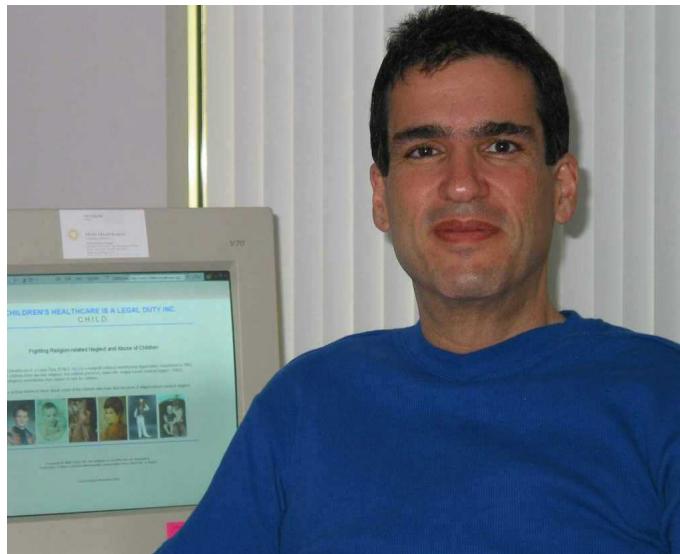


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Seth Asser at CHILD's Webpage

Holly Zynda and the Power of Prayer; Testimonials of Christian Science Healing Do Not Have Scientific Value

by Seth Asser, M.D.

The Christian Science Church frequently promotes their own record that they claim documents tens of thousands of cases of healing of disease. Cases with any degree of medical documentation are rare, and with clear medical confirmation are apparently non-existent. Such is illustrated by the case of Holly Zynda.

Holly's story was presented on an episode of the A & E network's Investigative Reports with Bill Kurtis (December 17) entitled "Healing and Prayer: Power or Placebo?" In 1985, 20-month-old Holly was bruising easily. Her mother, Debra, was raised in the Christian Science church and did not want to take Holly to a doctor. However, a neighbor, Kim

Brown, identified as a nurse practitioner, recommended that Holly have medical care. The father Tom Zynda, who was not then a Christian Science member, convinced his wife to take Holly to a pediatrician. The diagnosis of ITP, idiopathic thrombocytopenic purpura, was made based upon a very low platelet count.

ITP is a disorder of young children that leads to easy bruising and, less commonly, bleeding. This is due to a decrease in the platelets circulating in the blood. Platelets are small cell fragments that are an essential component of clotting. In ITP, an autoimmune reaction often following a typical childhood viral infection, the body's own antibodies attach to platelets and decrease their numbers. The platelets that remain are able to function, but their number is insufficient for normal clotting to occur.

The disease is generally mild. Most children do not need any treatment other than increased vigilance to reduce rough play, contact sports, and accidents. Those with severe bleeding symptoms and extremely low platelet counts may transiently benefit from treatment with steroids or intravenous immunoglobulin. Rarely, a splenectomy may be required if ITP becomes chronic.

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Implication: fatal disease

Kurtis and Brown, however, give the impression that ITP is often a fatal disease. Brown tells us solemnly, “Children can die. Children can bleed to death and die.”

The disease, Kurtis claims, “has some of the same characteristics as leukemia.” He narrates that Holly’s doctors considered her condition “critical,” monitored her blood count for two months, and put her on prednisone (a steroid). “But,” he continues melodramatically, “Holly didn’t get better. The medication didn’t seem to be helping at all.”

Failure of medical care alleged

Feeling he “had nothing to lose,” Tom Zynda agreed with his wife to discontinue the medical care and rely exclusively on Christian Science to heal Holly. Echoing typical Christian Science rhetoric, Kurtis says, “Debra was determined to break through her own fear and conquer Holly’s disease through her faith.”

What is the evidence that Holly’s medical treatment was failing? Neighbor Brown says, “She kept getting worse,” but no objective evidence is offered to support her impression.

Most children do not respond immediately to steroids. But most important is that the disease is self-limited in well over 95% of cases, remitting on its own within 2 to 6 months.

Nurse claims Christian Science healing

Zynda reports that within 30 days after they discontinued the medication, they noted “a real dramatic change.” It’s hard for me to understand how something that took 30 days can be called dramatic, but the improvement three months after diagnosis is precisely the expectation that physicians would have for children with ITP.

As evidence to confirm the “miracle,” Brown offers her opinion that when patients are taken off anti-inflammatory drugs such as steroids, they get suddenly worse most of the time. But before Brown would have expected improvement, she states to the camera, Holly was running around and the bruises went away.

Kurtis further inflates the drama of the situation by stating, “Doctors say that ITP can become a

chronic, lifelong illness. But 15 years after her battle with the disease, Holly is enjoying the life of a normal, active teenager.” He adds, “She’s never been to another doctor.”

The truth is much less miraculous. By the time Holly was taken off prednisone, it was likely that her platelet count had already begun to improve. And, unlike patients with more severe and chronic autoimmune disorders, a patient with ITP would not likely “get worse” when taken off prednisone. A platelet count would be required to know with certainty when she began to improve.

Disease self-limited in 95% of cases

More important, the overwhelming majority of children with ITP will get better, on their own, with time. Very few go on to the chronic form, when the disruption lasts more than 6 months. For those who do, most do not have serious bleeding as an ongoing problem and they can remit at any time, most doing so within a few years. Kurtis’ implication that severe lifelong problems from ITP are common is incorrect.

His claim that ITP is like leukemia is preposterous. ITP shares the low platelet count and, therefore, easy bruising, with leukemia, but the similarity ends there. A simple white cell count differentiates the two. ITP doesn’t have the fevers and malaise that leukemia usually has. ITP is not cancer. ITP usually resolves itself without any medical treatment.

Reasons for fallacious claims

This story illustrates as well as any that an anecdote cannot be offered as proof of therapeutic efficacy. Physicians, who are aware of the natural history of ITP, would not be able to reasonably conclude that it was divine intervention or the power of prayer that helped Holly Zynda. Time and her own physiology were sufficient.

Ignoring the natural course of a self-limited disorder is a typical error made by believers of unsubstantiated claims. Inflating severity and over-dramatizing are other typical mistakes. Physicians would not likely describe her case as “critical.” She needed immediate medical attention, but she was

not in critical condition. She also had a very low likelihood of progressing to chronic ITP.

In addition to the story of Holly Zynda, the show presented other believers in faith healing as well as members of the medical community who are currently promoting prayer as an adjunctive therapeutic modality.

There was some attempt to balance these views with stories of the failure of faith healing and Christian Science, such as that of CHILD's founder Rita Swan and with more skeptical medical opinions.

Next frontier?

Television, however, tempts producers to give weight to opinions or theories that haven't earned it. Controversy is considered newsworthy. Failure to meet scientific standards of proof is relatively boring on the small screen. Thus, Kurtis describes Harold Koenig, a psychiatrist who promotes the integration of spirituality into medical care, as "a pioneer in the exploration of medicine's next frontier."

While few would dispute that religious beliefs and practices are important to patients as they confront illness, there is little evidence, despite the hundreds of studies noted by Kurtis, that prayer or ritual has any substantial independent efficacy.

This is hardly medicine's "next frontier." Rather, faith healing, particularly as exemplified by the narrow-minded philosophy of the Christian Scientists, is a remnant of the nineteenth century. It recalls a time in which science had much less to offer than it does today. A time when years of life expectancy in America were in the 40's, as opposed to the high 70's that we enjoy today.

Russian roulette

Holly Zynda was fortunate, not that her mother had faith in Christian Science, but that she had a relatively benign and self-limited disease. As documented many times in CHILD newsletters and in medical journals, other children whose parents eschewed medical treatment and relied exclusively upon faith healing have not been as fortunate.

When parents play Russian roulette with their children's lives, sometimes they live. That doesn't

prove that the game is safe. It is the unnecessary deaths which demonstrate that it is not.

Seth Asser is a fellow in forensic pediatrics at Brown University.

More questions on Holly

by Rita Swan

I have no medical training. I had never heard of idiopathic thrombocytopenic purpura before I watched the Arts and Entertainment program on "Prayer and Healing" that Dr. Asser dissects above.

Alarm bells were, however, going off before the program aired. The network webpage listed Christian Science practitioner LaMeice Harding as a major draw of the program; it did not give names of anyone who doubted faith healing. The promo for the program articulated the case for healing by prayer and did not articulate any downside.

The question developed for a viewers' poll related to the program was a lulu: "Should doctors be required to pray for people who request it?" I pictured politicians writing prayers to various deities and passing laws requiring doctors to recite them to their patients.

Journalist claims miracle occurred

I complained to the producer, who promptly countered that he did not work for A&E and had nothing to do with how they were promoting the program. He also said that practitioner Harding had been given only one sound bite because she made no sense and that he had even told the Christian Science church that.

"You got eight minutes," he said. Surely anybody who gets eight minutes on national television should be thrilled, right?

Well, I have no complaints about how A&E presented our experience nor with the number of minutes spent on it. I am strongly concerned, however, about the producers' determination to present a child's recovery as evidence that Christian Science heals diseases of children.

Did Christian Science save girl's life?

Here was a medical nurse solemnly declaring, "Children can die. Children can bleed to death and die." Here was respected lawyer and journalist Bill Kurtis likening the disease to leukemia. After two months of medical care during which his daughter "kept getting worse," even the non-Christian Science father decided he had "nothing to lose" by discontinuing medical care and relying exclusively on Christian Science.

The program gave the strong impression that a Christian Science practitioner had rescued Holly Zynda from the very jaws of death. Even without medical knowledge, however, one could see some glaring inconsistencies and omissions in her story. Was it really likely that the pediatrician would have allowed the Zyndas to discontinue medical care if Holly were still at risk? As a mandated reporter of child abuse and neglect, he would have been obligated to report her case to Child Protection Services if she still needed medical care when the parents discontinued it.

Records and statistics missing

For all the other healings attributed to prayer in the program, the patients' physicians were interviewed. The only medically trained person to speak about the Christian Science healing on the program was a nurse who lived nearby, but did not say she had Holly as a patient. One page of Holly's medical records was flashed on the screen to confirm the diagnosis of ITP, but no records of her condition at discharge were shown.

With the other faith healings, Kurtis gave statistics: the patient had only a 50% chance of survival or 5% etc. No statistics about recovery rates from ITP or the likelihood of children bleeding to death and dying were given.

Is it possible the Christian Science church innocently believes that Holly's recovery is an outstanding spiritual healing? Are church officials unable to consult with a medical doctor and get information about idiopathic thrombocytopenic purpura or go to a library and read about it? We doubt it. Church officials have approached medical doctors attempting to get verification of other Christian Science claims. They selected Holly Zynda as the best

healing they had to put on national television and likely knew the medical facts of her condition.

Why did "Investigative Reports" drop all pretense of "investigation" and become a mouthpiece for the Christian Science church in narrating Zynda's story? I suspect it was the price to be paid for getting to air the Christian Science miracle the network wanted to "balance" the deaths of Matthew Swan and Robyn Twitchell.

It was appropriate for the program to air both sides of the faith healing issue. But one side should not have been a fantasy. Journalists should not suspend all rational evaluation of their subject matter.

Does prayer heal disease?

Since the publication of Randolph Byrd's study on intercessory prayer in 1988, there has been enormous media interest in scientific evidence that prayer heals. [See R. C. Byrd, "Positive therapeutic effects of intercessory prayer in a coronary care unit population," *Southern Medical Journal* 81 (1988):826-29.] Christian multi-millionaire John Templeton gives millions of dollars a year for projects to gather scientific evidence that religion benefits physical health. [See www.templeton.org.]

To our knowledge, none of the research studies people who refuse medical care for religious reasons, but rather people who are under medical care.

Quality of research doubtful

Georgetown University professor and physician Dale Matthews reportedly has a bibliography of over 300 studies showing a physical benefit to faith.

Dr. George Lundberg, former editor of the *Journal of the American Medical Association*, points out that none of the studies submitted to *JAMA* over a 15-year-period met its standards for scientific method. [Alissa Rubin, "Pills and prayer," *The Washington Post* (Jan. 11, 1998)].

The best known of these studies have been criticized in skeptics' and humanists' publications. Though Byrd touted his study as double-blind, he actually chose the criteria for evaluating the patients' outcomes after the data were collected and

when he was unblinded. Byrd's results have not been replicated by others as Irwin and Jack Tessman point out in "Efficacy of prayer: a critical examination of claims," *Skeptical Inquirer* (March/April 2000): 31-33. Dr. Richard Sloan, a psychiatry professor at Columbia University, also explains the shortcomings of the "prayer benefit" studies in "Religion, spirituality & medicine," *Freethought Today* (Jan./Feb. 2000): 10-12.

In "Should physicians prescribe religious activities?," *New England Journal of Medicine* (June 26, 2000), Sloan joined with Catholic priests, a Protestant minister, Buddhist priest, orthodox rabbi, and Greek orthodox chaplain in criticizing these studies.

Research showing no benefit is ignored

Scientific research that shows no physical effect from prayer has been virtually ignored by the media. The AP devoted barely two column inches to a recent Mayo Clinic study that found "no significant effect on medical outcomes" from prayer for coronary patients. [See Jennifer Aviles, et al, "Intercessory prayer and cardiovascular disease progression in a coronary care unit population: a randomized controlled trial," *Mayo Clinic Proceedings* (December 2001) and Kevin Christopher, "'No effect' prayer study from Mayo Clinic ignored by media," *Skeptical Inquirer* 26(March/April 2002: 5.)] To our knowledge the study was not reported at all by the broadcast media.

The New York Times, however, did run a lengthy article on Sloan's work and the response of those who claim scientific evidence for physical benefits from faith. ("Religion and health: new research revives an old debate," May 7, 2002)

CHILD feels no necessity to prove that prayer never "works" or has never healed disease to justify our fundamental contention that it should not be a legal substitute for medical care of sick children. But those who claim scientific evidence for the power of prayer to heal should be willing to follow science wherever it leads.

Toddler dies of malnutrition in charismatic leader's "Family;" five charged

In February, two Marinwood, California, parents of a toddler and three women who lived with them were charged with involuntary manslaughter and felony child endangerment in the boy's death. Four of the five adults were also charged with second-degree murder.

In November 19-month-old Ndigo Campisi-Nyah-Wright died of severe malnutrition and neglect in the vegetarian sect. He had rickets and suffered multiple fractures because he had almost no calcium in his bones. He was fed mainly tea and herbal supplements.

One child told investigators that Ndigo became thinner and weaker over time. She also said he turned blue two weeks before his death. The night he died he was propped up in front of a television to "stimulate his brain" because he was having trouble breathing.

The twelve surviving children in the home were taken into protective custody. They all suffered from malnutrition. Several had rickets and were "obviously deformed," Marin County prosecutors said.

Punishment ceremonies

The children reported ritual punishments. For example, they were whipped with belts after candles were lit in a punishment ceremony. One girl said she was tied to a playpen every night for two weeks for secretly eating food during an enforced fast. Other punishments included taping the children's mouths and force feeding them jalapeno peppers.

All the children were home-schooled.

The group was headed by former social worker Winnfred Wright (a.k.a. Rasheen Nyah) and called themselves "The Family." He fathered all the children with women in his harem.

Law enforcement and state children's services had received various reports about them for more than a decade, but apparently did not have enough evidence to intervene or prosecute before Ndigo's death.

Coroner may reopen investigation

In 1990 a 3-month-old group baby named She W. Nyah-Wright died at home. She was delivered at home and had never been seen by a doctor.

Her mother, who stated she was a Christian and read the Bible, left the baby's body in a hammock for three days before reporting it to authorities. The mother claimed it took three days for the soul to leave the body.

Investigators found no sign of abuse or neglect in the home. The autopsy described the child as well developed and well nourished and listed the cause of death as "undetermined."

Recently, the San Francisco coroner has said he may reopen the investigation into She's death.

Previous reports of suspected neglect

In 1992 Children and Family Services investigated a report of child neglect. A social worker came to the home and talked with some of the women about their home schooling and about the need to immunize the children.

The next year the police investigated another report that several children were being kept ill-fed and ill-clothed in a filthy yard. An 8-year-old child was looking after seven younger ones, a neighbor recalled. The children had no underwear on and were crying for food. The police found nothing out of order in the home.

After the police left, Wright threatened to kill the neighbor who made the report. He paraded around the neighborhood with several young children who mimicked his obscenities and mannerisms and threw gravel at the neighbors.

Wright was arrested for making threats. The charges were dropped after he completed a diversion program.

The Family then moved into an upscale neighborhood of \$600,000 homes.

After Ndigo's death, neighbors remembered several odd details. The children played in complete silence. Some wrote "Watch your karma" on the sidewalk. Whenever anyone left the house, a van with tinted windows was backed into the garage so the neighbors could not see who was getting in. And one neighbor remembered children crying for

food and had called the county health department about it.

Adam and Eve

If nothing that officials saw happening to the children persuaded the state to intervene, what was known about the adults should have set off loud alarm bells for the children's safety.

One of Wright's lovers was routinely dispatched to approach other women on the street and invite them to be photographed for a "world mural" depicting 90 women. When a new woman came to The Family's home, she would be asked to don a kimono and given a massage. Wright would then direct her to read from Revelations in the Bible or astrological charts.

He would also smoke what was apparently crack cocaine and give the women something to smoke that made them black out.

One potential recruit said she was then raped. Another said after she woke up, the women living there told her she was Eve and Wright was Adam. Wright exposed himself to her and grabbed her as she was fleeing the house. The other women pursued her and persuaded her to return. She stayed in the house until dawn reading the Bible aloud.

White karma

She's mother left the group a year after the baby's death. She obtained a restraining order against the Family, told officials that Wright used large quantities of crack, and beat her and the other women in the household.

Police took incident reports in the cases. They saw cuts and bruises on all the women's faces when they came to the home. They also retained cult expert Margaret Singer to interview She's mother and analyze their evidence.

Wright, an African-American, persuaded white women to live with him, Singer reported, by telling them they had "white karma" for what whites have done to blacks and could cleanse themselves by taking care of him financially and sexually.

Wright's teachings were a mixture of New Age, Rastafarianism, and Christianity. He ordered the women to take target practice with squirt guns in the streets to prepare for the "Fall of Babylon."

Singer said, however, that the real control over the group was Wright's charisma and physical abuse rather than a cohesive religion. He threatened them with guns, went around the house with a riding crop that he used to beat the women, and once beat them so hard he broke his arm, Singer reported.

The women who left the group, however, did not want to press charges, and so the police dropped their investigation.

Political correctness

Some commentators blamed Marin County's well-known tolerance of offbeat lifestyles. A producer at KQED radio in San Francisco said the case was "a very Marin story: the white guilt thing, the New Aginess. Also the fear of reporting it."

A neighbor said that, based on what he could observe of The Family, "It wasn't out of normal enough for us to interfere in a politically correct world."

"To be connected, you can't be politically correct," responded Michael Pritchard, a Marin social worker and filmmaker who works with troubled youths. "You can't say, 'Oh my gosh, that's a big Rastafarian. I can't say anything because someone might think I'm a racist.' Children were starving."

Peaceful neglect

Accusations of racism are just what defense attorneys have leveled. Denouncing press coverage as racist and inflammatory, they describe The Family as a peaceful group who cared for their children, adhered to a strict vegetarian diet, shunned modern medicine, and believed in home schooling.

"Sex and race seem to be what is titillating here," said Bremner's attorney John Rauch. "It's their lifestyle that's interesting to everybody, not what was done."

CHILD disagrees. The state is prosecuting these folks for the death, abuse, endangerment, and degradation of children, and we believe that is the public's main concern also.

Final note: for all the Family's shunning of modern medicine, Bremner came to court wearing a surgical mask because she was getting medical treatment for leukemia.

Taken from *San Francisco Chronicle* Feb. 12, AP report Feb. 15, *Los Angeles Times* March 17.

Vegans charged with child endangerment

On April 26 Sylva and Joseph Swinton of Queens Village, New York, were arrested for starving their baby daughter. They were charged with reckless endangerment and endangering the welfare of a child.

Strict practicing vegans, the Swintons did not give baby Ice Swinton either breast milk or formula. Instead, she was fed "ground nuts, fresh-squeezed fruit juices, herbal tea, beans, cod liver oil and flax seed oil," according to the complaint.

The baby weighed only ten pounds at age sixteen months when authorities discovered her in November. She was diagnosed with low muscle tone, a distended abdomen, fractured bones, rickets, and a lung disorder—all caused by malnutrition. She had no teeth and had difficulty moving her arms and legs

Even when doctors told the couple their baby was close to death, both parents insisted "there was nothing wrong" and were resistant to treatment, the complaint said.

Ice was treated for four months in Long Island Jewish Hospital and then placed in a foster home. The child now functions at the level of a 10- to 12-month-old, but is still struggling, authorities said.

The Swintons were allowed supervised visits with their daughter, but the state has asked a judge to order them stopped because the father said he thought the child was getting "chubby."

District Attorney Richard Brown called the case "heartbreaking and among the worst cases of child neglect I have ever seen."

Vegetarianism their religion

But Warren Silverman, a lawyer representing the mother, said the parents "felt that they have their own lifestyle, they're vegetarians, and they felt that they were providing proper care for their child."

The parents have said that vegetarianism is their religion, and New York has a religious defense to child endangerment charges at Penal Code 260.15. The statute requires that a caretaker availing himself of the defense be "a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness."

Taken in part from an AP report of April 29.

Baby dies of infection in unassisted home delivery

When Mary and Boyd Duke called their daughter Kristin McPherson's home on June 9, 2001, they were told she was in labor with contractions 3 ½ minutes apart. They asked to talk to her, but were not allowed to do so.

Kristin and her husband Christopher belonged to Grace Independent Baptist Church in Moultrie, Georgia. They wanted a home birth attended only by the minister's wife, Lisa Weaver, and the church secretary, Pam Miller.

Days passed. Mrs. Duke called the home many times. Miller told her once that the baby was coming out, but Kristin moved and the baby went back in.

On June 12, a neighbor called 911. When the emergency personnel arrived, they saw Kristin on the bed in a fetal position with baby Karissa between her legs still attached by the umbilical cord. Weaver said she had attempted CPR on the baby.

Kristin was taken to a hospital. After learning what had happened, the Dukes rushed from Tennessee to see her. Mr. McPherson would not allow them to see her, but the next day they sneaked into the hospital at 6 a.m. and got to visit her.

"I'm special"

The Dukes and other witnesses at the baby's funeral said the body was dressed in a T-shirt saying, "I'm special because I was born at home."

Some former church members said that the pastor Ken Weaver preaches against medical care

and argues that only a husband's hands should touch a woman. Weaver and Miller had said they were going to deliver Kristin's baby themselves, the members reported.

"Just washing towels"

Lisa Weaver denied any such responsibility. She said, "I was just there washing towels—just cleaning the house."

She also denied any religious pressure to give birth at home, saying that some of their members choose to deliver in hospitals and the McPhersons simply wanted "a nice pleasant home birth."

The Dukes fear their daughter is involved in a cult. "She's like a zombie," Boyd Duke said. "She's rejoicing because she said that it was God's will the baby died."

Weaver countered that the McPhersons have "both gone to college. They're not stupid or ignorant or just weirdos."

Weaver claimed that Kristin's labor lasted less than 24 hours. "Everything was fine," she said. "There were no problems at all. And so there would have been no way of knowing that anything was wrong with the baby before it . . . was born."

High risk of infection

That was not the view of the medical examiner who reported the cause of death as chorioamnionitis, an infection that occurred after the fetus lost the protection of the mother's amniotic fluid.

"The mother's membrane had ruptured on Saturday, June 9, but, because of her religious beliefs, she did not seek medical care," he wrote. "Once the membranes had ruptured and there was loss of the amniotic fluid, the risk of an ascending infection greatly increased over time. The fetus was delivered on Tuesday, June 12, and was unresponsive. The decompositional changes observed at autopsy would suggest that this fetus had been dead at least 24 hours, if not more. Despite the circumstances, the manner of death is considered natural."

Taken from the *Moultrie Observer*, June 23, 2001, and the autopsy report.

A grandmother's plea for action

On June 12, 2001, my granddaughter Karissa was born dead. Our daughter Kristin and son-in-law had decided to have a home birth attended only by fellow church members.

Kristin's membrane broke on Saturday when Karissa began her journey into birth. The preacher's wife, Lisa Weaver, and the church secretary, Pam Miller, came to her home. No one bothered to listen to Karissa's little heart beat. No one cared that her mommy was having a very long, non-progressive labor. No-one cared that the baby's once safe environment was now a breeding ground for infection.

I called twelve or fifteen times during the labor. I was not allowed to speak to Kristin because of my "negative spirit." Weaver told me she was consulting with midwives in other cities.

Department unable to intervene

On Monday night I called the sheriff's office. A person from the Department of Children and Families came to the home and spoke with Kristin, who assured him that the home birth was her choice. Feeling there was nothing more the Department could do, he left.

After days of struggle, Karissa's little body was exhausted and racked with infection. She was not breathing when she was delivered. Weaver attempted CPR. Only after all this did Miller call 911 on Tuesday.

Instead of being a sad tragedy, Karissa's death was proclaimed "God's will" by the minister. Reportedly, Kristin herself said she was so close to God that she was not even sad about her baby's death.

Natural causes

Because Karissa did not take a breath, our laws do not recognize her as a human being. So, even though her death was clearly the result of negligence, the Medical Examiner had to rule her death as due to natural causes. Negligent homicide was not an option because, technically, she never lived. This is wrong and needs to be changed.

Were Karissa the only baby who died at the hands of religious fanatics, it would be bad enough. But, sadly, she is not. Though my research is very limited, I've come across several instances of babies dying at birth because parents and church leaders believe families are closer to God if they have no medical care before or during delivery. For their own selfish reasons, they deem themselves qualified to bring life into the world and they are not.

Persons who take on the responsibility of delivering babies should be held accountable for the outcome. The same laws that protect you and me should protect these babies. Our lives are no more valuable than theirs.

I beseech you to help me get these laws changed so that Karissa's tragedy will not happen to more babies. Please help me find justice.

Mary Duke
120 Doc Wheelock Road
Jonesborough TN 37659
Ph. 423-349-7875

Religious exemptions to childcare center regulations

by James G. Dwyer and Peter Flanigan

CHILD's last newsletter reported the death of a young girl in Florida, Zaniyah Hinson, whom day care workers negligently left for nearly three hours in a closed van, causing her to die of heat stroke. Her day care center was largely exempt from state regulation and oversight, because under a special provision in state law for centers operated by religious organizations, the center was required to be accredited only by a private agency and the state has no authority to second guess such private agencies. The Florida League of Christian Schools that accredited Zaniyah's day care center did not require it to count or log in children when transporting them.

Broadest exemptions

Exemptions to state licensing requirements for religious day care centers exist in a significant minority of states. In Utah there is absolutely no

state oversight of a childcare facility administered by a parochial educational institution (Ut. Code § 26-39-106) though a city might require it to have a business license. South Carolina [S.C. Code of Laws § 20-7-2700(b)(10)] exempts from licensure “child daycare centers and group daycare homes owned and operated by a local church congregation or an established religious denomination or a religious college or university.” South Carolina does require the unlicensed daycares to meet standards for health, fire, safety, floor space, and child-staff ratios. Missouri (§210.211 and 210.252 Rev. Stat. Mo.) exempts childcare facilities operated by religious institutions from state licensure, requiring them to have only fire, safety, health, and sanitation inspections.

Florida (Fl. Stat. § 402.316) provides that religious day care centers “shall meet minimum requirements of the applicable local governing body as to health, sanitation, and safety.” The state, however, has no power to inspect childcare facilities accredited by religious organizations, to review their records, or to close them, although it can investigate deaths and allegations of abuse or neglect in them.

Florida and Missouri require that criminal background checks be performed on employees in unlicensed religious day care centers, but the states cannot prohibit the religious day cares from hiring criminals.

Limited exemptions

Virginia takes the approach of setting forth a separate list of requirements for religious centers that wish to be exempt from licensing, but its list is much more extensive than those in Florida and Missouri. The list includes compliance with standard regulations regarding food service, health and sanitation, building and fire codes, vehicle safety, and immunizations, and in addition meeting special requirements for adult-child ratios, background checks on employees, training of employees in identification and reporting of child abuse and in administering first aid, and procedures for supervision, intake, dismissal, and daily health screenings of children.

North Carolina, Maryland, and Arkansas take the converse approach of exempting religious day

care facilities from specific requirements, leaving them subject to all regulations not specified. In North Carolina, church-run day care centers are exempt from regulations pertaining to “training or curriculum” and from statutory prohibitions on corporal punishment. (N.C. Gen. Stat. § 110-88.1) In Maryland, church-run day care centers are exempt from regulations pertaining to “instructional program, curriculum, or teacher, principal, or administrator qualifications.” (Md. Fam. L. Code § 5-574). Similarly, in Arkansas, the state may not impose on religious day care operators any regulations “of a religious or curricular nature.” (Ark. Code § 20-78-209) Otherwise, in North Carolina, Maryland, and Arkansas, religious day care centers are subject to all of the same regulations governing secular day care centers.

The most limited sort of exemption exists in Georgia, whose statutes contain a special provision for religious day care centers that characterizes them as “exempt” from licensing requirements, but that nevertheless requires such centers to comply with all the same rules and standards with which “non-exempt” facilities must comply. (O.C.G.A. §49-5-12) The effect of the exemption is thus just to spare facilities from the formality of licensing; there is no ostensible difference in substantive treatment.

Exemption only for preschools

Some states have a licensing exemption for religious preschools, but not for daycare centers. Alabama exempts from licensure “preschool programs which are an integral part of a local church ministry or a religious nonprofit elementary school.” They must meet only “fire and health requirements” and must send the state a letter each year “certifying that the following records are being maintained by the church: fire and health inspection reports; immunization verifications for all children; medical history forms for all staff and children and that the following information shall be available to parents or guardian prior to enrolling their children in said church ministry; staff qualifications; pupil-staff ratio; discipline policies; type of curriculum used in the learning program; the religious teachings to be given each child; and the type of lunch program available.” Illinois law requires compliance

only with “appropriate State or local health and fire safety standards” for religious preschools that serve only children 3 years of age or older and that operate as a component of a parochial elementary school. (225 Ill. Comp. Stat. 10/2.09).

Notice of parental responsibility

Some states, South Carolina and Missouri for example, condition the exemption from licensing on the childcare center not receiving state or federal financial assistance its services. Some states require that parents be informed that the facility is unlicensed. See, for example, Ala. Code 38-7-3 and § 210.254 Rev. Stat. Mo. The latter requires that parents sign “a notice of parental responsibility” acknowledging the center’s lack of state regulation.

To be blunt, Missouri and other states are serving notice that they have abdicated obligations they assume for other children and that parents will have to take responsibility to protect their children from harms that may befall them in these facilities. Whether young, stressed working parents will be able to do that is a serious question.

This year legislation was introduced in both Florida and Missouri to repeal licensing exemptions, but all bills were killed by massive opposition from churches.

CHILD will continue to urge legislators to pass reform legislation, but what possibilities might there be for reform through litigation?

Litigation

There have been a dozen or so court decisions relating to religious exemptions from day care regulation. Nearly all occurred in the 1980s. Plaintiffs were generally not advocates for children in religious day care centers, but rather operators of secular child care centers who wanted the exemptions eliminated in order to erase the competitive cost advantage they gave to religious day care centers.

These plaintiffs articulated their objections in terms of equal protection rights and establishment clause concerns—that is, that the government was illicitly favoring religion and religious groups. The state defendants were usually joined by religious day care center operators, who successfully

countered that government was not, by creating exemptions, promoting one religion over another, but rather simply avoiding interference with rights of religious freedom.

Amos ruling used to turn back challenges

In upholding religious exemptions against such challenges, several courts have relied on the United States Supreme Court’s 1987 decision in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, which unanimously upheld a religious exemption in a federal employment discrimination law against a challenge on Establishment Clause grounds. That exemption was challenged by a person who had been fired from a job as janitor for a religious organization because he was not a member of the church.

The exemption was not a violation of the Establishment Clause, the Court said, because it did not promote a particular religious viewpoint, despite the fact that it conferred a special benefit on religious employers, and because it served the legitimate purpose of minimizing governmental interference with religious groups’ decision making. That purpose, the Court said, also trumped any concern about employees of religious organizations receiving lesser protection of the law than was enjoyed by employees of non-religious organizations.

One year after the *Amos* decision, a federal appeals court in Virginia held, in *Forest Hills Early Learning Center v. Grace Baptist Church*, 846 F.2d 260 (4th Cir. 1988), that a religious exemption to Virginia’s day care licensing requirements did not violate the Establishment Clause. The exemption was challenged by child care centers that were not affiliated with a religious organization. They alleged that they were harmed by the exemption because it put them at a competitive disadvantage. The Fourth Circuit Court of Appeals closely followed the Supreme Court’s reasoning in *Amos*, concluding that the state had a legitimate purpose in trying to avoid forcing church leaders to violate their convictions, and that the exemption did not have the effect of advancing religion, even though the exemption applied only to religious organizations, because the state was just getting out of the way, not affirmatively assisting the religious groups.

An objective observer, the court said, would not view the exemption as government endorsement of religion. The court added that the exemption would also have the salutary effect of avoiding entanglement between church and state, another important consideration in applying the Establishment Clause.

Adults should have more protection than children

Perhaps the most disturbing aspect of the opinion is that at the end the court suggested that the case for exemption was even stronger in a child care context than in an employment context. It is even less appropriate, the court implied, for the state to intrude in the operations of religious organizations in order to protect the welfare of children, than it is for the state to intrude to protect adult employees.

One year after *Forest Hills*, a federal trial court in Florida decided a challenge to Florida's religious exemption. In *Forte v. Coler*, 725 F.Supp. 488 (M.D. Fla. 1989), the claims by non-religious day care providers were identical to those advanced by the plaintiffs in *Forest Hills*, and the court in Florida explicitly adopted the Fourth Circuit's interpretation and application of *Amos* in likewise rejecting those claims. See also *Pre-School Owners Association of Illinois v. Dept. of Children and Family Services*, 518 N.W. 2d 1018 (Ill. 1988) (rejecting equal protection and Establishment Clause challenges to religious exemption in Illinois day care licensing requirements); *Arkansas Day Care Association v. Clinton*, 577 F.Supp. 388 (E.D. Ark. 1983) (federal trial court decision upholding religious exemption in Arkansas statute against Establishment Clause challenge).

Litigation challenging Missouri's exemption was aborted in 1989, after a loss at the state trial court level, in light of the *Amos* decision and the lower court decisions, discussed above, applying *Amos* to day care licensing exemptions. Since then, there has been little judicial activity relating to religious exemptions to day care licensing.

Constitution does not require exemptions

Significantly, the *Amos* decision was handed down before the Supreme Court's 1990 decision in *Employment Division v. Smith*, 494 U.S. 872

(1990), which marked a turning point in the Court's free exercise jurisprudence, toward a position that religious entities are not entitled under the First Amendment to a special exemption from generally applicable regulations. While *Smith* reaffirmed that government *may* create religious exemptions in some situations where it is not *required* to do so, the decision made at least implausible claims by legislators, lobbyists, or litigants that the First Amendment Free Exercise Clause requires licensure exemptions for religious day care providers.

Indeed, even before *Smith*, some courts had rejected demands for an exemption where one did not exist. For example, in *State of Michigan v. Emmanuel Baptist*, 455 N.W.2d 1 (Mich. 1990), the Supreme Court of Michigan upheld universal application of that state's day care licensure requirements, on the grounds that those requirements served "a compelling state interest in protecting children in childcare centers from physical and emotional harm." See also *State of Texas v. Corpus Christi People's Baptist Church*, 683 S.W.2d 692 (Tex. 1984) (rejecting free exercise challenge to licensing by religious operators of residential child care facilities).

In sum, neither proponents nor opponents of religious exemptions have had much success in court. The state of the law currently is that religious exemptions to day care regulations are constitutionally permissible but not constitutionally required.

Could a child bring a claim?

Notably, however, the legal claims that have been advanced against the exemptions were only on behalf of non-exempt day care operators, and not on behalf of children in exempt facilities. Non-exempt operators can allege only competitive disadvantage, and courts are generally unreceptive to the idea that such disadvantage constitutes a harm for equal protection purposes.

The harm to children in exempt facilities is potentially much, much greater, as is evidenced by the tragedy in Florida. Some courts are likely to be more sympathetic to a legal claim advanced on behalf of those children. The difficulty, as regular readers of the newsletter will know, is getting a claim on behalf of a child before a court.

One strategy that has been used in other contexts is to have a non-custodial parent bring suit on behalf of a child whose custodial parent is making choices that, together with the state's failure to protect the child, put the child in danger. In this context, it would be a custodial parent who enrolls a child in a day care center that is an exempt facility, and the non-custodial parent would allege that the state is denying his child equal protection of the day care laws and thereby subjecting his child to risk of grievous harm.

Modest legislative successes

Failing a judicial remedy, those seeking change must repose their hope in legislative action. Opponents of exemptions have had some legislative successes. In Pennsylvania, the legislature repealed an exemption provision altogether, and in Maryland, child advocates have blocked fundamentalists' attempts to obtain an exemption allowing corporal punishment in sectarian day care centers. Utah used to have a licensing exemption for all childcare operated by churches; in 1997, the exemption was narrowed to childcare administered by a parochial school.

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Mother's plea falls on deaf ears in Tallahassee

Tekela Harris drove 300 miles through the night—twice—to tell Florida lawmakers how her daughter had died at an unlicensed church-run daycare and to urge them to require state oversight of sectarian childcare.

Harris, 26, of Port Orange, lost her two-year-old daughter Zaniyah Hinson in August when workers at the Abundant Life Ministries daycare in Daytona Beach left the child locked in a closed van for three hours.

State Representative Evelyn Lynn, R-Ormond Beach, introduced a repeal bill. Christian church organizations, both Catholic and Protestant, immediately raised massive opposition to it.



Tekela Harris

Photo by Sam Cranston of the *Daytona-Beach News Journal* used with permission

State Representative Evelyn Lynn, R-Ormond Beach, introduced a repeal bill. Christian church organizations, both Catholic and Protestant, immediately raised massive opposition to it.

Florida Association of Christian Colleges and Schools Director Howard Burke blamed parents. “The mother willingly chose that institution,” he said. “Where is the parent’s responsibility to do any investigation of the facility necessary? The right to choose—that’s the battle in the legislature and that’s the issue the parent has to be responsible for.”

In fact, however, the Abundant Life daycare advertised itself as “accredited,” and Harris didn’t realize it was not state-licensed. Also, as a devout Christian herself, she thought the church daycare would have superior care for her daughter.

Harris argued for the bill in simple, eloquent words. “This is not a church issue. It’s a children’s issue. My daughter wasn’t given a chance at life. I don’t want this to happen to anyone else.”

“If it were your child, you would care,” she told the legislators.

Money, spanking, & religious freedom

Nevertheless, Republican lawmakers dismantled the bill after she sat down. They claimed it would be too expensive for the state to inspect the 400 or more church-run day cares in Florida. They also echoed the churches' arguments that state licensure violated First Amendment guarantees of separation of church and state.

Another issue was corporal punishment. It is prohibited in state-licensed facilities, and some churches were determined to maintain the right to hit children.

The substitute bill allowed licensure exemption, but required that the agencies accrediting unlicensed church-run childcare facilities have standards that met or exceeded the state's minimum standards and that the accrediting agency conduct an initial onsite review of the facility.

After the initial review the facility was required to submit a notarized statement to the accrediting agency that it was in compliance.

Staff in the unlicensed facilities were required to complete a 40-hour training course—at first the state's course and later one developed by the religious accrediting agencies in collaboration with the state.

The substitute bill required the unlicensed facilities to inform parents that they were not state-licensed.

It prohibited the state from regulating the religiously-exempt childcare facilities' curriculum, discipline, or hiring practices or from closing any facilities accredited by the religious agencies.

Only initial inspection required

The disparity between the licensed and unlicensed facilities was particularly evident in that the state is required to inspect the licensed facilities three times a year while the accrediting agencies for the religious care facilities did not have to inspect them more than once.

The bill also required the state to maintain a central database to record information about violations, citations, and penalties imposed against licensed child care facilities, but not the ones accredited by religious agencies.

Mom, churches, & Dept. accept substitute, but bill dies anyway

Vowing to continue the fight for licensure again next year, Tekela Harris eventually agreed to the substitute bill as an improvement over current law and returned to Tallahassee to testify before a second committee.

With the support of the church groups and the Florida Department of Children and Families, the bill was passed to a third committee, where Chairman Mike Fasano would not put it on the agenda.

Lynn and church lobbyists said they were "mystified" that the bill was killed.

Taken from the *Daytona Beach News-Journal*, Feb. 7, 8, 17, 21, and 27, and March 13.

Helpful web pages

Science writer Andrew Skolnick has posted his published articles on Christian Science at www.aaskolnick.com. The articles deal with church lobbying for religious exemptions from medical care of children and with Medicare/Medicaid reimbursements for Christian Science nursing.

Christian Way has recently put up a new and expanded webpage at www.christianway.org. Christian Way is an organization of former Christian Scientists presenting the gospel of Jesus Christ.

The Center for Effective Discipline of Columbus, Ohio, has a webpage at www.stophitting.com with an excellent section of statements by clergy of various faiths against corporal punishment of children. It could be very useful in responding to those who insist that corporal punishment is mandated by the Bible.

About CHILD Inc.

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

See www.childrenshealthcare.org for more information and a membership application form. To reach CHILD by mail, phone, fax, or e-mail, see the contact information on page 1.