of Christ couple whose daughter died of pneumonia in 1986 and because the Shippys themselves had moved to Idaho in 1984 after Canadian child welfare officials began investigating them for letting an injury to another of their children go untreated.

Taken from *The Oregonian*, December 3.

Two babies feared dead in anti-medical sect

Since early November, Massachusetts police have been searching for remains of two babies whose parents belong to a sect that rejects medicine. About 12 adults and 13 children belong to the nameless sect, living in an Attleboro duplex and on a farm in Seekonk. It was founded by Roland Robidoux, a mason and chimney sweeper. Members do not eat pork, celebrate birthdays or holidays, or go to doctors. They follow a strict fundamentalist interpretation of the Bible and cut themselves off from relatives and friends who disagree with them.

Samuel Robidoux was ten months old when he disappeared. Police were alerted to his disappearance by a disaffected group member who is now fighting for custody of his children. When police interviewed group members about Samuel, they were told that another baby, Jeremiah Corneau, was stillborn in August.

The parents have refused to reveal where the babies are buried. Samuel's father, Jacques Robidoux, remains jailed on contempt of court charges. Samuel's mother Karen was released after invoking her Fifth Amendment right against self-incrimination.

Babies reportedly buried in Maine park

A 9-year-old girl in the sect told investigators that Samuel died last spring. His and Jeremiah's bodies were kept in a cellar until September when they were taken to Baxter State Park in central Maine, she said. Sect members went on an extended camping trip in the park then.

Investigators believe the bodies were buried there by four members who hiked into the woods and returned to the group's cabin about 1 ½ days later. They have searched the Attleboro home, dug at the Seekonk farm with a backhoe, and trekked for miles through the Maine park with cadaver-sniffing dogs.

A journal kept by the sect reportedly indicates that members received a vision that they interpreted

to mean baby Samuel should be taken off of solid food and given only breast milk. As the baby deteriorated, his mother became more tormented, but other sect members told her Satan was using her son's condition to try to get to her, the journal stated.

The sect founders were originally Catholics. Their disaffection began by rejecting the commercialism of Christmas. Then they objected to celebrating it on December 25. Next they decided the Bible should be their only authority for every aspect of life. All the men are said to have beards and the women long hair and long dresses. Their rejection of medical care includes foregoing eyeglasses, dental care, and medical attention during childbirth.

Taken from *The Boston Globe*, Nov. 14, 16, 18, 19, 20, 21, 24, and 28.

Charges filed in Firstborn baby's death in California

On November 3, felony child endangerment charges were filed against Shawn and Stephanie Curran of Corona, California, for the death of their baby fifteen months earlier.

Myles Matthew Curran died of a congenital heart defect at 28 days old on July 22, 1998. According to police reports, the baby was being fed by his mother when he started having trouble breathing, began gasping for air, and turned blue. Mrs. Curran tried to blow air into his mouth, but he continued to have respiratory distress and became unresponsive. A friend of the Currans called 911; firefighters arrived two minutes later, but the baby had stopped breathing about two hours earlier.

God's will

Members of the Church of the Firstborn, the Currans told investigators they had religious beliefs against medical care. They said they had faith in God and it was "God's will whether the child lived or died."

Myles and his five-year-old brother were born at home without a licensed physician present. Myles was never seen by a physician nor was he taking any prescription medicines. The baby had not had a bowel movement for days and was given a mixture of syrup and mint leaves in an attempt to induce a bowel movement.

Riverside County Deputy District Attorney Robert Spira said, "This is a tragedy involving good people who have real beliefs. But this office also believes there is a larger obligation to protect the children in the community." He cited court rulings in the deaths of two California Christian Science children (*People v. Rippberger*, 231 Cal. App. 3d 1667 (1991), and *Walker v. Superior Court*, 763 P.2d 852 (1988)) as evidence that California law does not allow parents to withhold needed medical care on religious grounds.

Taken from *The Riverside Press-Enterprise*, Nov. 4, and the coroner's report.

Firstborn parents plead guilty in son's death

On October 22, Joshua and Mindy Glory of Fruitvale, Colorado, pled guilty to criminally negligent child abuse resulting in the death of their son Warren. Members of the Church of the Firstborn, the Glorys would not get medical care for their baby when he became sick with pneumonia and then meningitis. Instead, they called in church elders to pray for Warren and anoint him with oil as prescribed in church doctrine.

While Church of the Firstborn members may go to dentists and eye doctors, they adamantly oppose other forms of medical care, immunizations, medical tests, and attention at childbirth.

Death ruled a homicide

Mesa County Coroner Rob Kurtzman ruled Warren's death a homicide, saying his illnesses could have been easily treated with antibiotics.

Mesa County District Attorney Frank Daniels, who filed charges of manslaughter, negligent homicide, and two counts of child abuse resulting in death against the Glorys, said the baby had been sick for a week, turning blue and struggling to breathe before he died February 28 at 18 days old.

By contrast, Warren's grandfather, Marvin Peterson, a Firstborn elder, said the death was God's will and the baby died peacefully, waiting for judgment day and sanctified in the Lord.

In return for the plea, Daniels dropped the other charges and recommended probation for the parents. Sentencing is set for January 25.

Speaking for the Glorys, Peterson insisted that their guilty plea was not an admission that withholding medical care was wrong.

Peterson said the church fears that probation may be contingent on the Glorys providing needed medical care for their surviving daughter and that the state will try to take the girl away if they don't.

"We're raising our children in our beliefs and the state is stepping in and telling us we can't," he said.

Church elder predicts more deaths of children

Daniels said he did not expect prosecution to change their beliefs. "We're dealing with good people here who are doing what they believe God has instructed them to do. And that is a deeply felt belief," he said. "I am not fooling myself to think this case is going to put a stop to [their practices]. But if we can prevent one future child from dying, that is all the better."

Peterson defiantly predicted more deaths and prosecutions. "This is going to happen again. I guarantee it," he said.

CHILD knows of 8 Colorado Firstborn children who have died since 1974 without medical care.

Taken in part from *The Grand Junction Daily Sentinel*, March 7 and October 23, and *The Denver Post*, October 28.

Indiana intervenes for Firstborn baby

In September the state of Indiana intervened to get medical care in a Church of the Firstborn case. Because of their religious beliefs, Dewayne and Maleta Schmidt of Franklin, Indiana, did not seek medical care when Maleta became ill and lost consciousness.

An anonymous caller told the Johnson County Sheriff's Department that Maleta might be dying. The police came to the Schmidts' home on September 8 and found Maleta unable to talk. They took her to a hospital where her daughter was born a few hours later, three months premature and critically ill.

Johnson County Prosecutor Lance Hamner said there were no grounds to file criminal charges even if the baby died in the hospital. Indiana criminal law does not cover an infant before birth, so parents cannot be charged with abuse or neglect of the unborn, he said, and adults have the right to refuse medical care for themselves.

Taken from the *Indianapolis Star*, September 10.

Parents convicted in starvation death

A California man who said God disliked fat children and sat idly by while his toddler son slowly starved to death, was convicted of first-degree murder on December 2.

Zechariah Mayer died of chronic malnutrition on Jan. 20, 1998 in El Cajon, a few weeks before his third birthday.

His mother, Jennifer Mayer, 23, was convicted in October of second-degree murder by a different jury and faces a sentence of 15 years to life in prison. David Mayer, her common-law husband, faces at least 25 years to life. Both are scheduled to be sentenced Jan. 6.

19 pounds at age 3

When Zechariah was 2 months old a pediatrician noticed he was malnourished. She alerted social workers, who assigned a public health nurse to work with Jennifer Mayer and check on the baby. For a while, the boy grew, put on weight, and was doing well.

Zechariah weighed 19 pounds at one year old when he was last seen by the nurse. When he died two years later, he still weighed only 19 pounds and was also shorter than normal for his age.

Mayer's attorney, Jesse Gilbert, argued that his client suffered from profound delusions that he was an instrument of God, and that God would take care of the child. Mayer once told a social worker that fat children were "carnal" and disliked by God.

The defense lawyer also said Mayer had a low IQ and other psychological problems and could not perceive that his son was wasting away. Because of those problems, Gilbert argued, Mayer could not form the intent necessary for a premeditated murder conviction.

Jurors disagreed. "No one felt his delusions were responsible for his behavior," a juror said.

Jennifer Mayer worked full time as a cook at a convalescent home; David Mayer stayed home with the child. He was unemployed, and all but a recluse. Their apartment refrigerator was full of food. There was a big-screen color television in the living room.

Severe neglect

Apparently, however, Zechariah spent most of his days in the bedroom of the apartment, alone. Investigators found a half-dozen small toys in the house, and fewer than six pieces of child's clothing.

At the time of his death, Zechariah had a diaper rash so severe it was an open and bleeding sore. His fingernails were long, and there were deep scratches and gouges on his face. He also had a large bald spot on the back of his head which medical experts said came from lying in one position for a long time.

Mayer was charged with torture as well as murder, but the jury deadlocked 10-2 in favor of conviction on the torture charge.

Taken from *The San Diego Union-Tribune*,
Dec. 3.

Minister cleared of child abuse in corporal punishment

On November 17, the Massachusetts Supreme Judicial Court ruled that a Woburn minister did not abuse his handicapped son when he spanked him with a belt and that the state should not have labeled him an abuser.

In 1997 Judah Cobble, 9, told his teachers he was afraid to go home because his father would "beat" him for poor behavior. The boy has attention deficit disorder. He must wear braces for his legs and back because of a congenital defect.

His report triggered a Department of Social Services (DSS) investigation. His father, Donald Cobble, an assistant minister at the Christian Teaching and Worship Center, admitted whipping his son with a leather belt, but only on the buttocks and when the child was clothed.

DSS made a finding that Cobble had abused his son and found Lisa Cobble negligent for not stopping the abuse. The DSS recommended that Cobble not be alone with his son until Judah turned 18 years old. But the Cobbles refused to follow their recommendations, and the DSS closed the case without taking further action.

Judah told state social workers that the corporal punishment left only pink marks that disappeared within ten minutes. Two doctors testified they had seen no signs of abuse on the child.

Whippings "a religious ceremony"

Determined to remove his name from the state child abuse registry, Cobble argued to the Supreme Court that the whippings he gives his son are "essentially a religious ceremony."

Before and after hitting his son, Cobble testified, he always hugs his son and tells him that he loves him. Often he reads from the Bible as well so

the boy understands "the religious nature and spirituality of the discipline."

Cobble argued to the Court that his method of discipline is protected by his constitutional right to freedom of religion and privacy. "I feel it's my God-given responsibility [to train my son] and teach him what's right. And part of that is corporal punishment," he said.

The state Supreme Court ruled that the temporary pink marks on Judah's body did not meet the department's own regulatory definitions of abuse. Like Cobble, the Court pointed out that the DSS closed its file on the boy after substantiating the abuse report. If the DSS really believed Judah was being abused, it would have continued to monitor the child's welfare, the Court said.

To Cobble's disappointment, the Court did not rule on his claim of a First Amendment right to use corporal punishment on his son. "God says corporal punishment is a necessary part to raising your child," Cobble argued.

Comment

First off, we concede that there need to be some limits on what the state can define as abuse. In a society that allows corporal punishment of children, pink marks that disappear in ten minutes do not sound illegal or abusive.

We also note, however, that Judah Cobble expressed fear of his father's beatings to his teachers. The harm of corporal punishment cannot be measured simply by the physical evidence. A handicapped child might be more traumatized by corporal punishment than a normal child. Perhaps his attention deficit disorder was exacerbated by his father's beatings.

In contrast to Rev. Cobble's view that corporal punishment should be allowed because it is a religious practice, CHILD feels that a religious rationale may actually increase the harm done by corporal punishment.

The seminal scholarship on the association of Christianity with corporal punishment is Philip Greven's *Spare the Child: The Religious Roots of*

Punishment and the Psychological Impact of Physical Abuse (NY: Knopf, 1991).

Children must accept punishment

Greven's quotations from contemporary fundamentalist spokesmen indicate a perception that the willfulness of children is a primary evil and that a good Christian has a moral obligation to do "battle" against it and "win." Children should be hit until they "accept" their punishment. For some, acceptance means that the children cry "tears of a broken will" instead of "tears of anger;" for others, it means the children must stop crying. Children are then expected to express their love in words, hugs, and kisses for the parent who hits them.

A number of fundamentalist spokesmen, including Larry Tomczak, author of *God, the Rod, and Your Child's Bod*, teach that children should be hit with implements, such as "rods," rather than the hand, so that the children will regard the hand as "an instrument of love."

The belief that children are born sinners may increase the severity of corporal punishment and the emotional harm to the child. The insistence that the physical pain comes because of love may confuse the child. The parent's love is conditioned upon stripping the child of will. Insistence that a supernatural being has ordered the child's pain compounds the assault on the child's sense of self. Religious extremists who claim that the child is possessed by the devil may drive the child to dissociation and other mental illnesses.

Also, hitting children with implements rather than the hand means that a parent is less aware of the force being used. And most children are smart enough to figure out that the supposedly "loving" hand is wielding the stick, shoe, or paddle. The hypocrisy of the parent's claim that his hands are not participating in the punishment may demoralize the child.

We are, of course, not saying that the state should intervene more aggressively in religious families than in non-religious families. The harm and danger of any practice to children can and should be

defined in objective, non-religious terms. It should, though, include emotional harm as well as physical harm.

Sources for the Cobble case are *The Boston Globe*, July 21, Sept. 14, and Nov. 18.

Gallup poll on Christian Scientists' health behaviors

A first-of-its-kind poll of randomly selected Christian Scientists conducted by the Gallup International Institute was reported by Harvard University's Mind/Body Medical Institute in the *Journal of Nervous and Mental Disease* for September, 1999.

By calling nearly 33,000 phone numbers within twenty miles of Christian Science churches, Gallup gathered responses from 230 individuals who identified Christian Science as their religious preference and compared them to 589 non-Christian Scientists.

Survey participants were asked if they had experienced any of the following thirteen diseases or symptoms within the past twelve months: headaches, allergies, sprains or strains, anxiety, dizziness, arthritis, depression, insomnia, chronic pain, digestive problems, high blood pressure, diabetes, or cancer. The thirteen were chosen by the researchers as conditions that people without medical training would supposedly know they had.

Use of medical care common

Eighty percent of the non-Christian Scientists and 73% of the Christian Scientists said they had experienced one or more of the thirteen conditions within the past year. Surprisingly, these two groups were nearly equal in their use of medical care. Seventy-four percent of the Christian Scientists who reported the symptoms or illnesses also admitted going to a doctor or hospital for treatment, while 78% of the sick non-Christian Scientists did so. Christian Scientists did, however, take substantially fewer prescribed medications (33 percent compared with 43 percent).

Entitled "Self-Reported Health, and Illness and the Use of Conventional and Unconventional Medicine and Mind/Body Healing by Christian Scientists and Others," the study by Herbert Benson and Jeffrey Dusek does not say why physician visits or hospital admissions took place nor whether they were related to the 13 illnesses and symptoms.

Gary Jones, spokesman for the First Church of Christ, Scientist, pointed out in *The Christian Science Monitor* that Christian Scientists may "make doctor or hospital visits for medical exams required by employers, schools, the military, or insurance companies and for purposes of childbirth."

The Christian Scientists questioned by Gallup reported the same level of smoking and drinking of alcoholic beverages as non-Christian Scientists.

Only 60 percent of those calling themselves Christian Scientists said they were church members, and 21 percent said they never attended church services.

Very satisfied

Fifty-two percent of the Christian Scientists said they were very satisfied with life compared with 37 percent of non-Christian Scientists, and 71 percent reported very good or excellent health compared with 61 percent of non-Christian Scientists.

The finding that Christian Scientists self-report fewer illnesses cannot be attributed to healthier lifestyles, say Benson and Dusek. The Gallup poll shows that Christian Scientists are less likely than non-Scientists to exercise, limit cholesterol, take vitamins and minerals, and avoid refined sugar. Furthermore, the Christian Scientists smoke and drink alcohol at the same rates as the general population according to Gallup.

Therefore, the fact that Christian Scientists report less illness than others, the researchers speculate, must be due to their much greater use of special religious services and spiritual healing.

On the issue of whether Christian Scientists may have reported fewer illnesses in order to defend their religion, Benson and Dusek say the questionnaire was never described as evaluating the relationship

between religion and health. Gallup interviewers told participants it was a survey on "health and life satisfaction."

Benson and Dusek say their findings contradict the public's impression that Christian Scientists are "less healthy than non-Christian Scientists." They claim that the Christian Scientists found by Gallup may be "more representative" of the total Christian Science population than the graduates of Principia College for Christian Scientists studied by researcher Bill Simpson, who found elevated mortality rates among the graduates. Benson and Dusek also point out, however, that their data consisting of self-reported illnesses cannot be compared to Simpson's data based on deaths.

Their study closes with the claim that more research like theirs is "urgently needed."

Comment

Medical doctor Herbert Benson began his interest in mind/body relationships with a best-selling book, *The Relaxation Response*. At the time he said there was nothing transcendental about the benefits of meditation and relaxation techniques. Since then, his research has become progressively more directed to proving that faith has health benefits. His Mind/Body Institute sponsors conferences on "Spirituality and Healing," which always include a Christian Science representative on their faculty.

Benson's new direction may be timed to make use of funds from the John Templeton Foundation, which aims to find a scientific basis for belief in God. As *New York Times* reporter George Johnson said, "The recent drive to put God back in science would not be nearly so intense without the millions of Templeton dollars looking for places to land."

What scientific conclusions can be drawn about self-reporting of illnesses by Christian Scientists and are they worth publishing? While some of the 13 illnesses and symptoms surveyed could be identified by a person without medical training, others would not be. And certainly people who go to physicians regularly would be much more likely to know that they had developed cancer, diabetes, high blood

pressure, or arthritis within the past twelve months than a Christian Scientist who does not go to a doctor and believes that disease is unreal.

We definitely do not feel that more research of this caliber is "urgently needed."

Sources: "Science and religion: bridging the great divide," *The New York Times*, June 30, 1998; "Study on Christian Scientists finds health benefits," *The Christian Science Monitor*, Sept. 15, 1999; Jeffrey Dusek and Herbert Benson, "Self-Reported Health, and Illness and the Use of Conventional and Unconventional Medicine and Mind/Body Healing by Christian Scientists and Others," *Journal of Nervous and Mental Disease* 187:539-48 (1999).

Book explores Christian Science "mind control"

A new book entitled *The Religion that Kills: Christian Science: Abuse, Neglect, and Mind Control* evaluates the religion by the criteria of the countercult movement.

Linda Kramer, Ph.D., bases her book on the features of a "thought reform group" identified by scholar Robert Lifton, who studied behavior in Chinese prison camps and Chinese universities in the 1940s and 1950s. Lifton identified these features as milieu control, mystical manipulation, the demand for purity, confession, loaded language, a sacred science, doctrine over person, and rejection of outsiders as unworthy.

Kramer argues persuasively that Christian Science includes all these characteristics except the "cult of confession." It has an authoritarian leader, unique meanings of words, information management, impossible demands for perfection, and a sacred science that cannot be questioned and controls both sacred and secular realms. Its hold on the minds of its members leads to preventable deaths and suffering of children and adults.

A former Christian Scientist, Kramer describes her exodus with an easy, flowing simplicity and sincerity. "I grew up in Christian Science, never

dreaming that I would one day leave it, much less write a book critical of it," she begins. "I left the religion for doctrinal reasons but found that, somehow, I remained its emotional prisoner. I was out of Christian Science, but it was definitely not out of me."



Linda Kramer

The book ends with two appendices. In the first she explains how Christian Science theology differs from orthodox Christianity. She backs up her claims with many quotations from the Bible illustrating that the divinity of Jesus and vicarious atonement for sin through the crucifixion are basic Christian beliefs, although both are rejected by Christian Science.

The second appendix is a powerful narrative of her ultimately successful work with therapists for emotional and mental health.

This honest, informational, and uplifting book is available in paperback from Huntington House Publishers in Lafayette, Louisiana, and on internet bookstores such as amazon.com.

High achievers speak at CHILD conference

CHILD held a conference July 24 in Toledo, Ohio, that included talks by many people with significant accomplishments in litigation, legislation, and authorship.



CHILD Members meet at the Cauffiels' Home

The meeting was held at the home of Phyllis and Ford Cauffiel, who are charter members of CHILD. Ford is the chairman of CHILD's board of directors and has worked for state and federal legislation in CHILD's interest.

President Rita Swan opened the meeting with a report on the religious exemption bill that had passed the Oregon legislature earlier that week. It was CHILD's main project for seven months.

George Mezinko of the National Exchange Club Foundation spoke about the Exchange Club's work against child abuse. The National Exchange Clubs co-signed a recommendation report prepared by CHILD and submitted to the U.S. Department of Health and Human Services.

Dr. Gerald Bergman, a biology professor at Northwest State College of Ohio, spoke about the Jehovah's Witness doctrine on blood transfusion.

Raised as a Witness, Bergman left the faith in early adulthood. He has been researching and writing about the religion for nearly four decades. His most recent publication is *Jehovah's Witnesses: A Comprehensive and Selectively Annotated Bibliography* by Greenwood Press. Several of his publications deal with the origins of the Witnesses' opposition to transfusions, how the faith has modified its position in response to scientific developments, its unscientific rationale for the exceptions it now allows, and how it is likely to change in the future.

The biblical basis for the Witnesses' opposition to transfusions is a few verses saying, "Eat no blood." Witnesses interpret them to mean that all blood should be drained from an animal used for food and that human blood should be poured out and disposed of rather than stored for transfusion. Strict Jehovah's Witnesses, Bergman said, consider it a religious duty to prevent mosquitoes from biting them and their cats from catching mice.

CHILD board member Peg McLaughlin recounted experiences growing up in a Christian Science household. Her brother died after years of uncontrolled asthma attacks. Her sister was born with hypothyroidism, which could have been easily managed with thyroid medication, but instead caused permanent organ damage because it was untreated.

Dr. Bill Simpson, a computer science professor at Emporia State University, presented his data on mortality rates among Christian Science adults on graphs and explained their significance. They have been widely reported in the national media and also in many scholarly articles. He has published his findings in "Comparative longevity in a college cohort of Christian Scientists," *Journal of the American Medical Association* 262 (Sept. 22-29, 1989): 1657-8 and "Comparative mortality of two college groups, 1945-83," *Morbidity and Mortality Weekly Report* 40 (Aug. 23, 1991): 579-82.

Joanne Brant, a professor at Ohio Northern University College of Law, explained the amicus brief she wrote in support of CHILD's appeal of summary judgment in *CHILD et al. v. Min de Parle et al.*, civ. 98-3521, 8th cir. She also discussed

et al., civ. 98-3521, 8th cir. She also discussed Eleventh Amendment law, which is one of her specialties and was the basis of a federal appeals court ruling against CHILD in *CHILD v. Deters*, 92 F.3d 1412 (6th Cir. 1996).

Robert Bruno, a lawyer in Burnsville, Minnesota, spoke about Douglass Lundman's civil suit against the Christian Science church and other parties involved in the death of his son Ian to untreated diabetes. He related some of the information about Christian Science nursing obtained in the suit that CHILD has used in its lawsuits. Bruno has represented CHILD in a declaratory judgment action against Ohio officials and two taxpayers' suits against the federal government over its Medicare and Medicaid payments for Christian Science nursing.

Boston attorney John Kiernan recalled his 1990 prosecution of Christian Science parents Ginger and David Twitchell for letting their son die in great pain from a bowel obstruction and peritonitis.

After dinner on the Cauffiels' terrace, Caroline Fraser from Santa Fe, New Mexico, spoke about her just-published book, *God's Perfect Child: Living and Dying in the Christian Science Church*. It is 561 pages long, extensively researched, and has received high praise in many prominent literary reviews.

Lastly, Dr. Imogene Johnson of Jackson, Mississippi, spoke about her reasons for establishing an award that CHILD gives in her name, and Rita Swan presented the award to Ellen Mugmon of Columbia, Maryland.

Mugmon wins CHILD's award for advocacy

At its Toledo conference in July, CHILD presented the Imogene T. Johnson Friend of Children Award to Ellen Mugmon of Columbia, Maryland. The award is given to those who have successfully advocated legislation to protect the health of children in faith-healing sects.

Ellen has lobbied in the Maryland statehouse on a broad variety of children's issues as a volunteer for fifteen years. She is present in the statehouse 75 days or more of the legislature's 90-day sessions. She systematically reads all bills dealing with children and monitors action on them.

She has won many victories against the Christian Science church's endless push for religious exemptions from laws requiring health care for children. In 1991, she and the Maryland Chapter of the American Academy of Pediatrics defeated a bill to place a religious exemption in Maryland's criminal code.

In 1994, she achieved repeal of Maryland's religious exemptions to child abuse and neglect in the civil code.

In 1997, the church got a bill introduced stating that no Maryland law could be construed "to establish a requirement that a parent or legal guardian provide a child with any medical service or treatment against the religious belief of the parent or legal guardian" nor "to require or authorize a finding of abuse, neglect, or violation of a criminal law" by such a parent or guardian. Ellen lobbied against it, and the bill was defeated by the first committee that heard it.

She has defeated the Christian Science church's attempts to get religious exemptions from health instruction, lead-level screenings of children in childcare, and hearing tests for newborns.

She also opposed bills to allow corporal punishment in church-related childcare facilities and a state version of the federal Religious Freedom Restoration Act, both of which died in committee.

Like many advocates, Ellen works with coalitions, sometimes lining up scores of organizations to take a position against a religious exemption bill. These organizations deserve credit too, but we know from comparing Maryland's laws with the doleful religious exemption landscape in other states that these victories would not have happened without Ellen. CHILD is deeply indebted to her.

Ellen is the second winner of our Friend of Children Award. The first was Ken Casanova of

Jamaica Plain, Massachusetts, who led a successful five-year struggle to repeal Massachusetts' religious exemption to nonsupport.

Law Schools Assn. to hold forum on religious exemptions

The American Association of Law Schools (AALS) will hold a panel discussion on religious exemptions from laws requiring health care for children at its centennial meeting January 5-9 in the Marriott Wardman Park Hotel in Washington DC.

Entitled "Children, Spiritual Healing, and Religious Exercise," the program on religious exemption laws is chaired by Joanne Brant, Ohio Northern University School of Law, and David E. Steinberg, Thomas Jefferson School of Law. It is scheduled for Sunday, January 9, from 9:00 a.m. to 10:45 a.m.

The speakers are James G. Dwyer, University of Wyoming Law School; Richard Wingfield Garnett, IV, Notre Dame Law School; Terry Gustafson, District Attorney, Clackamas County, Oregon City, Oregon; and Steffen N. Johnson, Associate, Mayer, Brown & Platt, Chicago, Illinois.

The Mayer, Brown, and Platt law firm has represented the Christian Science church.

Terry Gustafson had several children die in her county because medical care was withheld on religious grounds. She refused to file charges because of the religious defenses to felonies in Oregon law. She then worked for repeal of the religious exemption laws.

James Dwyer is the author of "The children we abandon: religious exemptions to child welfare and education laws as denials of equal protection to children of religious objectors," *North Carolina Law Review* 74 (1996): 1321-1478, and *Religious Schools vs. Children's Rights* (Ithaca: Cornell University Press, 1998).

Both Dwyer and Gustafson believe that religious exemptions from child healthcare requirements

violate the Fourteenth Amendment rights of children to the equal protection of the law.

For more information about the conference and the program on religious exemption laws, see the AALS website at <http://www.aals.org>.

60 Minutes report in preparation

The CBS newsmagazine *60 Minutes* has filmed several interviews for a report on CHILD's lawsuit against the federal government, *CHILD et al. v. Min de Parle et al.*, civ. 98-3521, 8th cir.

Photo credit

The photo of Tyrell Dueck used in CHILD's newsletter 1999, issues 1 and 2, should have been credited to the *Saskatoon Star-Phoenix*.

Notable quote

"The most basic issue in health care is not universal coverage but universal choice. People who want mainstream medical care should have it. Those who rely on other means of care must be able to exercise those options free of government interference." *The Christian Science Monitor*, lead editorial, Nov. 16, 1999:8

About CHILD Inc.

CHILD is a national membership organization dedicated to preventing religion-related child abuse and neglect. For more information on CHILD, visit our web page at <http://www.childrenshealthcare.org>.