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*Zaniyah Hinson*

## Daycare charged in Florida toddler's death; advocates call for exemption repeal

On October 5, a Daytona Beach daycare center and a daycare worker were charged with felonies in the death of a Florida toddler. Abundant Life Ministries, which owns the daycare center, was charged with manslaughter; worker Gail Besemer was charged with felony neglect.

Zaniyah Hinson of Port Orange, Florida, died August 10 after being left in a closed van for almost three hours at the Abundant Life Academy of Learning. The temperature reached between 125 and 140 degrees inside the van. Besemer did not remember she had left the 2-year-old girl in the van until the toddler's mother, Tekela Harris, came to pick her up from the daycare.

By then Zaniyah was already dead from massive heat stroke. She had vomited and likely suffered convulsions before passing into a coma and dying.

Five daycare staff members had planned to accompany children on a field trip August 10. According to court records, however, Rev. Marcus Triplett of Abundant Life Ministries ordered some of the daycare staff to move furniture from one building to another instead.

Two daycare workers had urged Triplett repeatedly to have the furniture moved during off hours so they could look after the children properly. One was in tears the day before the field trip when

Triplett reportedly rebuffed her, saying "I don't care" and "I made the rules."

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No head counts were done and no roll calls made of the children who went on the field trip that day. Staff estimated that from 44 to 47 children traveled in four vehicles. Three staff members and one parent volunteer drove the vehicles and were the

only adults supervising the children. Zaniyah was among 14 children ages 2 to 6 in the 7-person van driven by Besemer. None was strapped into child safety seats as required by law.

### **Child safety regulations**

The dangers of leaving children in closed vehicles are well known in Florida and elsewhere. After a Florida baby died in a daycare van in 2000, the Florida legislature passed Fl. Stat. 402.305(10), requiring licensed childcare facilities to maintain accountability for children being transported.

Early this year the Florida Department of Children and Families issued regulations at 65C-22.001(6) requiring that logs be maintained for all children being transported in a childcare facility vehicle, that a physical inspection and visual sweep of the vehicle be conducted by two adults to ensure that no child is left in the vehicle, and that both adults must verify the driver's logs and the fact that all children have left the vehicle.

### **No state regulation of church-run daycare**

Zaniyah Hinson's daycare, however, did not have to follow the new statute or regulations because it was run by a church. It also did not have to follow other regulations requiring that at least three staff members accompany twelve or more children on field trips. Florida is one of about eight states that exempts from state licensure and regulation childcare facilities that are run by religious organizations (see Fl. Stat. 402.316).

In lieu of state licensure, such facilities must be "accredited" by one of 19 organizations, such as the Florida Catholic Conference, Association of Christian Schools International, or Florida League of Christian Schools. Abundant Life Ministries advertised its daycare to parents as "accredited" because it had the League's approval.

The 19 religious accrediting organizations must file a statement of their standards with the state, but do not have to file updates or changes. The state

has no power to inspect childcare facilities accredited by the religious organizations, to review their records, or to close them, although it can investigate deaths in them.

### **Deficiencies in Christian league standards**

The Florida Department of Children and Families (DCF) meets with the religious accrediting organizations every two or three years to ask if there are questions or problems, but has no authority over them. "We don't pass judgment on the standards they set," DCF official Ron Cox said.

Although the Florida League of Christian Schools claims that its standards "continue to meet or exceed" the state's, the League manual filed with the state in 1995 does not require counting children or logging them in when they are transported.

The League says it did not adopt such requirements because most of its daycares do not transport children.

The state has some leverage over the religious daycares in that it provides financial assistance to help needy parents with their tuition. The Childcare Resource Network, a state agency that administers childcare services for low-income families, cancelled vouchers for attendance at Abundant Life a week after Zaniyah's death.

Zaniyah's family called for the Abundant Life daycare center to be closed at least temporarily until safety procedures were improved, but Rev. Triplett refused to do so. As the public's anger and media coverage mounted, the Florida League of Christian Schools revoked Abundant Life's accreditation on October 4, and then the state had the power to close the daycare.

### **Friends of Zaniyah founded; call for change in laws**

Few families withdrew their children before the center was closed. Several defended it to the press. One mother said, "Everyone gets special attention from the heart" there.

Denyse Walbeehm, however, not only withdrew her daughter the day after Zaniyah's death, but organized a movement for policy change. Walbeehm, 34, of Daytona Beach, has gathered thousands of signatures on a petition calling for repeal of the licensing exemption in Fl. Stat.



402.316. She has spoken to many public officials and the media. And she has organized the Friends of Zaniyah, who vow never to forget the little girl's death. Their website is at <http://pages.prodigy.net/denysew>.

Rep. Evelyn Lynn, R-Ormond Beach, has prefiled House Bill 0175 to repeal the licensing exemption at 402.316.

State's Attorney John Tanner's office charges that Abundant Life Academy of Learning and its worker, Gail Besemer, violated state laws that are independent of daycare licensing issues. For example, any caregiver is required to secure a child under three years old in a child restraint seat when traveling in a vehicle and it is a crime for anyone to leave a child unsupervised in a vehicle.

Rev. Marcus Triplett, as president of the Abundant Life corporation, will stand trial for manslaughter (unless the courts dismiss the charge before trial) and could be sentenced to nine years in prison if convicted.

### **Can a corporation be criminally liable?**

The daycare's attorney, James Purdy, maintains Triplett won't go to prison even if found guilty. "We're not Afghanistan," he said. "There's no authority in law to hold a corporate officer or employee criminally responsible for charges against the corporation."

Theresa Radwan, a professor at Stetson University College of Law in St. Petersburg, said there has never been a Florida case of an executive officer going to prison for the actions of a corporation. "The corporation itself is treated as an individual with an existence separate from its officers," she said. "The corporation is its own person."

In 1999, a Miami jury convicted a jet repair company of criminal recklessness in a fatal airline crash. An \$11 million penalty was assessed, but no corporate officers were jailed. In November, 2001, the 11th U.S. Circuit Court of Appeals dismissed 8 of the 9 counts in the conviction and most of the penalty.

Taken in part from *Orlando Sentinel*, Aug. 20; *Daytona Beach News-Journal*, Aug. 14, 17, 19, and 22; Oct. 9 and 17, and Nov. 7.

## **Religious exemptions abound in Florida's health and safety laws for children**

Some Florida newspapers and child advocates have called for repeal of the religious exemption from licensure of daycare facilities at **Fla. Stat. § 402.316** in the wake of a Port Orange toddler's death (see previous article).

That statute, however, is only the tip of the iceberg of Florida's religious exemptions, including:

**Fla. Stat. § 409.176(5)(a)**, a religious exemption from licensure of residential child caring facilities;

**Fla. Stat. § 39.01(30)f and 984.03(73)**, a religious exemption from child abuse and neglect; these statutes allow courts to order spiritual treatment in lieu of medical treatment for any child in the state as well as exempting parents with religious objections to medical care from abuse and neglect charges;

**Fla. Stat. § 383.14(4)**, religious exemption from metabolic testing;

**Fla. Stat. § 383.04**, religious exemption from prophylactic eyedrops;

**Fla. Stat. § 383.145(3)c**, allowing parents to refuse the newborn hearing screening for any reason;

**Fla. Stat. § 232.0315(1)**, religious exemption from school-entry health exams;

**Fla. Stat. § 232.032(3)a**, religious exemption from immunizations of school children;

**Fla. Stat. § 402.305(9)c**, exemption for children enrolled in daycare from medical or surgical examination or medical or surgical treatment if parents object for any reason [administrative regulations at 65-c22.006(2)(c) provide religious exemption from immunizations for children in daycare];

**Fla. Stat. § 39.810 (2)** also appears to provide a religious exemption from a parent's duty to provide medical care. The law obligates the court, in weighing a petition for termination of parental rights, to consider "the ability and disposition of the parent or parents to provide the child with food,



clothing, medical care *or other remedial care recognized and permitted under state law instead of medical care*, and other material needs of the child.” (emphasis added)

### “A trap”

The religious exemptions from abuse and neglect charges have been ruled to prevent criminal charges when parents withhold lifesaving medical care on religious grounds. In 1992 the Florida Supreme Court overturned, on due process grounds, the convictions of Christian Science parents who let their daughter die of untreated diabetes.

*Hermanson v. State*, 604 So.2d 775 (Fla. 1991) The Court held that the abuse and neglect exemptions caused confusion as to whether religious objectors had a duty to obtain medical care for their children.

“The statutes have created a trap that the legislature should address,” the Court held.

Since then, three Florida legislators promised to sponsor a bill to repeal the abuse exemption, but abandoned their support after Christian Science lobbyists met with them.

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## Abuse charged at Christian boarding school; school files suits against its accusers

Nine workers at Heartland Christian Academy, a boarding and day school near Newark, Missouri, have been charged with child abuse. School founder Charles Sharpe has fought back with two federal suits against state and county officials.

After making millions of dollars in insurance, Sharpe said he felt called by God to establish a non-denominational Christian school in 1995 for troubled children and teenagers who had passed through juvenile courts, foster care, and broken homes.

According to state officials, Heartland receives no public funding and has free tuition. However, parents must sign a statement pledging to donate a certain amount of money to the Heartland Academy Community Church or CNS International Ministries. And if parents withdraw their child before high school graduation, they must pay

Heartland \$600 per month until the child’s expected high school graduation date, state officials say.

Sharpe’s unaccredited Academy uses Christian-based education, prayer, work therapy, and strict discipline, including corporal punishment, to try to turn around troubled youths in grades K-12. Before the abuse allegations surfaced, it had 227 students. Many came from multiple psychiatric placements.

### The manure punishment

The Heartland complex is in Shelby and Lewis counties about 150 miles north of St. Louis and is Shelby County’s largest employer. It includes a dairy farm with 7,000 cows. Students were punished by being forced to work in manure pits and the pool from which manure ran into a lagoon.

Workers at the dairy reported seeing children standing in manure up to their chests and saw one student smeared with manure from head to toe. One girl was forced into a manure pit alone. Some children remained in the pit for as long as two hours, they said.

The Lewis County sheriff said his office intervened because the pits, which often had afterbirth from calves as well as 28,000 pounds of manure a day, were a health hazard for the children.

Sharpe said he had stopped the manure punishment six weeks before the state intervened, not because it was wrong or unhealthy, but because it was bad public relations. He also disputed the length of time the students were in the pit and said they were not forced to stand in deep manure.

### Beatings, unlawful custody charged

Felony child abuse charges have been filed against the workers who forced the students to work in manure and against others who allegedly paddled a boy about 50 times, leaving deep bruises.

Sharpe also hit a 16-year-old girl with a wooden paddle about 30 times, but has not been charged for that. Instead, he and his wife Laurie have been charged for unlawfully taking custody of an infant. Sharpe said the baby’s mother, a Heartland student, had asked them to take custody and then ran away. Later she returned with police and demanded the baby back.



Some students complained of being forced to eat "slop" as a punishment. One said she became suicidal after four months at Heartland.

### **Other degrading punishments**

Roy Cochenour, who once lived on the Heartland campus as an employee, said his family left after 15 months because he found the discipline degrading. His 5-year-old son was paddled for not eating mashed potatoes. Students were forced to run until they vomited while staff members barked insults from a pickup. Other students were made to suck pacifiers all day for speaking out or to wear what the school calls the "ugly dress," Cochenour said.

The staff seemed to be competing with each other to think up more degrading punishments, he said.

In October Michael Waddle, a state juvenile officer in Kirksville, heard from runaways about two children injured by school discipline practices. A 13-year-old boy was being held down while another staff member prepared to swat him with a paddle. The boy bit the employee who then hit him in the ear, causing the boy's already infected eardrum to rupture. Another child was told to punch a mirror and injured his hand in doing so. Waddle also learned that staff members indicted for felony child abuse continued to work with the children.

### **Boarding students taken into protective custody**

Waddle then went to juvenile court and got an order for protective custody of all 115 of the school's boarding students. On October 30, the Highway Patrol loaded the students onto buses and took them to juvenile detention facilities where they were then released to their parents. Some parents took several days to get their children because they lived hundreds of miles away.

### **Parents return their children despite warning**

Waddle's office has written to the parents about the abuse allegations at Heartland and warned that leaving their children at Heartland might result in further juvenile court action.

Nevertheless, the majority of parents have returned their children to Heartland, including the boy whose eardrum was ruptured.

Sharpe's CNS International Ministries and Heartland Academy Community Church filed suit to stop the removals. U.S. District Judge Richard Webber issued a temporary order halting any more mass removals and said the state can remove a child only if it has evidence of a specific danger to an individual child.

Waddle testified that it would be difficult for him to protect children from abuse if he had to travel to Webber's court each time to prove the state should intervene.

### **Some students are helped**

Waddle agreed that Heartland had "tremendous potential to do great things for kids," but felt "a mature, trained staff" was needed to care for troubled teenagers, "not 19-year-old males without experience or training."

Several of the students who were forced to work in the manure pits testified that they did not think they were being abused at Heartland. Several told the press that Heartland was the best place for them because it had rescued them from drug abuse and violence and gave them more love than they had gotten in foster care.

When the students "are touched by the power of God, their lives change," Sharpe said. "Until they receive Christ as their savior, nothing happens. It's strictly spiritual. Our program works from the inside out. The whole thing is about God."

Sharpe added that the real abuse was the way the children had lived in the outside world before they came to his "place of peace."

"We do work within the limits of the pertinent laws, but we do not intend to run things the way the state does. That system already has failed these kids," Sharpe said.

He was happy about his temporary "victory" in federal court and predicted the criminal charges against his staff would fail. "A group of little men thinks they can stop God?" he asked.

### **Missouri's religious exemptions**

Missouri has virtually no regulation of children's residential facilities run by religious



organizations. Missouri law exempts them from licensure and regulation. It does not even require them to meet fire, health, sanitation, or safety standards.

The state has no records on these facilities. Indeed, it does not know their names, locations, how many there are, the names of their students, or how many students there are. Recently a runaway youth was picked up by law enforcement and taken to juvenile court in Rolla, Missouri. He said he was enrolled at a local religious boarding school that public officials had never heard of.

The state has no authority to close unlicensed religious boarding schools or group homes. It cannot set standards for the training of their personnel. Missouri does require that criminal background checks be done, but the religious facilities have the right to employ whomever they wish regardless of their background.

State officials can investigate these facilities only when they have probable cause to suspect child abuse or neglect.

### **Reform legislation promised**

State law does require parents who place their children in religiously-exempt facilities to sign a "notice of parental responsibility" acknowledging that the boarding schools are unlicensed, but the notices do not have to be filed with the state. Indeed, Heartland refused to provide Waddle with the names of Heartland students and their parents after he received reports of abuse. Waddle had to get the names with a search warrant.

Missouri State Senators Patrick Dougherty and Roseann Bentley have promised to introduce legislation to improve protection for children in unlicensed boarding and day schools.

### **Comment**

Words fail us. All we can do is shudder at the thought of seriously disturbed children hundreds of miles away from their parents under the care of people and institutions who have no accountability to the state.

In general, it is reasonable to require that the state have probable cause to suspect abuse or neglect of an individual child before intervening and then only on behalf of that child. But the state

cannot possibly protect children who are walled away in institutions that it knows nothing about. Any facility that cares for children on a daily basis (except for homes where only kinship care is given) should be required to meet state standards.

Taken in part from *The New York Times*, July 5, and the *St. Louis Post-Dispatch*, July 8, Nov. 7, 16, and 18. See also the book *An American Gulag: Secret P.O.W. Camps for Teens* by Alexia Parks.

## **Canadian church insists on right to hit kids**

Church and state appear headed for a collision in Canada over corporal punishment. A church has encouraged parents to defy a court order prohibiting corporal punishment even though such defiance may cost them custody of their children.

In July a Children's Aid Society removed seven siblings in Aylmer, Ontario, from their home. The parents, whose names cannot be released, are German Mennonites and speak little English. They were living in Mexico when Rev. Henry Hildebrandt of the Aylmer Church of God persuaded them to move to Canada and join his church two years ago.

Hildebrandt said the family first came to CAS attention last year when one of the children was scalded and the parents did not obtain medical care. The founder of his branch of the Church of God is Rev. Daniel Layne in Upland, California, and children have died in Layne's church after their parents withheld medical care. (See article "Girl dies after family relies on faith for cure.")

Hildebrandt's position on medical care has not been reported, but he has had much to say on corporal punishment, which he claims the Bible mandates. He says children will be "wayward" without corporal punishment. Indeed, he claims that children want their parents to use it "because it makes them happy children; it keeps them in line."

The church believes in hitting a child only on the buttocks and then only after other discipline methods have failed, Hildebrandt says. It also teaches that parents should not strike while they are angry.



Corporal punishment should, however, be "thorough," he says. "A thorough job is when the child complies. He must show submission [and] remorse. Do it a little longer. You will feel when they have given in."



*Rev. Henry Hildebrandt*

Photo by Dave Chidley used with permission from the *London Free Press*

Hildebrandt said the church must protect its belief that "it takes more than a slap on the butt to obey. There has to be pain. There will be pain." The church advocates hitting with objects rather than the hand.

Twenty-six mothers and seventy-four children, about half of his congregation, fled Canada in fear that CAS would take custody of their children. They went to sister Church of God congregations in Ohio and Indiana.

Another response was for the Aylmer Church of God congregation to join the local Children's

Aid Society en masse, outnumbering the entire membership the Society had before the incident. Its acting director welcomed the new members, but pointed out that its policies are set by provincial legislation. The members can vote for the board of directors.

#### **Agreement: medical care and no hitting**

The children were returned to their home three weeks later after their parents agreed that neither they nor anyone else could hit the children, that they would provide needed medical care for them, and that CAS could interview the children privately. A court hearing was held this fall to determine if CAS could continue to monitor the children's welfare.

It was expected to consider the parents' claim that they have a religious right to hit their children and whether CAS was justified in prohibiting them from using any corporal punishment.

Calling CAS action in the case "illegal and immoral," Citizen Impact Canada, a London-based group that defends traditional Christian values, said "Parents know their children better than anyone else and need to be free to make their own decisions about discipline within the confines of the law."

Focus on the Family Canada, a fundamentalist Christian group, said: "The theological underpinning for family corporal punishment is tied up with the responsibility that God gives families for raising the young. You can find it particularly in the early books of the Bible."

#### **God's law requires corporal punishment**

On December 4, Hildebrandt announced that an international council of Church of God leaders had met in Texas and decided that the church did not "encourage the family to comply" with the court order because God's law required corporal punishment of children.

"We believe this, we teach this, and we're standing for it, regardless of the consequences," Hildebrandt said.

Hildebrandt said the family is still "free" to do what they wish, but "God's law includes corporal punishment."



“Why would you be a member of something” whose teachings “you don’t want” to follow? he asked.

Hildebrandt refused to answer questions about what church discipline the family would face if they don’t resume the church’s concept of their “parental duties.”

### **Father willing to disobey court order**

On December 11 the father told the press he will follow the Bible and inflict corporal punishment on his children even though he knows it may cost him custody of them.

One of their children translated for his parents, but would not talk until the pastor was present. The parents said they will consult their pastor if their children misbehave and will first try alternatives to corporal punishment, but will not rule it out.

In response, Family and Children’s Services said it will ask a court to restrain Hildebrandt from counseling the parents to strike their seven children and from talking to the press about the case. It will also ask the court to order the parents to confirm in writing that they will obey a previous order not to strike or medically neglect their children.

### **Church pressure on parents alleged**

The agency said much of the conflict had been instigated not by the parents, but by the church. The parents are new to Canada and are heavily dependent on the church, FCS said. For example, the church is paying for the parents’ legal defense.

On December 9 the family was in the front row of the church as Hildebrandt told followers for two hours that the laws of men must be violated when they contradict the laws of God. The scene was observed by a social worker, FCS said.

On December 17 Hildebrandt held another press conference at his church and said he was “ready to go to jail for the children.”

Canada’s criminal code, section 43, allows parents to use corporal punishment as long as it does not “exceed what is reasonable under the circumstances.” The law has been challenged by child advocates who would like Canada to outlaw corporal punishment as several European countries have.

Section 43 was upheld by Ontario Superior Court. The ruling has been appealed to the Supreme Court of Canada.

### **Comment**

CHILD believes it is appropriate for courts, on the recommendation of state child protection services, to prohibit some families from using any corporal punishment even when the law allows parents in general to use moderate corporal punishment.

Taken in part from the *London Free Press*, July 7, Aug. 1 and 25, and Dec. 5, 12, 15, and 18, and *Kitchener-Waterloo Record*, July 17.

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## **Pressure to avoid medical care described**

While the Aylmer Church of God (see above) has become controversial in Ontario for its policies on corporal punishment, others charge that the church discourages medical care. Aylmer medical nurse Liz Coletta stood aside and watched her mother, sister, and father die without medical care because the church promised healing by faith.

Shortly after her relatives joined the church, Coletta’s mother was pressured to stop taking heart medication. Her mother sat sleepless in a chair for 48 hours, gasping for air, her legs bloated, Coletta said. Church members told her nothing was wrong. “They just sat around the table ... talking and laughing. They kept telling my mother ‘God’s going to give you a new heart, just have faith,’” Coletta reported. Seven weeks later her mother’s lungs filled with fluid and she died.

Last year, Coletta’s sister died of what was likely breast cancer, though it was undiagnosed. “Her breast was split wide open and draining fluid,” Coletta said.

Rev. Daniel Layne, who founded this branch of the Church of God, said followers are expected to seek healing first through prayer, but are free to choose medical treatment.

Based in Upland, California, Layne said he spoke to Coletta’s sister on the phone and she never regretted her choice. “Every time she prayed, the pain would go away—that was the miracle,” he said.



## Pastor's wife must set example

The wife of a former pastor said Layne yelled at her for going to a doctor. "Whether you follow my counsel may determine if you live or die," Layne told her, the woman claimed.

Layne denied making threats or yelling. But he said he expected a pastor's wife to set "an example among us."

Restricting access to doctors is just one form of the church's excessive control of its followers, said David Kauenhowen, a former minister from Manitoba, who left the church last year. The church controls every aspect of its members' lives, from whom they marry to where they live, he said. "Layne and his ministers control people so intensely that they can't think or speak for themselves."

Taken from the *London Free Press*, Aug. 11.

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CHILD is reprinting with permission the article below in the August 24, 2001, issue of the *London Free Press*. Interestingly, the Canadian newspaper was the first to report the death of this California child.

## Girl dies after family relies on faith for cure *by Jonathan Sher*

On July 4, the same day police and social workers dragged seven children from their house in Aylmer, a more tragic drama unfolded in a home east of Los Angeles.

A week-and-a-half short of her first birthday, Julia Grace Wiebe had already learned to pull herself to her feet, her hands clinging to whatever was close. Any day, it appeared, she would walk.

But she would never take a step.

That first week in July, Julia fell violently ill. Her parents, members of the Church of God, believed they had one course of action: Prayer.

Rick and Agnes Wiebe were joined in prayer July 4 by those who share their faith in places such as Aylmer, [Ontario]; Indiana and British Columbia. Two days later, after her fever spiked and her body convulsed, Julia was dead.

"This was an easily preventable death," said Claudia Spencer, chief of community health

services for San Bernardino County's public health department. "This would have easily responded to almost any antibiotic."

The coroner in San Bernardino County has ruled the infant died of meningitis and medical neglect.

Homicide detectives and medical officials are seeking answers.

But this much is clear—the Wiebes chose to put their faith in God rather than in doctors.

It's a choice they and their relatives refuse to second-guess.

"I believe in divine healing," said Julia's uncle, Tim Vandervalk. "If parents have the right connection, the right relationship with God, I believe they'd be doing right not to take the child to the doctor."

Vandervalk described his niece's final days.

"Agnes phoned us (July 4) and said Julia was quite sick. She couldn't pick Julia up—she'd start screaming," he said from his home in British Columbia. "Julia was in pain but she couldn't say what it was because she couldn't speak. (Her parents) phoned different congregations and asked them to pray for her."

On July 6, Julia's fever spiked and her body was convulsing. By day's end, she was dead.

Investigators with the coroner's office later arrived at the Wiebes's ranch home in Rancho Cucamonga. They were familiar with the address.

In 1996, in that same home, Agnes Wiebe delivered a stillborn boy, according to Randy Emon of the coroner's office. [Another boy died at birth in 1999; see following article.]

"What really bothered me is that the mother said that three days before, the baby had stopped moving, but they had not sought medical help," Emon recalled this week.

Emon also noted the couple had been joined by their pastor, a man who seemed exceedingly nice but also a man who seemed to direct the parents.

"I got the impression he controlled them," Emon said. While Emon couldn't recall the name of the pastor, the Wiebes' pastor was and still is Danny Layne.

In an interview this month, Layne insisted the church encourages the use of prayer to heal but



neither forbids the use of doctors nor ostracizes those who seek medical care.

His claim has been questioned by relatives of church members in Aylmer who have died of cancer and other maladies without treatment. And it also appears that for a time the church hid from its members the fact a leader among them had a caesarean section that saved her life.

Susan Mutch edits the church's liturgical newsletter. Mutch said she had the surgical procedure but insisted others in the church arranged for it.

"I was incapacitated. It would have been my husband and (Pastor Ron) Walter," she said.

Her child was stillborn.

Layne knew she had the procedure but not all the details that led to it, she said.

For two years, leaders in the church kept secret the c-section, Vandervalk said.

In fact, when Mutch first returned to a church service after the surgery, a woman in the congregation said in a testimonial to others she was thankful Mutch has survived the ordeal without going to a doctor, Vandervalk said.

Layne and Walter couldn't be reached for comment. Asked if she or others had deceived the congregation, and if so, why, Mutch refused to answer.

But in verses she composed for the newsletter, Mutch wrote: "Stand oh Christian, at any cost, hold that banner higher. Strike dread fear in Satan's hosts, let them feel the fire. The devil's cast so many down, through compromise and sin. Make him feel the pains of hell before he enters in."

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## **Church of God couple face criminal charges in baby's death**

On September 17, Richard and Agnes Wiebe of Rancho Cucamonga, California, were arrested and charged with manslaughter and willful cruelty to a child in the death of their daughter.

Julia Grace Wiebe, age 11 months, died July 6 of meningitis, a vaccine-preventable disease. The San Bernardino County Sheriff's Office said the baby was ill for at least a week with a high temperature and a fever. The Wiebes did not get any medi-

cal attention for her and called paramedics only after Julia stopped breathing.

The Wiebes are members of the Church of God in Upland, which encourages exclusive reliance on prayer to heal disease.

### **Parents have lost 3 children**

Agnes Wiebe, 28, had two stillborns before giving birth to Julia. In March, 1999, her baby Michael Aaron Wiebe was stillborn at home. Coroner's officials ruled that compromised blood flow between mother and baby and two knots in the umbilical cord caused the baby's death.

In 1996 the Wiebes had another stillborn boy at home. Mrs. Wiebe told the coroner's office she felt the baby stop moving three days before delivery. The office attributed the death to "undetermined natural causes."

Wiebe is pregnant again. In fact, the couple's bail was reduced and they were released from jail later in September after their lawyer argued that Wiebe needed prenatal care.

Taken in part from the *Inland Valley Daily Bulletin*, Sept. 19, 2001.

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## **Colorado parents sentenced in diabetic child's death**

On November 8 Colleen and Randy Bates of Clifton, Colorado, were sentenced in Mesa County District Court for letting their 13-year-old daughter Amanda die without medical care. They pled no contest to criminally negligent child abuse causing death.

Amanda died February 5 of diabetes and gangrene. Her parents withheld medical care from her because of their lifelong membership in the Church of the Firstborn. According to Mr. and Mrs. Bates, Amanda was sick for a week with what they thought were symptoms of flu. Mrs. Bates also saw that Amanda had a "rash" on her face, arm, leg, and buttocks. Fellow church members saw the rash the last week of January, and Amanda told them her legs hurt.



### **Alarming symptoms**

On February 2 Amanda began vomiting off-and-on for three days. Mrs. Bates called church members in to help with her care. These members observed that Amanda "appeared to be in a deep sleep." They did manage to awaken her briefly twice. She appeared disoriented.

At 3 a.m. on February 5 Amanda's ear made a "funny noise" and started to bleed. Her breathing was very labored, and she had large black circles under her eyes.

At about 7 a.m. she stopped breathing. Mrs. Bates then called 911 because, according to her later statement to investigators, she thought Amanda had died.

### **Diabetes, yeast infection, gangrene, and pneumonia**

Amanda was taken to a Grand Junction hospital. She was bleeding from every orifice, including her nose and ears. The examining physician and pathologist said she had, in addition to diabetes, a severe yeast infection of the genitalia and buttocks that had been left to "fester for a long time," and early pneumonia. She died the night of February 5.

Mrs. Bates, 36, was then pregnant with her fourteenth child. The couple had earlier lost a son to sudden infant death syndrome. One of Mrs. Bates's brothers died in childhood during an epileptic seizure.

The Bateses were home schooling their children even though neither graduated from high school. Mrs. Bates provided the instruction while working full-time at Sam's Club for the past six years.

### **Medical diagnosis to obtain disability**

Mr. Bates has been fired from two jobs because he refused to pay for medical insurance. A few years ago, however, he did go to a doctor and was diagnosed with rheumatoid arthritis. He receives \$748 per month in disability payments.

One church member whom Colleen Bates called on repeatedly during Amanda's illness was Barbara Reed. In 2000 Reed lost two children, one in a fire and another because of a common, correctable heart defect for which she and her husband did not get medical care. Reed told

investigators that, because of these deaths, the Department of Human Services required her to get medical checkups for her surviving children and a county public health nurse had taught her to recognize signs of serious illness.

Mrs. Bates asked Reed's opinion as to whether Amanda had measles. Reed said she did not. And on the last night of Amanda's life, Reed told Bates Amanda would be okay though both women had seen that she was in a coma most of the time and disoriented during the few minutes she was conscious.

### **Three siblings found with strep infection**

After Amanda died, the DHS investigated the family and obtained medical examinations for her siblings. Three had strep throat.

Colleen and Randy Bates were charged with felony child abuse, reckless endangerment, manslaughter, and negligent homicide.

Both said they always gave their children the choice to see a doctor, and Amanda had refused. She "never complained," Bates said.

### **Parents willing to obey state orders**

Both parents stated to investigators they were not sure they would do anything different if they had it to do over again.

Both also, however, told DHS workers and other public officials that they were willing to comply with all state orders for medical care of their children. In October one of their children got sick and they promptly sought medical help in compliance with the DHS treatment plan for the family.

The Bateses stated that they did not neglect Amanda and do not believe they are guilty. Randy Bates said a nurse at the hospital told them childhood diabetes was "hard to detect" and "not uncommon," but then, he complained, "they changed their minds and now we are criminals. I just want everyone to be honest; that's why I took the plea agreement. I believe in God, He took my daughter home, I don't like it and I miss her very much, but God is merciful."

### **Medical care and health education ordered**

They were convicted of abuse resulting in death. Mesa County District Attorney Frank Dan-



iels presented hundreds of pages about Amanda's physical deterioration and suffering. He argued for prison time, but in a courtroom packed with Church of the Firstborn members, Judge Amanda Bailey sentenced them to twenty years probation during which time they will have to provide Medicaid health insurance for their children, get them medical care when necessary, complete courses in health, and perform 1300 hours of community service each.

### **Could parents have been unaware that child was seriously ill?**

The probation officers' presentencing report made excuses for the parents. "In spite of the sores seen on Amanda's body," they wrote, "it doesn't appear that Mr. and Mrs. Bates were aware of the extent of the injuries or their daughter's diabetes and gave what they thought was reasonable, adequate and loving care to Amanda. They offered her liquids, lotions for her rash and food when she requested it. They had her bed made up in the living room so she could continue to interact with her family and certainly did not ignore her. While it is tragic that further investigation into her 'sores' didn't take place, it does not appear that they intentionally ignored her illness."

Judge Bailey said they were "not criminals in any ordinary sense of the word" and their intentions "were not evil."

### **Comment**

The judge's comment is unfortunate and the presentencing report's conclusions are shallow. Everyone concedes that these parents loved their daughter, but parents should have more legal obligations to their children than good intentions.

Colleen and Randy Bates did not completely ignore Amanda's illness, but what they did about it was so inadequate that they were, in a legal sense, criminals. They intentionally ignored alarming, even grotesque symptoms.

We have no criticism of the judge's sentence, but she missed a golden opportunity to educate her Church of the Firstborn audience about what they ought to do when their children are sick.

Amanda died when Colorado had a confusing religious defense to felony crimes against children.

Outrage over her death contributed to its repeal two months later.

Taken in part from the presentencing report.

## **Maryland—still getting cleaner**

Maryland was already on CHILD's list of clean states with no religious exemptions from a duty to provide medical care for a sick child. In 1994 Maryland repealed its religious exemptions from child abuse and neglect in the civil code and has never had a religious exemption in the criminal code. Maryland child advocates have fought off two attempts by the Christian Science church to enact religious exemptions to felony crimes against children.

### **CINA exemption repealed**

In 2001 they obtained yet another victory for children—repeal of an ambiguous exemption from adjudicating the child as in need of assistance (CINA). The exemption read, "A child may not be deemed to be a child in need of assistance for the sole reason that the child is being furnished non-medical remedial care and treatment recognized by state law."

What legislators meant is debatable, but the Christian Science church has repeatedly told Maryland state government that their prayers are "non-medical remedial care and treatment recognized by state law." The evidence they offer for state recognition is the Maryland Health Occupations Article, which permits Christian Science spiritual healers to send bills for their prayers without being charged for the unlicensed practice of medicine.

### **Deception alleged**

In 1996 the American Bar Association Reform Committee put in a bill to reform Maryland foster care law; it included repeal of the exemption in the CINA law. The bill died. In 1999, the Maryland judges sponsored another large bill dealing with reform of foster care law, which also included repeal of the religious exemption and also died. In 2000 it passed the Maryland Senate, but died in the House after some legislators complained that the Christian Science church had not had an



opportunity to testify and one accused CHILD honorary member Ellen Mugmon of Columbia, Maryland and the pediatricians' lobbyist of trying to "sneak" repeal into the bill. Actually, repeal had always been in the bill and had been put there by the judges and the ABA.

### **Judges work for 3 years on bill**

The judges, Mugmon said, deserve great credit for insisting on repeal of the religious exemption even though it cost them their reform bill in 2000. This year they made an all-out effort to get it passed. Joseph Bell, Chief Judge of the Maryland Court of Appeals (the state's highest court), and other judges attended legislative committee hearings and testified for the bill.

Many organizations specifically called for repeal of the religious exemption in their testimony to the legislature. These included the Children's Action Coalition, Coalition to Protect Maryland's Children, Citizen Review Board for Children, Presbyterian Church of Maryland, and the Maryland Chapters of the American Association of University Women, American Academy of Pediatrics, and National Council of Jewish Women. The Maryland Department of Human Resources also testified against the religious exemption, pointing out that it deprived children of equal protection.

In the Senate, Christian Science lobbyist Dale Burman passed out an amendment to restore the exemption a few minutes before the hearing began and said he had just gotten it from the Mother Church in Boston. Two Senators sponsored it in the Judicial Proceedings Committee.

Mugmon, representing the State Council on Child Abuse and Neglect, testified that the exemption violated the Establishment Clause because it preferenced the prayers of only one faith, Christian Science. She also charged that it violated the equal protection clause of the Fourteenth Amendment, caused due process/fair notice problems, and conflicted with Maryland's case law, its child abuse and neglect statutes, and federal standards.

### **Court: Christian Scientists must get medical care**

As an example of Maryland case law, she cited the ringing words of the court's ruling in *Craig v.*

*State*, 155 A.2d 684 (Md. 1959): "[The appellants] were. . . not prosecuted because they prayed, but for their alleged negligent failure to provide medical care. While [Maryland law] *permits* the treating of human ills in accordance with the tenets of Christian Science, it does not, in any matter, render such treatment the legal equivalent of medical care; hence Christian Science parents find themselves under the same duty to provide medical care of their minor children under the provisions of [Maryland law] as do all other parents."

Mugmon emphasized that adjudicating a child as in need of assistance makes possible a variety of state services for the child and his parents. By contrast, with the exemption preventing such adjudication, the only intervention possible for the state was a court order for medical treatment in an emergency.

"Asthma, epilepsy, and diabetes are common childhood ailments that pose substantial ongoing risks and require delicate medical management," she said. "Children with these diseases should not have to go into medical crisis after medical crisis with no guarantee that they will be discovered in time by authorities to prevent disability or loss of life."

The Christian Science amendment was defeated and the bill passed the Senate with repeal of the religious exemption to the CINA law.

### **Swan testifies**

CHILD president Rita Swan testified before the House Judiciary Committee. Excerpts from her testimony follow.

"While the religious exemption considered here today is a restriction placed upon judges, please consider that it also shapes the behavior of parents. The Christian Science church publishes booklets of legal advice, which, by quoting religious exemption laws out of context, have in the past given many parents the impression that exclusive reliance on Christian Science prayer treatment for their sick children is legal. Parents in faith-healing sects are deeply conflicted when their child is sick. Laws should communicate to them clearly. Present Maryland law is not clear.



### No scientific support for medical neglect

"Maryland's Christian Science lobbyist testified to the Senate Judicial Proceedings Committee that 60,000 people have been healed by Christian Science prayer treatments. We wish to point out, however, that the church's healings have not been evaluated in a peer-reviewed scientific journal, and the church has refused to let us see any medical documentation they may have for these healing claims.

"The church's testimony cites studies by Dr. Dale Matthews and others showing a connection between spirituality and health as a rationale for the exemption. But the studies do not support withholding medical care. Matthews says, 'I believe in the combination of medical treatment and faith. . . . To not use medicine would be like going back to the first century and saying, well, let's not use electricity.' [National Public Radio, *All Things Considered*, November 25, 1998]

### No medical care for dying child

"Religious exemption laws have contributed to deaths and injuries of many children. In 1990, for example, the Supreme Court of your neighbor Delaware quashed a lower court order for medical care of a Christian Science child stricken with cancer, in part because of a state religious exemption law. *Newmark v. Williams*, 588 A.2d 1108 (Del. 1991)

"We see no need for a statutory religious exemption from a parental duty of care or an exemption limiting the court's authority to protect sick children on the basis of religious belief. Everyone's right to pray is protected by the First Amendment. Child protection laws require evidence that the child is being harmed or at substantial risk of harm before the state can investigate or intervene in family privacy. Intake workers are trained in cultural competency. Child Protection Services regulations prohibit findings of child abuse or neglect if the reporter is simply suspicious of members of a minority religion or ethnic group and has no evidence of a specific and substantial threat to the child's welfare.

"Ironically, in lobbying elsewhere, the Christian Science church claims that they trust the courts to be fair, but they need religious exemption laws to stop social workers from imposing medical

treatment on their children without going through the courts. On June 1, 1994, Philip Davis, the church's federal representative, wrote to Congress professing alarm that in Maryland 'the child protective network [is] able to order medical treatment for a child being given Christian Science treatment without the necessity of obtaining a court order.'

"**'There has been no attempt on our part to receive some form of immunity in cases where a child's condition becomes a concern to the state. However, we do need a fair hearing in court,'** Davis said (emphasis added)

"Of course, however, 'some form of immunity' in cases before the court is exactly what the church is seeking to preserve here today.

"The courts are often the bulwark of protection for minorities. Both sides have rights to counsel. Delegates, please trust your state judges whose bill includes the repeal of the religious exemption in the dependency code. You can trust your independent judiciary to be fair and to protect legitimate First Amendment rights without limiting their ability to order assistance for a child."

### Church lobbyist: parents should have right to choose "recognized" spiritual treatment

In response, the Christian Science lobbyist Dale Burman adopted a folksy tone, reminiscing about his time at Principia College in the 1960s when Rita and Doug Swan were there.

"Doug was the nicest guy in the world," Burman said. "We often played tennis together. He always won, but I didn't hold that against him." [Doug Swan denies playing tennis with Burman or anyone else at Principia, let alone winning.]

Burman's view of Rita Swan was rather different. He said her testimony had no facts relevant to Maryland and accused her of "banging the table" with empty rhetoric.

He also said Christian Scientists are free to go to doctors and in fact, he himself took his three-year-old son to a doctor when the boy's neck was "swollen to huge proportions" with infection.

Burman, nevertheless, insisted that Christian Scientists should have statutory exemptions from providing medical care for their children and that



their healing methods were "recognized by state law."

Nor is such state recognition a special privilege for one religion, he argued. In 1958, Christian Scientists got rights for practitioners to charge money for their prayers, he said, and "any religion could have done what we did."

### **Delegate badgers judges**

Delegate Anthony O'Donnell again this year complained to the judges that "this religious exemption thing just blindsided us" and was "snuck out" without the subcommittee's knowledge.

"What else have you snuck in without our knowledge?" he asked a judge. He warned the judges, "You just might not get your bill if you pull tricks like this on us again."

The bill passed the committee by 15-1 with O'Donnell the only dissenter.

As the bill went to the House floor, Burman's legislator put a temporary hold on it and expressed her intention to introduce a floor amendment for the Christian Scientists.

The Coalition to Protect Maryland's Children and other groups quickly composed a page of talking points and distributed it to sixty delegates, including Burman's, within 24 hours. No amendments were introduced, and the bill passed handily.

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## **Christian Science lobbying thwarted in Georgia legislature**

During the 2001 legislative session the Georgia legislature considered HB453, a bill to make child endangerment a crime. The Christian Science church lobbied for a religious exemption. CHILD honorary member, Dr. Randy Alexander, the director of the Center for Child Abuse at the Morehouse School of Medicine, testified vigorously against it.

Nevertheless, in March, the Georgia House Children and Youth Committee added a religious exemption to the bill allowing Christian Scientists to withhold medical care from a sick or injured child "in conscious disregard of a substantial and foreseeable risk" that the child's health or safety are

endangered and in "a gross deviation from the standard of care which a reasonable person would exercise. . . ."

### **CHILD members fight exemption**

CHILD's other Georgia members raised more protest against the exemption through letters, phone calls, and personal visits to the Statehouse. A member's relative met with a Deputy Attorney General, whom she knew personally, and informed him of the religious exemption amendment.



When the bill went to the floor, Rep. Stephanie Stuckey of Decatur (on left) spoke strongly against the exemption for Christian Scientists.

The bill was tabled, not only because of her protest, but also because right-wing conservatives were concerned that the bill trampled on parents' rights and because some women's groups want an affirmative defense to the crime of child endangerment for battered women.

Prevent Child Abuse Georgia, Georgia prosecutors, and other child advocates have been working hard to prepare a new bill and overcome conservative objections to this much-needed legislation. They oppose statutory exemptions for both faith healers and battered women.

In the 2001 legislative session, the Christian Science church also lobbied in Georgia for an exemption to SB60, which provides for child fatality review. However, the bill passed and was signed into law without a religious exemption.

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## **South Dakota religious privilege bill killed**



In 2001 a bill was introduced in South Dakota modeled after the religious freedom restoration act that was in federal law for three years. It provided a cause of action for anyone whose religious practices were infringed upon by state laws or regulations and required the state to prove that its infringement served a vital state interest and used the least restrictive means to secure that interest.

CHILD member Joni Clark Cutler, a 2000 winner of the Imogene Temple Johnson Friend of Children Award, organized massive opposition to the bill, and it was defeated.

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## **Iowa strikes out again on children's health**

Iowa missed another opportunity to protect children this year when the Department of Public Health decided to continue its policy of letting parents refuse metabolic testing of newborns.

Aware that the department was revising its policy, CHILD president Rita Swan wrote the department urging it to drop the parental waiver so that at least all babies born in hospitals would be tested for metabolic diseases. Swan also presented CHILD's position at a meeting of the state Birth Defects Advisory Committee.

The department decided, however, to retain the waiver in its new regulations. At a public hearing on the new regulations conducted by videoconference, Swan and Sioux City pharmacist Shirley Winckler spoke against the parental waiver. They were the only people in the state who attended until the program director at the University of Iowa arrived an hour late, and he professed his neutrality on the waiver.

Nevertheless, the department reaffirmed its decision to maintain the parental waiver. It begins its testing regulations with the statement, "It shall be the policy of the state of Iowa that all newborns shall be screened for hypothyroidism [and other metabolic disorders]." A later paragraph allows parents to refuse the test for any reason. When informed of CHILD's concerns, the Attorney General advised the department to move the waiver provision to a different chapter.

## **Parents must understand potential damage**

Iowa does require parents who refuse the test to sign a statement confirming that they understand that, if untreated, metabolic disorders "may cause permanent damage to my child, including serious mental retardation, growth failure, and even death;" that they "understand the risks" to their child "if the screening is not done," and they "accept the legal responsibility for the consequences of this decision."

Since no public official or member of the Birth Defects Advisory Committee has given a reason why parents should be allowed to refuse the test, CHILD wrote both the Public Health Department and the Attorney General to ask for an explanation. We have not received an answer.

## **Comment**

Iowa wants to have it both ways. The state says they have a policy that *all* newborns shall be tested. The state also wants all parents to have the right to refuse the testing, but tries to hide the waiver where parents can't find it. With no means of enforcing the policy, Iowa has no policy in our view.

What "legal responsibility" will accrue to parents whose children are permanently damaged by "the consequences" of the parents' decision? The state and insurance carriers will still be obligated to support a disabled child and adult. The parents will not be indicted for doing something the state allows them to do.

It seems to us that the "consequences" will be borne entirely by the children.

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## **Wyoming allows more religious exemptions from immunizations**

A court ruling and a settlement agreement have forced the Wyoming state health department to grant all written requests for exemptions from immunizations in which the parent states a religious objection.

## **Vaccine encourages immoral behavior**



Several plaintiffs challenged the Wyoming Department of Health's denial of a religious exemption from the hepatitis B vaccine. The parents believe that, because of their Christian values, their children will never engage in sex outside of marriage or use intravenous drugs, and therefore do not need the vaccine. Indeed, they argue that giving the vaccine, like distributing condoms, encourages immoral behavior.

Dr. Shannon Harrison, the State Health Officer, denied their requests, claiming that their objections were philosophical rather than religious and that the religious exemption was only for those with religious beliefs against all medicine and vaccines.

Several months later one parent testified that her religious beliefs had changed and she now believed all vaccines sinful. Harrison still refused to grant her the exemption and questioned the sincerity of her religious conversion.

The parents, supported by the Rutherford Institute in Charlottesville, Virginia, and local counsel, argued the state had no right to question the sincerity of anyone's religious beliefs or to require that s/he object to all medicine and vaccines to qualify for a religious exemption to the hepatitis B vaccine.

### **Sincerity inquiries prohibited**

On March 8 the Wyoming Supreme Court ruled for the parents in *In the Matter of Exemption from Immunization Requested by Susan LePage, Parent of Lisa LePage, a minor v. State of Wyoming Department of Health*, 18 P.3d, 1177 (Wy. 2001). The exemption in Wyoming Statutes Section 21-4-309(a), provides, "Waivers shall be authorized by the state or county health officer upon submission of written evidence of religious objection or medical contraindication to the administration of any vaccine." The Supreme Court ruled that the word "shall" orders the Department of Health to grant all written requests for religious exemptions without inquiry into the sincerity of religious beliefs.

"Furthermore," wrote the Court, "construing the statute as the Department of Health suggests raises questions concerning the extent to which the government should be involved in the religious lives of its citizens. Should an individual be forced to present evidence of his/her religious beliefs to be

scrutinized by a governmental employee? If parents have not consistently expressed those religious beliefs over time, should they be denied an exemption? Can parents have beliefs that are both philosophical and religious without disqualifying their exemption request? Should the government require a certain level of sincerity as a benchmark before an exemption can be granted?"

Moreover, the Court warned that if "the legislature chose to address these types of questions with further legislation, such legislation would call into question the constitutional prohibition against governmental interference with the free exercise of religion under Article 1, Section 18 of the Wyoming Constitution."

While "abuse" of the religious exemption might cause disease outbreaks, the Court said it was the legislature's responsibility to solve the problem through constitutional means. The Court said it had been given no evidence that the number of religious exemption requests was "excessive."

The parents had raised constitutional issues including invasion of privacy, infringement on their religious freedom rights, and denial of the equal protection of the laws. The Wyoming Supreme Court refused to rule on the constitutional issues and based its ruling only on interpretation of the state statute.

### **State cannot question physician's judgment**

On March 9, the Court ruled for guardians in a case involving medical objections to the hepatitis B vaccine. *Jones v. Wyoming Department of Health*, 18 P.3d 1189 (Wy. 2001). The Joneses requested an exemption from the vaccine for their ward Keith Jones, a Wyoming middle-school student. Dr. Rebecca Painter, a licensed physician specializing in internal medicine in Gillette, Wyoming, wrote on a state form that all vaccines were contraindicated for Keith because of a history of adverse reactions.

The Health Department denied the exemption request because Keith had had all recommended vaccines except hepatitis B, no adverse reactions or allergies were cited in his medical records, and Painter declined to provide information about his adverse reactions.

The Wyoming Supreme Court ruled that current law required the department to grant any



request for a medical exemption that was supported by a state-licensed physician.

On August 8, a case before the U.S. District Court for Wyoming, *Kim Cooper v. Wyoming Department of Health*, was settled by agreement. The Department agreed that the current statute prohibited "regulation of religious exemption claims" and that, under current law, it would grant all future requests for exemption in which the parent claimed a religious objection in writing.

The state also paid the plaintiffs' attorneys' fees and costs.

### Comment

Though grounded in Wyoming state law, this ruling and agreement should be a wakeup call to challenge statutes giving religious exemptions from immunizations. Some public health officials and legislators continue to feel that giving religious exemptions to the Christian Scientists is fine, but ways should be devised to prevent others from getting them.

Vaccine opponents have been pushing state legislatures to expand grounds for exemptions from religious objections to "philosophical" objections. Out of concern for public health, medical organizations oppose these efforts. An otherwise excellent article in the *Journal of the American Medical Association* recommended that states limit the exemption to those who show "strength" of their religious convictions against vaccines.

CHILD president Rita Swan responded in a letter published in the March 28, 2001, issue of *JAMA* as follows: "Such a policy, in my view, will intensify resentment and hostility to immunization programs. It treats Christian Scientists and some other religious groups as privileged elites, while parents who would like to claim a 'philosophical' exemption because of their fears of adverse reactions to vaccination are not allowed the exemption.

"A far better policy," Swan argued, "would be to repeal all religious and philosophical exemptions from immunizations and also for state legislatures to [require only vaccines that effectively prevent severe and/or contagious diseases]. Immunization programs will be more appreciated by the public if they are based on science that is explained to the public and not on religion."

Some state laws limit the religious exemption to members of "established" churches. Several courts have ruled such laws unconstitutional. See for example *Dalli v. Board of Education*, 267 N.E.2d 219 (Mass., 1971) and *Davis v. State*, 451 A.2d 107 (Md. 1982). Requiring proof of sincerity is also constitutionally suspect, causing government intrusion into private matters of faith.

There is, however, nothing unconstitutional about requiring immunizations without exception for religious belief. See *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *Anderson v. State*, 65 SE2d 848 (Ga. 1951); and *Brown v. Stone*, 378 So.2d 218 (Miss. 1979).

We wish health officials would argue to the court from the standpoint of the benefit of immunizations to the individual child rather than simply trying to stop new groups from claiming the religious exemption.

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## Vaccine opponents file suits in Arkansas

In October three lawsuits were filed against Arkansas school districts, the Health Department, and public officials as an effort to get religious exemptions from immunizations. Some plaintiffs object only to the hepatitis B vaccine. Like the Wyoming parents reported on in the preceding article, they claim that hepatitis B is spread only by sexual contact and needle exchange, that their children will never have sex out of wedlock or use drugs because of their Christian upbringing, and that giving the vaccine condones and encourages immoral behavior.

### Objections from Catholics

Some appear to be non-denominational fundamentalists. One is a Catholic who says her religion commands her to avoid the appearance of engaging in evils such as promiscuity. The Arkansas Health Department, however, denied her request for an exemption because the Catholic church has no doctrine against vaccines.



Another Roman Catholic plaintiff objects to the varicella vaccine because it was developed by using tissue from fetuses aborted in Europe.

### **Exemption for parents affiliated with “recognized” churches**

The Arkansas law requiring immunizations of schoolchildren exempts those whose parents or legal guardian state that “immunization conflicts with the religious tenets and practices of a recognized church or religious denomination of which the parent or guardian is an adherent or member.” Ark. Code Ann. § 6-18-702(d)(2)

The plaintiffs are asking for the law to be ruled unconstitutional because it privileges members of recognized churches with doctrine opposed to vaccines. They are also asking for the statute to be rewritten so as to give exemptions to anyone with personal beliefs against immunizations.

They are represented by the Liberty Council in Orlando, Florida, and by Robert Moxley of Cheyenne, who handled suits opposing vaccines in Wyoming.

“The State of Arkansas should not be in the position of making the determination that some religious beliefs are ‘recognized’ while others are not,” Liberty Council stated. “The U.S. Constitution requires that if Arkansas is going to grant exemptions from immunizations, then it must do so without partiality. . . . The State set itself up as the final decision maker regarding which religious beliefs it would protect and which it would not. The State may not determine what is orthodox.”

### **Do medical exemptions require religious ones?**

The plaintiffs also cite the case of *Fraternal Order of Police Newark Lodge 12 v. Newark*, 170 F.3<sup>rd</sup> 359 (3<sup>rd</sup> Cir., 1999). In this case, some policemen had a physical condition that made shaving painful so they were given a medical exemption from the rule against policemen having beards. Muslims then filed a complaint to obtain a religious exemption from the rule, complaining that the state was discriminating against religion by giving a medical exemption and not a religious one. A federal court agreed with them.

Every state gives exemptions from immunizations when medically contraindicated for individual children, so *Newark* may be cited in many other states by vaccine opponents.

### **Treatment demanded for unvaccinated kids**

The Arkansas suits were cheered by an Austin, Texas, organization called PROVE (Parents Requesting Open Vaccine Education). PROVE claims that mandatory immunizations violate “constitutional and civil rights.”

PROVE charges that the health care professions are motivated by greed in supporting mandatory immunizations, but also complains when physicians refuse to treat unvaccinated children. “We have had an EPIDEMIC of doctors who discriminate based on religion,” PROVE states in its November 6th newsletter. “We have been getting calls and letters from all over detailing the horrible experiences of children getting dumped from their pediatrician solely because the parent is exercising their legal right to a religious exemption.”

The Arkansas suits are *Cynthia Boone v. Arkansas Dept. of Health and Cabot School District*, *Shannon Law and Susan Brock v. Mike Huckabee*, *Mark Pryor, and Fay Boozman*; and *Dan McCarthy v. Arkansas Dept. of Health and Ozark School District* in the U.S. District Court, Western District, Fort Smith Division. The first two suits are before Judge Susan Weber Wright in the U.S. District Court, Eastern District.

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## **Why the hepatitis B vaccine should be required for children**

Many parents wonder why a growing number of states are requiring children to have the hepatitis B vaccine. We asked Dr. Ed Ledbetter, a pediatrician and CHILD board member to explain. He writes:

“An estimated 1.25 million Americans have chronic hepatitis B virus (HBV) infection with a 15 to 25% risk of death from chronic liver disease or cancer of the liver, and serve as a reservoir for continued HBV transmission to others. Annually



there are 4000 to 5000 deaths from complications of this disease.

### Many modes of transmission

While most U.S. carriers acquired the infection during young adulthood, infants of infected mothers are also at significant risk.

HBV is most often transmitted through sexual contact, injection-drug use, regular household contact with a chronically infected person, or occupational exposure, particularly among susceptible health care personnel. In settings where close personal contact is the norm, HBV transmission may occur from transmission through an open skin wound (such as impetigo, scabies, and excoriated insect bites) or mucosal surfaces, with blood, or with other infectious fluids. The source of infection is not identified within the incubation period of the disease for approximately one-third of acute hepatitis patients, but may become known later.

HBV is endemic in institutions for the mentally disabled. Deinstitutionalization has led to the placement of HBV carriers into schools and other environments where the risk of transmission is ill-defined. Evidence suggests that under certain conditions HBV infection spreads to class room contacts in schools and childcare centers.

Currently available vaccines are highly effective, proven safe for people of all ages, and protective for at least fifteen years.

### CAPTA update

Because of the terrorist attacks on September 11 and perhaps other factors, Congress has still not taken action on the federal Child Abuse Prevention and Treatment Act (CAPTA).

On October 17, the House Education and the Workforce Subcommittee on Select Education held its second hearing on CAPTA this year. At the hearing, Congresswoman Susan Davis, D-San Diego, asked all the witnesses their position on the religious exemption in CAPTA. She met with Dr. Seth Asser, lead author of "Child fatalities from religion-motivated medical neglect," *Pediatrics* 101 (April 1998): 625-9, when he lived in San Diego,

and then became concerned about the harm to children from medical neglect on religious grounds.

Witness Charles Klicka, representing the Home School Legal Defense Association, defended the religious exemption as a protection for parents' rights.

The other witnesses, however, expressed concern about the harm to children posed by the exemption. Dr. Joann Grayson of the American Psychological Association said the exemption should be removed.



Sandra Alexander, director of Prevent Child Abuse America, Georgia Chapter, (on left) spoke substantially as follows:

### Federal exemption hurts children

"The provision in current law is harmful because it denies certain children the protection of the laws that apply to all other children – namely, the laws requiring parents to provide necessary medical care for their children.

"If these religious exemptions were removed from state child protection laws—so that all parents knew they had a legal obligation to obtain necessary medical care for their children—many parents would obey the law, despite their religious beliefs. And, by getting simple medical care—such as life-saving insulin, antibiotics, or surgery—many children would be spared from needless death or suffering.

"While religious *beliefs* should enjoy strong protection, *action or inaction* that hurts children is not protected by the First Amendment. This has long been the position of the Supreme Court, which held in 1944 that the Constitution's protection of religious freedom does not go so far as to give parents the right to harm their children. *Prince v. Massachusetts*, 321 US 158 (1944).



"CAPTA should not sanction state laws protecting religious practices that result in the needless death or suffering of children.

### **Many call for removal of federal exemption**

"The National Child Abuse Coalition, including more than thirty national organizations; Justice for Children, the National Association of Medical Examiners, and the United Methodist Church have called for the removal of the religious exemption from CAPTA."

Sandra, we are proud to say, is married to Dr. Randy Alexander, an honorary member of CHILD.

Finally, however slowly Congress is moving on CAPTA, it is moving. Committee staffers are working to revise the current federal child abuse law. Please write your Congressman and Senator to urge removal of the religious exemption, especially if your federal representatives are members of the House Education and the Workforce or Senate Health, Education, Labor, and Pensions Committees.

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### **Amish exemption reintroduced in Congress**

For the third session in a row, a religious exemption for the Amish from federal child labor laws has been introduced by Pennsylvania Congressman Joseph Pitts.

HR2639 allows children as young as fourteen to work full-time "inside or outside places of business where machinery is used to process wood products" if they are members "of a religious sect or division thereof whose established teachings do not permit formal education beyond the eighth grade."

The bill includes the restrictions that the child must be supervised by an adult relative or "an adult member" of his religious sect, that the child must not "operate or assist in the operation of power-driven woodworking machines," that he must be protected from "flying debris" by an appropriate barrier or "by maintaining a sufficient distance from machinery in operation," and that he must use

"protective equipment to prevent exposure to excessive levels of noise and sawdust."

In the two previous legislative sessions, exemptions for the Amish sailed through the U.S. House by voice vote, but died in the Senate Health, Education, Labor, and Pensions Committee. CHILD members wrote many letters to their U.S. Senators opposing the bill. Senators Tom Harkin, D-Iowa, and Paul Wellstone, D-Minnesota, were especially concerned about exempting children from the protection of the federal child labor laws.

### **Preserving Amish family values is difficult**

Bill supporters say it will help preserve Amish family and cultural values at a time when the Amish are being driven from family farms by high costs and a shortage of farmland. The economic base of the 150,000-member Amish community is now shifting away from agriculture into ventures such as woodworking shops, sawmills, and welding.

"We strongly believe the ages 14 through 17 to be a very tender, receptive age in which to instill longstanding Amish values and work ethics in our children," Chris Blank, national chairman of the Old Amish Steering Committee in Kinzers, Pennsylvania, testified. "Keeping young hands busy also keeps them out of mischief."

### **Bill allows child endangerment, Herman said**

The Clinton administration raised many objections to the bill. The Justice Department said it gave preference to religion over irreligion and thus raised Establishment Clause issues. Labor Secretary Alexis Herman told Congress that the death rate in sawmills is nearly five times higher than the average for all private industry and the injury rate is twice as high.

Young workers' inexperience, smaller size, immaturity, and lack of training make them especially vulnerable to serious injuries in the workplace. Therefore, the federal government prohibits youth under the age of 18 from working in sawmill operations and the logging industry, Herman said.

Even with current laws against child labor, the government reported in 1996 that nearly 210,000 youth between 14 and 18 are injured on the job each year, 70,000 of them need emergency room treat-



ment, and approximately 70 young workers die on the job each year.

Such facts do not impress Congressman Pitts. "Is it more dangerous to work in a sawmill than to have a federal bureaucrat destroy the ability for a Christian community to teach their children in a way that is culturally appropriate?" he asked during congressional hearings on the bill.

CHILD continues to oppose this bill, just as we oppose exempting any group of children from the protection of health and safety laws. While the economic difficulties facing family farmers are heart-wrenching, letting fourteen-year-olds work full-time in dangerous industries is a shortsighted solution. It creates a financial incentive to deprive children of education when education could open much greater economic opportunities for them.

HR2639 has been assigned to the House Workforce Protection Subcommittee chaired by Georgia Congressman Charles Norwood.

Taken in part from *The Washington Post*, April 2, 1999.

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## Over the top: a novel argument for religious exemptions

by Rita Swan

In October I received a very rare phone call from a Christian Science Committee on Publication. Church founder Mary Baker Eddy directed that Christian Science churches should employ in each state a person called a Committee on Publication (COP) to manage lobbying and public relations.

This COP called in response to a question I had raised months earlier. She explained at length why she couldn't answer the question.

After a pregnant pause, she then told me that the Christian Science church had changed its position on medical care and I ought to take account of that in my public statements.

She herself has cancer, she said, and she decided to get medical care with the full knowledge of her assistants and manager. She did not resign her office and no church officials asked her to resign or criticized her for having chemotherapy and radiation.

She was even able to have a Christian Science practitioner work for her while she was getting medical treatment. This sounded, indeed, like a huge policy change, so I asked for more details.

The practitioner treated her thought while the physicians treated the disease, the COP explained. In fact, the practitioner was doing "metaphysical work" to know that the COP would not be "mesmerized" by the doctors' prognoses.

### CS treatment of disease can't be combined with medical treatment

"Are you saying," I asked, "that a Christian Science practitioner can treat the disease while the patient is receiving medical care?"

After another long pause, the COP admitted that the church still did not allow the practitioner to attempt healing of the disease with spiritual prayer treatment if the patient is having medical treatment.

### Let all parents do what they please for sick children

Her punch line was that neither medical science nor Christian Science can offer guarantees and the church lets members go to doctors so, in return, the law should allow parents to choose whatever they think is the best method for healing their children.

### Comment

The Christian Science church has relaxed its rules on medical care to some extent. When prominent Christian Science teacher and periodicals editor Carl Welz chose to save his life by accepting kidney dialysis, he was forced to resign his church offices and give up his income. (Teachers and some other church officials are not allowed to have any salaried vocation outside the church.) The church then ran an editorial stating that members who turn to medical care should resign from church offices and not resume them until they are practicing the "radical reliance" upheld by Christian Science theology. (*Christian Science Sentinel*, April 11, 1983) If COPs are allowed to hold office while having medical treatment for cancer, the church has definitely liberalized its policies.

Having a Christian Science practitioner pray to persuade you that your doctor can't hoodwink you sounds strange to me, and I doubt most practitioners



would be willing to do that. Nevertheless, it could be a comfort to church members who turn to medical care in desperate need.

The church stricture against treating the disease still, however, seems to us like a powerful weapon to discourage medical care. From the cradle up, Christian Scientists are taught that Christian Science treatment is the only method that really heals disease. While it consists only of prayer, not all prayer is treatment.

Christian Science treatment has an argumentative structure of affirmation and denial. It is not simply asking or thanking God for something. It brings the full weight of Eddy's thunderous abstract rhetoric to bear on the problem and is expected to annihilate the "error" afflicting the patient and give him a life and environment free of sin, disease, death, and other inconveniences.

For the Christian Scientist or his children to be deprived of the sacred function of Christian Science treatment for the disease if they seek medical care surely continues to cause anxiety in our view.

What concerns me most about the COP's phone call, however, is her claim that her resort to medical treatment is somehow an argument for religious exemptions from child abuse and neglect. We also heard this argument during our lobbying in Colorado.

Some Christian Science adults figure out how much pain they can stand and hightail it to the doctor. Somehow that is supposed to be a reason to pass laws allowing them to deprive their children of medical care. We will not stand idly by and let such an arrogant *non sequitur* go unanswered.

Larry King asked Virginia Harris, chairman of the Christian Science Board of Directors, on national television what she would do if one of her children were seriously ill. She said she didn't know.

Maybe Harris was just trying to make the religion look less dogmatic and prescriptive to the general public or maybe she genuinely doesn't know. But if even the board chairman doesn't know whether she would always trust Christian Science to heal juvenile-onset diabetes or bacterial meningitis, legislators should certainly not be giving Christian Scientists the right to withhold medical care from children.

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## Kramer speaks on Christian Science at conferences



Linda Kramer of Troy, Michigan, spoke at two conferences this fall on psychological harm in the Christian Science religion. Speaking on "Christian Science Under Fire," she addressed a conference on the New Age sponsored by Midwest Christian Outreach, September 8-9 in London, Ontario. She described how Christian Science is deceptively

aligning itself with alternative medicine and other New Age trends. The church's foundational textbook, *Science and Health with Key to the Scriptures*, is now being marketed as a self-help book in ads that do not mention its connection to the church or Christian Science theology.

The second conference, "Children in Cults: Abuse of the Vulnerable," was sponsored by the Leo J. Ryan Educational Foundation, and held in Cleveland, October 26-28. Kramer's talk was entitled "Children in Christian Science: Perils of Perfection." An audiotape of the talk is available from Dove Enterprises at 1-800-233-3683 for \$5 plus shipping. It will eventually be posted on the LJREF website at <http://cultinfo.org>.

Kramer is the author of *The Religion That Kills: Christian Science: Abuse, Neglect, and Mind Control* published by Huntington House.

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## Scholar publishes on Christian Science rhetoric against medicine

Dr. Beth Rapp Young, director of the Writing Center at the University of Central Florida, has published a study of the linguistic strategies used by the Christian Science church to discourage medical care



and encourage exclusive reliance on its spiritual treatment.

Entitled "Defending Child Medical Neglect: Christian Science Persuasive Rhetoric," the study appears in *Rhetoric Review*, v. 20 #3/4, October 2001, pp. 268-92. The article may be obtained online for a fee at [www.catchword.com](http://www.catchword.com).



Young holds a Ph.D. in English from the University of Southern California and specializes in rhetoric theory.

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### **CHILD President wins national award for legal advocacy**

Rita Swan, CHILD's president and co-founder, was selected by the National Association of Counsel for Children to receive their Outstanding Legal Advocacy Award for 2001. The award was presented October 1 in San Diego at NACC's annual conference.

Through Rita Swan's work, the NACC said, "CHILD has become a powerful force in persuading states to repeal statutes that exempt parents from prosecution for murder, manslaughter, or abuse and neglect, if they rely solely on spiritual prayer to heal their sick children."

"Due in large part to CHILD's efforts," NACC continued, "Colorado, Massachusetts, Maryland, South Dakota, Hawaii, and Oregon have all removed laws which provided exemptions from prosecution to parents who fail to provide medical care for their sick children based on religion."

NACC's Outstanding Legal Advocacy Award "recognizes recipients for significant accomplishments in the representation and protection of children in the legal system." It is "presented to indivi-

duals and agencies working to ensure that children's



voices are heard and that the courts are a vehicle for prompt and just determinations in proceedings involving children."

"The NACC applauds Rita Swan for serving as an example of outstanding legal advocacy."

NACC has about 2,000 members, about 80% of whom are attorneys.

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### **About CHILD Inc.**

CHILD is a national membership organization dedicated to preventing child abuse and neglect related to religion or cultural traditions.

For more information on CHILD and a membership application form, visit our web page at <http://www.childrenshealthcare.org>. To reach CHILD by mail, phone, fax, or e-mail, see the contact information on page 1.