

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law



This issue features articles about six deaths of children in 2009 and two in 2010 after medical care was withheld on religious grounds. The happy babies above, however, get appropriate medical care.

First-Century Gospel case heads for trial

Parents who let their son die without medical care are scheduled to go on trial in Philadelphia on December 6th. Herbert and Catherine Schaible are charged with involuntary manslaughter, conspiracy to engage in involuntary manslaughter, and endangering the welfare of a child.

Their son Kent died at age 2 of vaccine-preventable bacterial pneumonia. The parents say they first noticed his illness on January 13, 2009. The toddler was fussy and irritable. The Schaibles described his symptoms over the next ten days as congestion, breathing with difficulty, sore throat, watery and loose bowels, poor appetite, moody and demanding attitude, and “feeling really warm at times.”

On January 22 and 23 the parents believed Kent “seemed more comfortable.”

On January 24, however, Mrs. Schaible saw that the toddler was “really cold but did not want a blanket on him.” Mr. Schaible carried Kent upstairs to his bed. Schaible later told investigators that his son “seemed to be at peace.” Mrs. Schaible told them that Kent had closed his eyes and seemed weaker.

The Schaibles prayed over the boy and called for their pastor to come. Their son stopped breathing. A few hours later they called the funeral home.

Mrs. Schaible told investigators that they did not seek medical attention for their child because they believe in faith healing and belong to First Century Gospel Church. We “pray for our healing” and do not “use medicine,” she said.

They also did not take his temperature. When asked if Kent had ever complained of pain, Schaible said Kent was too young [at 29 months] to verbalize what was wrong.

The Schaibles have six surviving children, who remain in their parents’ custody.

The First Century Gospel Church makes no secret of its belief against medical care. Its web-page states, “Believing faith in the atonement work of Jesus includes trusting God for healing without medicine, for divine protection without devices, and for daily needs without laid-up money. When we worship and serve God, He heals us of illness. Our trust is to be on God everyday for everything in life.”

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Matthew 6:19-20, 'Do not store up for yourselves treasures on earth. . . But store up for yourselves treasures in heaven,' by giving it to charity."

Like many other Pentecostal faith-healing sects, First Century Gospel Church holds that Christ's atonement has already redeemed mankind from both sickness and sin. Telling members that their salvation depends on trusting God to heal without medicine creates, in our view, a very strong demand upon the members.

Did vaccine exemptions excuse parents from getting medical care for sick children?

An interesting aspect is that the child died of a vaccine-preventable disease. In the past when children died of vaccine-preventable diseases and had religious exemptions from immunization, law enforcement has usually looked the other way. For example, in 1991, six Philadelphia children who were unvaccinated for religious reasons died in a measles outbreak with no medical care, but no criminal charges were filed.

Apparently public officials felt that, because state law excused these parents from getting their children vaccinated, the parents had no legal obligation to get medical care when their children got measles or even when the children were dying from pneumonia as a complication of measles.

We hope that attitude is changing. Asst. District Attorney Joanne Pescatore is prosecuting the case.

Sources include police reports and the First Century Church's webpage, www.fcgchurch.com.

Second child dies in Philadelphia faith-healing sect

On March 11, 2009, three-year-old Amy Fox died of untreated *Hemophilus influenzae* type B meningitis in Philadelphia. Public Health reported that the family "belongs to a religious community that eschews medical care [including vaccination]." We believe the community is either Faith Tabernacle or First Century Gospel Church. We heard secondhand that the child was sick for several days.

A vaccine has been available to prevent this disease since 1985. Antibiotics to treat it have been available since the 1940s.

Was girl's death investigated?

We have been contacting public officials periodically about this case since March, 2009, but still do not know whether a criminal investigation was done. We think, but are not positive, that it stayed in the medical examiner's office and was not referred to the district attorney.

If the girl had not died of H-flu meningitis at a time when other children were contracting infectious diseases from the same bacterium, Public Health would probably not have issued a press release about the outbreak and we would have never known that another Philadelphia child had died without medical care because of religious beliefs.

Washington teen dies of ruptured appendix

On March 18, 2009, Zachery Swezey of Carlton, Washington, died at home of a ruptured appendix a few months before his eighteenth birthday. He and his family belonged to the Church of the First-born, which has let scores of children die without medical care.

Elders called to bedside for prayer and anointing

His parents, Greg and JaLea Swezey, told investigators they first thought he had food poisoning and later perhaps the flu. Over three days he ran a fever and was vomiting with severe diarrhea. Aunts, uncles, and grandparents came to his bedside to pray.

On March 17 Mr. Swezey called church elders who came to their home, prayed for Zachery, and anointed him with olive oil as the family waited outside in the hall.

The next day Zachery told his mother he loved her and asked for his father to come to his bedside. His breathing slowed, his hands became cold and blue, and he died.

His father admitted knowing that his son was dying during the last fifteen minutes.

The Swezeys said they do not force their religion on their children and they gave their son the option of seeing a doctor. They pointed out that Zachery had gotten a physical examination so that he could be on the wrestling team.

Zachery was a champion wrestler at Pateros High School and popular with classmates.

In October, 1985, the Swezeys lost a baby girl in an unattended home delivery when they lived in Oklahoma.

Threshold for intervention: immediate peril

The Department of Social and Health Services (SHS) investigated Zachery's death and substantiated it as due to negligence. SHS also assessed the welfare of a surviving sibling "and determined that this child was safe in the care of the parents."

SHS would not tell us whether the Swezeys gave assurances that they would get medical care for the child when needed.

Washington sets a very high bar for state intervention in neglect cases. Negligence is defined by statute as "an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety." Revised Code of Washington 26.44.020

In order to seek a court order for even a medical examination of a child whose parents do not intend to provide medical treatment of illnesses, SHS "would have to demonstrate to the court that the child was very likely to suffer serious harm or possibly death if immediate medical treatment is not sought," the Department wrote.

SHS offered to provide grief counseling or visits from public health nurses, but the Swezeys declined.

Prosecutor now has sheriff's report

More than 16 months after Zachery's death, the sheriff's office submitted a report on it to Okanogan County Prosecuting Attorney Karl Sloan. Sheriff Frank Rogers says he has only two detectives for child abuse cases and they have many child abuse cases coming in constantly. The law requires rapid determination as to whether living children are physically or sexually abused so their work on death cases is always being interrupted.

Sloan has not yet made a decision on filing charges.

Free choice?

The Swezeys claim Zachery's physical examination is evidence that he had a free choice to go to a doctor. CHILD has another interpretation. We

say there is no freedom without information. Zachery did not know his appendix had ruptured and peritonitis had set in. He did not know the peritonitis would likely be fatal. He did not know the remedies available through medical science.

Given that Zachery was willing to violate his religious beliefs in order to participate in wrestling, we think it is likely he would have been willing to violate them to save his life.

And even if he understood the danger he was in and wanted to be a martyr for his religion, parents should still have a legal obligation to provide their minor children with the necessities of life.

Are food poisoning and flu trivial illnesses?

CHILD also believes both "food poisoning" and "the flu" are specious excuses for withholding medical care from children. Reasonable parents would be in contact with a competent health care provider, at least for advice, if they thought their child had either condition. Zachery died when the swine flu was killing many children in Mexico, the United States, and other countries and was in the news nearly every day.

Christian Science prayers are "medically necessary health care" of children

In the 1980s the Christian Science church tried to get a religious defense into Washington's criminal code. CHILD and especially CHILD board member Shirley Landa of Bothell, Washington, worked hard against it and the bill was killed.

In 1997, however, the church returned to Olympia and got an incredible law before we were aware of their lobbying. The law is a religious defense to criminal mistreatment of children and dependent adults. It turns prayer into "medically necessary health care," stating:

It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned. Revised Code of Washington 9A.42.005

Taken in part from the *Wenatchee World*, Aug. 26, 2009, and March 18, 2010 and e-mails from SHS of November 23, 2010.

Quiverfull baby stillborn in home delivery

On June 19, 2009, Benaiah Chmielewski was born dead in Richmond, Indiana. Though his mother Carri was over 40, overweight, and had high blood pressure, she planned to deliver her ninth child at home as a practice of the Quiverfull belief system. During her labor at home Carri passed out and then medical help was called. At the hospital she was diagnosed with amniotic fluid embolism and was critically ill but did recover.

Quiverfull is best known for its notion that conservative Christians should take over American politics by giving birth to as many children as possible. The model Quiverfull woman submits to her husband, home schools the children, grows a huge garden, avoids serving processed foods, and acquires no credit-card or other debts. Opposition to medical care varies within the movement.

Unlicensed Christian midwifery

During her pregnancy Carri sought advice from Brandi Graham-Wood, a certified professional midwife (CPM) and the director of the Christian Midwives International Organization. Her webpage at home4birth.com attacks vaccination and male circumcision and promotes homeopathy.

CPMs do not have nurses' training and are not recognized by Indiana as qualified to practice midwifery. Nevertheless, Wood's webpage suggests that her company has a thriving practice in Indiana.

Midwife insists mom is carrying twins

Brandi told Carri she was carrying twins and advised a high protein diet to treat her high blood pressure. Carri had an ultrasound done, which showed only one baby. Brandi, however, continued to insist that she was expecting twins and one baby was hiding behind the other.

Early on, Brandi told Carri she could detect two heartbeats. In a later visit she could not detect a second heartbeat but still told Carri the "active movement" was from twins.

Carri frequently wrote about her pregnancy on a blog called CarriMeAway. She was confused about whether she was having twins or a single baby. Her uterus was much larger than she expected, so maybe there were twins, but when she went one, two, and

then almost three weeks past her due date, she could not understand how twins could be that late.

Faith must conquer doubts and fears

Doubts and fears, though, come from the devil and must be quashed with faith, she said.

"God is with me and He is lifting me up and He is giving me peace and He is keeping the devil away from my thoughts," Carri wrote. "He will provide my needs and my babies or baby's needs. I need to trust Him and keep him in control of this birth and not me!" [*sic*]

"God never meant for man (Pregnant Women) to surrender himself (herself) to the total control of man (dr./technology, etc.). God considers that idolatry. We are to surrender ourselves to GOD," she wrote another day.

On yet another day: "I just keep tossing and turning this idea of twins. I want to trust Brandi and her thinking that we have twins but I find myself doubting as each day goes by. I am so up and down with it. I know one thing God knows what is in there! He will bless our family either way! I am trying to stay focused on that thought rather than playing the guessing game with twins or no twins."

Daily blogging, she confessed, helped her "get through another day." Always God triumphed and doubts were defeated in her mental wrestling. This blog is a typical example:

I want to rest in Jesus. I do not want to sound like I am complaining. Only God can fulfill me and I cannot change the situation I am in; only God can. . . in His time. . . . I know that [complaining] is from a proud heart and I need to check that real quick before the Lord or my heart will never be satisfied. I will continue to fall deeper into the pit of complaining. I do have faith that God is in control and He will see me through this bound of emotions.

We see in Carri's blogs so many features of dominist and Word-Faith theology. She believes she can reconstruct reality by the way she thinks about it. Doubts, fears, and emotions are not to be trusted. God is in control of everything. She "cannot change the situation," i.e. she is helpless.

She also shows a common tendency of extremely frightened persons: tunnel vision. She spends so much time worrying about whether she is carrying twins when she really should have been

worrying about her risk factors and making a rational decision to reduce the risks to herself and her baby.

Carri's husband removed her blogs from the internet within hours after Carri was hospitalized. Her condition and the death of her baby Benaiah provoked much criticism on the internet, but some defended her, claiming that the baby would have died even with optimal medical care.

Midwife condemned as incompetent

Dr. Amy Tuteur, a retired obstetrician/ gynecologist, attacked the midwife's incompetence on her blog:

Not surprisingly, someone deluded enough to believe that there were twins when only one baby could be seen was also deluded enough to believe that a clearly pathological pregnancy was normal. Carri measured much larger than expected even though there was only one baby. Almost certainly, there was a massive excess of amniotic fluid (polyhydramnios), both a sign of problems and a risk factor for future complications (including amniotic fluid embolus). Carri's abnormally elevated blood pressure was untreated by the quack remedy that was "prescribed." Pregnancies over 2 weeks past the due date have a dramatically increased risk of stillbirth, as well as life-threatening birth complications. The midwife pretended that this was not so.

A competent health care provider would have had good reason to suspect the polyhydramnios by simple visual inspection and from the fact that Carri was pregnant for the ninth time. The risk increases with multiple gestations. This was a high-risk pregnancy, but good prenatal care and delivery with licensed providers in a hospital would have reduced the risks to mother and baby. The death of Benaiah Chmielewski was not inevitable.

Quiverfull makes women reject their instincts

Vycki Garrison, who nearly died in the Quiverfull movement, wrote an impassioned letter to Carri after she lost her son. Quiverfull, Garrison charged, denigrates women as, like the biblical Eve, more vulnerable to deception than men. "All of this," Garrison wrote, "set us up as women to doubt our own perceptions—to dismiss our fears as irrational

or as the devil sowing seeds of distrust. Our deeply beloved belief system denied us an important safety net—that of our own feelings. When our bodies and our minds screamed out, 'Something is wrong!' our faith calmed us down."

Garrison's webpage at nolongerquivering.com has provided a forum for many women to share the severe hardships forced upon them by the Christian patriarchy of the Quiverfull movement and to help one another break loose.

Other good resources are Kathryn Joyce's book, *Quiverfull: Inside the Christian Patriarchy Movement*, and Hillary McFarland's *Quivering Daughters: Hope and Healing for the Daughters of Patriarchy*. The CHILD newsletter 2006 #3 has an article about Quiverfull beliefs and is available on our webpage, childrenshealthcare.org, in the newsletter archives.

Faith-healers lose infant in New Mexico

Baby Moses Kaufman died June 26, 2009, in an Albuquerque hotel room while Church of God members gathered in prayer around him.

His parents, Samuel and Tammy Kaufman, live in Texas where Samuel is a pastor and news editor for the *Andrews County News*. They had planned to deliver at home, but Mrs. Kaufman went into labor during a Church of God conference they were attending in Albuquerque.

She delivered identical twins who were both born alive. Baby Moses soon was "in distress" and "struggling to breathe," the Kaufmans told investigators. They called fellow church members to the hotel room to pray for him. The other twin also started having trouble breathing. He eventually seemed to improve, but Moses stopped making noise, stopped breathing, and died about three hours after birth. One church member attempted CPR.

Faith opposed to medical care

About two hours later the Kaufmans called for rescue personnel, but only to "collect the body." A detective advised them to take the other infant to a hospital for an evaluation, but the Kaufmans would not allow it, saying they did not believe in man, only God, according to the search warrant affidavit.

They also told the detective that Moses' death was the will of God.

The surviving baby was hospitalized over the parents' objections.

The medical investigator found that Moses died of group B streptococcal and *E. coli* sepsis and that his hospitalized brother "reportedly" had streptococcal sepsis too. Moses weighed 5 pounds 7.5 ounces and was "normally formed."

"Observers noted that the mother appeared edematous and might have had pre-eclampsia," but she "refused medical attention."

Several denominations are called the Church of God. The Kaufmans belonged to the Church of God based in Cleveland, Tennessee, which formed in 1993 when its members broke away from the Church of God of Prophecy.

Ex-member decries cultic control

Danny Page, a member of the Church of God from 1997 to 2004 and a pastor, said the church was unbending in avoiding medical care and hospital birthing.

The church is "staunchly against going to doctors. I didn't take so much as an aspirin for years. I did not go to a doctor for anything," Page said.

Page left the Church of God after he became frustrated with the demands and strict rules of its leaders. "It was very, very cultish," he said. "They constantly pound home this message that they are the only church recognized by God."

Page said he and his wife had three of their six children born at home. Their third child was delivered by Theresa Letcher, a church midwife who was also at the church conference in Albuquerque.

The church's beliefs posted on its webpage include the statement that "divine healing is provided for all in the atonement." This aligns them with other Pentecostal faith-healing groups who maintain that Jesus' crucifixion redeems mankind from both sin and sickness.

Medical care not sinful

However, Stephen Smith, the church's general overseer or chief bishop, said the church does not pressure members to give birth without medical attention. He says the church passed a resolution in 2008 asserting that the church "does not teach that it is a sin to visit a doctor or to take medicine."

Bacteria can be detected before delivery

After the Kaufmans' surviving son was released from the hospital and the parents returned to Texas, family friends told the media that the entire pregnancy had been supervised by "a certified midwife." However, the autopsy report labels Letcher as a doula. Doulas have no training in delivering babies; their role is to help the mother have a more comfortable labor. Two organizations that collectively certify all categories of midwives deny that Letcher has any certification for midwifery.

Group B *Streptococcus* (GBS) is the leading infectious cause of early neonatal morbidity and mortality in the United States even though its incidence has declined by 80% since the early 1990s. The decline is likely due to screening of pregnant women to identify their need for intrapartum antibiotic prophylaxis as recommended by the Centers for Disease Control and Prevention. If Letcher was not testing Mrs. Kaufman's urine during her pregnancy, the babies were at greatly increased risk for GBS infections.

Parents' duty begins at birth

"It's no crime to deliver a baby in a hotel room," said Dr. David Bennahum, a University of New Mexico physician and ethics professor.

But rescue personnel should be called if a child is in distress. "If the baby is gasping for breath, you should call a doctor," Bennahum said.

The Bernalillo County District Attorney's office says they intend to present baby Moses' death to a grand jury for possible criminal charges. However, they have 900 cases of crimes against children in their office and only seven prosecutors to handle them.

Comment

The church's 2008 resolution is helpful, but a theology that claims Christ's atonement includes spiritual healing of all disease nevertheless creates a strong incentive to avoid medical care. It is, of course, Americans' right to believe whatever they want, but we question whether churches should disclaim any ethical responsibility when members follow the beliefs promulgated by their churches.

Sources include *The Albuquerque Journal*, July 4, 12, and 28, 2009, and CBS 7 KOSA, July 20, 2009.

Followers charged in third death

Criminal charges have been filed in a third case of a child dying without medical care among the Followers of Christ congregation in Oregon City, Oregon.

Shannon Hickman reportedly had complications during labor, and church members prayed over her during the night. Her baby David was born at home on September 27, 2009, about six weeks premature and weighing 3 pounds 5 ounces.

David lived nine hours and then died of chorioamnionitis, staphylococcal sepsis, pneumonia, and complications from prematurity including underdeveloped lungs.

No one with medical training attended the birth, and no one called for medical help.

The Hickmans took video and photos of David's birth, but did not disclose their existence when investigators asked them for documentary evidence.

Shannon and Dale Hickman are charged with second-degree manslaughter. It is the fourth time in two years that Followers members have been indicted for withholding medical care from a child.

More than 80 children are buried in the Followers' cemetery near Oregon City. Many died from medically treatable illnesses, but until 2008 no criminal charges had been filed against Followers of Christ parents.

The Hickmans have a six-year-old daughter.

Sources include *The Oregonian*, July 31 and Sept. 13, 2010.

Jehovah's Witness teen dies after refusing blood

The issue of a minor's right to refuse lifesaving medical care was raised in England this year. On May 15, Josh McAuley, age 15, was preaching to local West Midlands shoppers as his Jehovah's Witness faith requires when a car crashed into a food shop and pinned the boy against a wall.

He was airlifted to Selly Oak hospital with serious abdominal and leg injuries. Reportedly, he declined the blood transfusion advised by doctors and died later that evening.

The hospital told CHILD that press accounts of the case were inaccurate and would not discuss

whether they allowed the boy to refuse a transfusion or, if so, why.

The UK's National Health Service states that children under the age of 16 years cannot normally refuse medical treatment in England and Wales, but are allowed to do so in Scotland.

The UK's Mental Capacity Act of 2005 states that all people over the age of 16 years must be presumed as having the capacity to consent or to refuse medical treatment. The burden is on the government to show that they lack this capacity.

How minor's competence is evaluated

Assessing a minor's competence to refuse medical treatment requires evaluating whether the patient has all relevant information about his condition and the proposed treatment, retains the information, and uses it in reaching his decision, as well as whether his decision is truly voluntary and unaffected by social pressures. "The more serious the decision, the greater the capacity required," a Master of the Rolls held.

When refusal of medical treatment entails a serious risk of physical or mental harm to a minor, courts in England and Wales often order treatment over the objections of minors, including 16- and 17-year-olds.

In *Re W* (1992) the court held: "the present state of the law is that an individual who has reached the age of eighteen is free to do with his life what he wishes, but it is the duty of the court to ensure so far as it can that children survive to attain that age."

British courts overruling minors' wishes sometimes cite Article 8 of the European Convention on Human Rights:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This discussion of British law on minors is taken from Rim Al-Samsam, "Legal aspects of consent to treatment in children," 18 *Paediatrics and Child Health* (Oct. 2008): 469-73. Information on Josh McAuley is taken from telegraph.co.uk, May 18, 2010.

Alabama parents charged with manslaughter in toddler's death

In October Alabama parents Jeff and Rebecca Stockton were charged with manslaughter for what former associates say is religion-based medical neglect of a child.

Their 16-month-old son Justin, who had Down syndrome, died in April of severe malnutrition. The medical examiner ruled the death a homicide.

The Stocktons' eight surviving minor children were removed from their custody and placed in foster care.

3 stillborns and 4-year-old without medical care

The Stocktons lived with other relatives in a compound in Gardendale, Alabama, and formed their own sect called "The Family." Defector Pamela Stockton called the group "cult-like" and said her own 4-year-old son Reginald died in 1989 because of the sect's prohibition of medical care when she was married to Jeff Stockton's brother. He denies her allegations.

The Jefferson County Coroner's office has reviewed three previous stillborn deaths and the death of Reginald in the Stockton home. "In every case the family told investigators that the child does not have a physician and the family does not seek treatment from doctors," a deputy coroner said. Reginald's death was ruled as due to congenital heart disease.

Taken from *The Birmingham News*, June 23, July 30, and Oct. 26, 2010.

Swan has chapter in medical textbook

CHILD President Rita Swan has a chapter on "Religion and Medical Neglect" in the book *Child*

Abuse and Neglect: Diagnosis, Treatment, and Evidence edited by Dr. Carole Jenny and recently published by Elsevier.

The clinical reference book's 70 chapters and 658 pages have a wealth of information for physicians and other professionals dealing with child abuse and neglect.

A chapter on female genital mutilation by Susan Bennett is posted on CHILD's webpage in our Cultural Abuses section.

Dr. Jenny is a professor of pediatrics at Brown University Medical School and a member of CHILD's board of directors.

Sobering final thoughts

Children are at the mercy of so many forces. As states slash public services, prosecutors, investigators, and social workers acquire staggering case-loads. The chances for errors multiply.

There is little we can do about unlicensed midwives especially if parents do not complain about them. As a general rule parents do not have a legal duty to a baby until he or she is born alive.

In 2007 lay midwife Diane Goslin of Lancaster County, Pennsylvania, was fined by the State Board of Medicine and ordered to stop delivering babies after an Amish baby died of pneumonia at 21 hours old. The Commonwealth Court of Pennsylvania, however, overturned the fine and the cease and desist order, holding that she was not practicing medicine or surgery nor misrepresenting her credentials. *Goslin v. State Board of Medicine*, 949 A.2d 372 (Pa. Commonw. Ct. 2008) The parents should have had a duty to obtain medical care for the baby, but were not charged, and the midwife apparently does not have a duty to the baby.

A member of the National Child Abuse Coalition, CHILD is dedicated to stopping child abuse and neglect related to religious beliefs, cultural traditions, or quackery.

CHILD's informative webpage at www.childrenshealthcare.org has recently been redesigned and expanded.