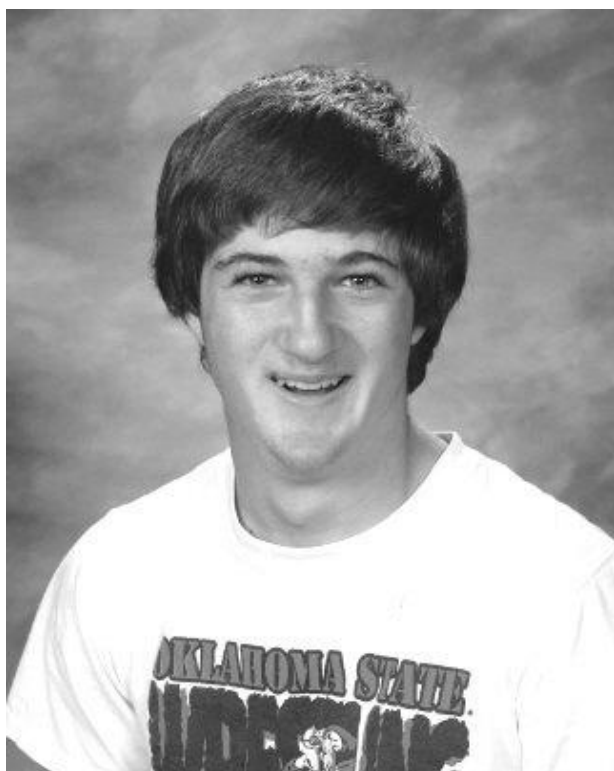


Children's Healthcare Is a Legal Duty, Inc.

136 Blue Heron Place, Lexington, KY
Phone 859-255-2200
Web page: www.childrenshealthcare.org

Number 1, 2012© by CHILD, Inc.
E-mail: admin@childrenshealthcare.org
Written by Rita Swan

Equal rights for children under the law



Zachery Swezey

Washington State parents sentenced in teen's faith death

On June 7 a Washington State couple agreed to a plea deal that spared them jail time for the death of their son but acknowledged some responsibility for not seeking medical care for him.

Zachery Swezey was a popular student at Pateros High School when he died in March, 2009, of peritonitis from a ruptured appendix, only four months before his 18th birthday. He was a champion wrestler and active in several other extra-curricular activities. Hundreds came to his memorial service in the school gymnasium.

His parents, Gregory and JaLea Swezey of Carlton, belong to the Church of the Firstborn, which views medical care as showing a lack of faith

and has let scores of children die without medical attention.

Zachery's sister, Ashley Nicole, died at birth in 1985 when the Swezeys lived in Oklahoma. No charges were filed in her death.

In February, 2012, Okanogan County District Attorney Karl Sloan filed felony charges against the parents. Sloan said other high-profile cases and short-staffing had caused the long delay in filing charges. Because the Swezeys were not considered a flight risk or threat to the community, his office had worked on other cases first.

Firstborners want Christian Science exemption

The Swezeys' attorneys, Chelsea Korte and Douglas Webber, moved to have the charges dismissed because "the defendants' constitutional right to equal protection of the law has been breached."

Washington's criminal mistreatment law requires parents to provide "medically necessary health care," but also states: "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 (emphasis added)

In effect, this incredible state law declares prayers by Christian Science healers to be the equivalent of medical care for seriously ill children.

"The discrimination in Washington law between . . . two religions has the constitutionally prohibited effect of providing favoritism and/or immunity for members of the *Christian Science Church*

INSIDE

Playing God and doctor	3
History of Wash. privilege for Christian Science....	4
Supreme Court upholds health insurance mandate..	7
<i>The Last Strawberry</i> reissued	8

over members of *The Church of the First Born* for identical conduct. . . .” Korte and Webber wrote.

“There is no rational basis,” they continued, “for the distinction between faith healing as a belief of one religion over the other, and therefore the defendants have been denied equal protection of the law under Article I, section 12 of the Washington State constitution. . . . [The] law creates a distinction based solely on preference toward a particular group and [is] wholly lacking a legitimate governmental purpose.”

State sees rational basis for law

Prosecutor Sloan, however, argued that there could be a rational basis and legitimate governmental purpose for exempting those relying on Christian Science from criminal mistreatment charges. He cited the following law requiring “practitioners” to report child abuse and neglect:

“Practitioner of the healing arts” or “practitioner” means a person licensed by this state to practice. . . . medicine and surgery or to provide other health services. The term “practitioner” includes a duly accredited Christian Science practitioner. RCW 26.11.020(1)

Therefore, Sloan wrote, the “duly accredited Christian Science practitioners” are required to report to state officials when they have “reasonable cause to believe that a child has suffered abuse or neglect,” but “no similar explicit duty is imposed upon the defendants or their church.”

Court: CS healers are licensed and mandated reporters

Judge Christopher Culp’s ruling agreed with the state and even went beyond Sloan in writing that Christian Science practitioners were licensed by the state. Although RCW 26.11.020(1) might appear to say that, the church’s practitioners are not licensed or accredited by any body. (See next article.)

Imposing licensure and reporting requirements upon the practitioners was part of the state’s “identified need to provide protection for children” and the exemption from prosecution for the Christian Scientists has “a rational basis,” Culp held.

The Swezeys, however, did not seek help from anyone with such responsibilities to the state and therefore they were not entitled to an exemption

from criminal mistreatment charges, the judge ruled.

Though the defense stated in its pretrial memorandum of authorities that the Swezeys belonged to “a denomination relying on faith healing rather than traditional medical intervention” and had engaged in identical conduct to the Christian Scientist who willfully rejects medical care in favor of ritual, the defense took a very different tack later.

“Just had the flu”?

At trial they argued that the Swezeys’ religion did not influence their decision to forgo medical care. “This was not a faith healing death,” Korte told the jury.

The Swezeys thought their son “just had the flu” and was getting better, Korte claimed. One physician bolstered that claim with testimony that a teenage athlete could have great “physiologic reserve” and could mask his symptoms to others.

Symptoms too alarming to mask

Even if Zachery’s words minimized his symptoms, however, the parents saw plenty that would have alarmed reasonable people. Statements made to investigators described Zachery as suffering severe stomach pains, vomiting and diarrhea during the last 62 hours of his life. He could not get to the bathroom on his own and could not control his bowel. His parents moved him first to the couch, and then to their own bedroom. They called in church elders to pray for Zachery in his home. Some came from Spokane and some from Olympia. They anointed him with olive oil. Family members came and stayed to help care for him. His fever was so high that he went without clothing and soaked the sheets with sweat, Sloan told the jury.

At the end he was delirious. He asked for his father. His hands turned blue. His breathing slowed, and he died, Sloan said.

Appendicitis discussed by church members

A sheriff’s detective testified that three people said they believed the boy was going to die, including one saying so a day before the death. One person called a funeral home to ask if Zachery had died. He said he was part of the church prayer group and had been told the boy had appendicitis.

A pathologist discussed autopsy photos showing Zachery’s blotched, green-colored body that he

said was due to rapid decomposition from massive amounts of infection and bacteria in his abdomen.

Defense: medical care not prohibited, boy made free choice to rely on faith

Defense witnesses gave evidence that the Church of the Firstborn did not prohibit medical care, Swezey family members themselves had gotten medical care in the past, Zachery made his own choice to rely on faith, and his illness didn't look that serious or he was recovering.

Zachery came home Sunday night with a bad stomach ache. He woke his parents in the middle of the night, and they set him up to sleep on the couch so they could check on him. But when he woke up the next morning, the pain in his stomach was gone.

He continued to have flu-like symptoms off and on, but seemed to be getting better. He went to baseball practice on Monday but his coach thought he looked too sick to play so he sat on the bench and watched.

Ritual used for trivial complaints

Mr. Swezey called elders from the Church of the First Born in Olympia and Spokane to come anoint and pray for Zachery on Tuesday, but he didn't think the boy was on his deathbed, he said.

The father testified that church members routinely call upon fellow members to pray for healing and to anoint whether the illness is serious or not.

Dad figured out son did not have appendicitis

He admitted someone at their home did mention appendicitis on Tuesday, but they looked up the symptoms and didn't think they matched. Zachery had a high fever, not a low-grade one. The pain in his abdomen never moved to the right. Zachery told them the pain in his stomach went away, although he continued to vomit and later had severe diarrhea.

Swezey testified that he, JaLea, and daughter Abi had all been sick with the flu, which contributed to their thinking Zachery "just had the flu." On cross examination, however, Swezey admitted that Zachery's symptoms were more serious than those of the other family members.

Zachery: "I'm going home"

Swezey testified that his son asked for him to come to his bedside on Wednesday. The boy's hands were cold. Swezey knew then that Zakk was

dying and asked if he wanted to be taken to the hospital.

According to the father, the boy replied, "No. I'm going home" and died a few minutes later.



Gregory Swezey

Swezey testified that the family has had dental and orthodontic work done in the past and his boys were treated by a physical therapist or chiropractor after a wrestling match. Zachery got a physical exam in order to participate in sports.

When Zachery's brother Andrew broke his leg playing high school football, their father cast the leg himself. No x-rays were taken, and no doctor examined him. Later the boy went to a Native American physical therapist who believes in ritual healing to have the cast removed.

His brother Douglas had emergency medical care after a vehicle accident; the father consented to it by phone as the teen was being taken to a hospital.

Dad never got medical care for his kids

On cross examination, Swezey acknowledged that he had never taken any of his four children, including Zachery, to a doctor to get immunizations or other medical care.

The Church of the Firstborn believes in baptizing when the believer understands the faith and makes his own commitment to it. Zachery had made that quality of commitment and made his own decision to refuse medical care, witnesses said.

Alford pleas after hung jury and acquittals

The jury acquitted the parents of second-degree murder, but could not reach a unanimous decision on manslaughter charges.

Sloan then worked out a plea agreement that provided some protection for four-year-old Abi. The parents agreed to enter "Alford pleas" to criminal mistreatment of Zachery. In an Alford plea the

defendant does not plead guilty, but admits that there is enough evidence to convict him or her.



JaLea Swezey

Some protection for Zachery's sister until age 8

JaLea is on probation for the next two years. Greg's sentence is also two years probation but begins after JaLea's expires. During those four years the parents are required to notify Child Protection Services when their child is ill.

JaLea asked the court if she should report the most trivial incidents to the state. The judge told her to "err on the side of caution," report them, and then do what CPS told her to do.

Sources include the *Wenatchee World*, March 21 and Aug. 26, 2009; and March 6, April 27, May 2, May 8-15, June 4, and June 7-9, 2012.

On playing God and playing doctor

It is preposterous to argue, as Swezey's attorneys, did that there was "no nexus" between the Swezeys' faith and their decision to withhold medical care. Reasonable parents would seek medical attention for symptoms as serious as Zachery's.

Instead, the Swezeys did an internet search to determine for themselves that Zachery did not have appendicitis. They read that a low-grade fever may accompany appendicitis, but Zachery had a high fever, so of course he did not have appendicitis.

Was Zachery getting better?

They believed their son was getting better because the excruciating pain went away Sunday

night. That was probably when his appendix ruptured, and yes, the pain would greatly diminish, but then peritonitis sets in.

The Swezeys' few encounters with health care providers do not prove that they had a reasonable parent's acceptance of medical care for sick children. Christian Science, Faith Tabernacle, and Church of the Firstborn all oppose medical treatment but approve of dental care on grounds that the latter is only "cosmetic" or "mechanical."

Devotees of faith healing are also more likely to accept medical care for trauma than for disease, perhaps because they comprehend what has caused an injury or because emergency medical personnel or coaches are advocating medical treatment for the injury.

Did the boy make a free and informed choice?

The Swezeys and some community members felt that Zachery was old enough to make his own decision on medical care. Mr. Swezey testified that he asked his son if he wanted medical treatment both the day before he died and minutes before his death. The boy declined.

CHILD holds that children should be provided with necessary medical care until the age of 18 regardless of their religious beliefs. Zachery did not know what disease he had, what relief medical treatment could provide, or the consequences of declining it.

Zachery and his brothers wanted to play high school sports. They were willing to go to doctors for a physical exam as a condition of participating and to get sports injuries treated by providers other than medical doctors.

It strains credulity to think that a boy willing to go to a doctor so he could play in sports would not be willing to have medical care to save his life. We think he simply didn't know what the stakes were.

The defense was all over the map on the connection between faith and the parents' decision against medical care. In opening argument defense attorney Chelsea Korte said there was no connection, for the parents did not know their son needed medical care.

Parents still don't know?

However, Korte also said if you ask the Swezeys what they would have done if they *knew* their son had a ruptured appendix and was dying, "They

both say, they don't know. They would like to think that their faith is strong enough that they could rely upon it. But even now, three years later, they don't know."

In recent years this has become the Christian Scientists' standard response when asked, "What would you do if you or your child had _____?"

"I don't know" is, we believe, intended to show that their religion can heal all diseases, but they are not fanatics—they just might be willing to get medical care in some situations.

The "I don't know" response also, however, insists that the choice should be up to them and that is a fanatic's attitude in our view. Even if the Swezeys knew their son was dying of a ruptured appendix, they would not necessarily race to the hospital. They would still hope their faith was "strong enough" to place their child's life in God's hands. And if the child died? Well, God had a better plan.

The back story on Washington's law

In the 1970s a boy named Michael Schram lived with his Christian Scientist mother in Mercer Island, Washington. His divorced father was not a Christian Scientist. In 1979 Michael became very sick, but Mrs. Schram did not inform his father of the illness or that she was providing no medical care. Instead, she was having a spiritual healer called a practitioner provide what the church calls "treatments," which amount to silent argument that the disease is unreal because God did not make it.

Michael died at age twelve of peritonitis from a ruptured appendix. Mrs. Schram and the practitioner continued to pray for resurrection three or four days after his death.

When a funeral home was finally called, the boy's body was so badly decomposed that one of the funeral home employees vomited. The public was outraged. Mr. Schram told us that both the mother's home and the local Christian Science church were firebombed.

The church turned on the practitioner, saying that she was only a practitioner in training and did not have her church accreditation yet. The press did not follow up and ask if a church-accredited practitioner could have done a better job of healing peritonitis or raising the dead.

CS denial of illness protects mom from charges

King County prosecutor Philip Killien quickly announced that he would not file charges. He said that the boy's acceptance of Christian Science teaching "might have contributed to an inability or unwillingness to express pain, but that's just speculation." In other words if the boy tried to be a good Christian Science soldier and ignore his pain, then the mother would not have reason to know he was seriously ill and therefore did not have a legal duty to provide medical care.

For years after Michael Schram's horrible death the Christian Science church did not try to get laws in Washington State allowing members to deprive children of medical care. In 1986, however, they tried to get a religious defense to child maltreatment into the criminal code. Fortunately, CHILD got early notice of it and was able to mount opposition, including opposition not only from local CHILD members but also the state prosecutors' association. The church's provision was killed.

Conference committee adds religious defense

In 1997, however, the church got its way, and neither CHILD nor statewide organizations learned of it in time to protest. Indeed, the religious exemption was added in a most secretive way. It was not in the health care bills as passed by either the House or Senate, but a conference committee of six legislators tasked with reconciling the two versions added a religious exemption to criminal mistreatment that neither chamber had voted on. When the reconciled bill adopted by the conference committee returned to the House and Senate, it was accepted *pro forma*.

And what the church got was a lulu:

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

Christian Scientists exempted from mistreatment and murder charges

In Washington first-degree criminal mistreatment is recklessly causing great bodily harm to a

child or dependent adult by withholding the basic necessities of life.

But in Washington parents and caretakers of frail and helpless elderly can cause great bodily harm by withholding what most of us think of as medical care if they retain a Christian Science practitioner to give prayer-treatments. Indeed, the legislature has decreed that prayers by Christian Science practitioners are “medically necessary health care.”

The criminal mistreatment law and its religious defense carry over to death cases in that a second-degree murder charge requires proof that death occurred in the commission of another felony.

Last year we wrote to those 1997 conference committee members and asked their rationale for the law, but we received no answer.

One church’s prayers are “medically necessary health care” for sick children: a rational law?

Okanogan County District Judge Chris Culp ruled that the religious defense was only for Christian Scientists and that the law had “a rational basis” and served the state’s interest in protecting children because Christian Science practitioners are state-licensed and required to report child abuse and neglect to the state.

CHILD rejects his conclusion in the strongest possible terms. Even if the church’s spiritual healers were state-licensed and were mandated reporters of medical neglect, that would show only that Christian Science children might not be in as much danger as Church of the Firstborn children. It would not show a good reason to allow Christian Science parents to recklessly cause great bodily harm to a child.

Do spiritual healers report medical neglect?

Furthermore, Christian Science practitioners are not licensed or accredited by the state and we question that they are mandated reporters. The Washington Department of Social and Health Services does not include such practitioners on its list of mandated reporters at DSHS.wa.gov/ca/safety/abuseReq.asp?2.

Though RCW 26.44.020(16) includes the Christian Science practitioners on the list of reporters, the several religious exemptions for medical neglect seem to exempt the healers from reporting it. They appear to have a statutory duty (unbe-

knownst to Social Services) to report abuse and several kinds of neglect, but no duty to report a sick child who is getting their prayer treatments instead of medical care. Since RCW 9A.42.005 defines prayers by Christian Science practitioners as “medically necessary health care,” the children for whom they are praying are not neglected even if the children have diabetes and no medical doctor is caring for them.

RCW 26.44.020(16) also appears to give these spiritual healers an exemption from a duty to report the medical neglect practiced in their church.

CHILD has never heard of the church advising its practitioners to report medical neglect of a child or of any case in which they did so. They believe their prayers are the best “treatment” in the world and do not want to concede that the parents paying for their prayers are neglecting the child.

When Culp’s ruling came out upholding the privilege for parents who got treatment from “duly accredited” Christian Science practitioners, the *Wenatchee World* asked the church’s state public relations manager Bill Scott about the practitioners’ duties to the state. Scott refused to say what it means for them to be “duly accredited.”

“Health care” without responsibility

This is typical Christian Science strategy of getting privileges without accepting responsibilities. The church has gotten many laws in this country giving privileges to “duly accredited practitioners” and those who rely on their spiritual treatments in lieu of medical care. But if accreditation might confer responsibilities for them or their church, the church denies that it accredits them. In the wrongful death suit *Brown v. Laitner*, the church swore that it only allowed people to advertise in its periodicals as practitioners but *did not accredit them or evaluate their abilities in any way*.

Culp’s ruling will not be appealed. The Swezeys “never wanted to be the poster child for changing the law in Washington even though the law begs to be changed,” their attorney Douglas Webber said.

Defense: the law is bizarre

Webber rightly characterized this law calling one and only one church’s prayers “medically necessary health care” as “bizarre.”

Washington is the only state that explicitly gives Christian Scientists a religious defense in the criminal code though some other states have criminal laws with Christian Science code words in them.

Sources include the *Seattle Post-Intelligencer*, Oct. 13, 1979; depositions in *Brown v. Laitner* (#73903, Mich. Ct. App., Dec. 17, 1986) and the *Wenatchee World* of April 27 and June 9, 2012.

Individual mandate upheld

On June 28 the U.S. Supreme Court upheld most of the federal Patient Protection and Affordable Care Act, including the requirement that Americans purchase medical insurance, get it through their employer or a religious cooperative, or pay a penalty, which the Court described as a tax.

Some groups are exempted from the mandate: prisoners, undocumented immigrants, enrolled members of Native American tribes, the very poor, and the Amish.

The Amish were exempted because they have a long record of opting out of government benefit programs, including Medicare and Social Security, upheld in court rulings, and a long record of the entire Amish community contributing to pay the medical bills for individual members.

The Christian Scientists and members of faith-healing sects were not exempted from the individual mandate.

Insurers required to pay for prayer in two bills

While Congress worked on the Affordable Care Act, the Christian Science church got provisions in House and Senate bills that required insurance companies to reimburse the fees Christian Science healers charge for their “treatments,” which consist solely of prayer. Church lobbyists and other members placed many columns in the secular press arguing that “universal health care” should include the “health care” that Christian Scientists had found most effective. “True reform will include care that’s spiritual” was one title.¹

Payment without diagnosis sought

¹ George Gregory, “True reform will include care that’s spiritual,” *Des Moines Register*, May 30, 2009.

The church openly admitted that they wanted compensation for their “health care” without a medical diagnosis. A church lobbyist told the press that about 300 insurance companies used to reimburse for Christian Science “treatment,” but with the advent of managed care, most insurers now require a medical diagnosis.² The church wants the insurance industry to pay for its eccentric health care without a medical diagnosis to determine what the patient’s ailment is.

Prayer-fee reimbursements defeated

CHILD, the American Academy of Pediatrics, and secular humanist organizations vigorously opposed the requirement to reimburse for “spiritual health care” and both the House and Senate later removed it from their bills.

Lobbying continues

The church is not giving up. Gary Jones, the manager of the church’s federal lobbying, wrote in the *Huffington Post*, “Although spiritual care has not been recognized as a therapy in the new health care reform law, there’s every reason to believe it will be in the future.”³ Long after the ACA passed, a Texas church lobbyist said he was wearing off “plenty of shoe-leather” going to congressional offices to promote the prayer-fee mandate.⁴ A “team of dedicated, visionary workers” for the church spent the summer of 2011 lobbying Congress about the ACA’s “gross injustice” not only to Christian Scientists but also “anybody who thinks that there might be more factors to health than physicality.”⁵

In addition to lobbying Congress the church has been meeting with U.S. Department of Health and Human Services officials trying to persuade them to put the prayer-fee mandate in the regulations HHS will write to implement health care reform or, alternatively, to relieve Christian Scientists from

² Terry Goodrich, “Christian Scientists looking at healthcare reform,” *Fort Worth Star-Telegram*, Feb. 21, 2009.

³ Gary Jones, “Spirituality: a Powerful Factor for Health Care Reform,” *Huffington Post*, May 26, 2010.

⁴ Keith Wommack, “Pay for prayer?” and lots of steps,” *Houston Chronicle*, Aug. 6, 2010.

⁵ Virginia Early, “Spiritual health care concerns intern,” *Connecticut Post*, Jan. 6, 2012.

paying the penalty for not having health insurance.⁶

“Christian Science will end ObamaCare”

Christian Scientist Ron Meyer, a program officer for the conservative Young America’s Foundation, took heart from Supreme Court Justice Elena Kagan’s comment to the attorney arguing against the law:

The theory behind this law is that people are in this market right now, and they are in this market because people do get sick, and because when people get sick, we provide them with care without making them pay. And it would be different, you know, if you were up here saying, I represent a class of Christian Scientists. Then you might be able to say, look, you know, why are they bothering me? But absent that, you’re in this market. You’re an economic actor.⁷

Meyer confidently titled his blog, “Christian Science will end ObamaCare.” He charged that the law “medicalizes citizenship” and is unconstitutional.

“As Justice Kagan stated,” Meyer continued, “mandating Christian Scientists to buy medical insurance not only forcibly drags many of us into commerce, it violates our religious conscience.”⁸

For all the complaints about being forced to buy a product they’ll never use, many Christian Scientists have gotten medical care after prolonged suffering. The church’s real goal is to get federal or state governments to require insurance coverage for Christian Science treatment and the church’s unlicensed nurses in addition to medical care. That was always the thrust of its lobbying in Congress.

Ironically, in 2006 about half of the employees at the church headquarters in Boston had medical insurance offered by the church.⁹

CHILD opposes a government requirement to pay for anyone’s prayers. We can’t stop the private insurance industry from paying bills for prayers, but the state should not be forcing it to do so.

⁶ Mark Barna, “A Springs Christian Science healer talks shop,” *Colorado Springs Gazette*, Aug. 13, 2010.

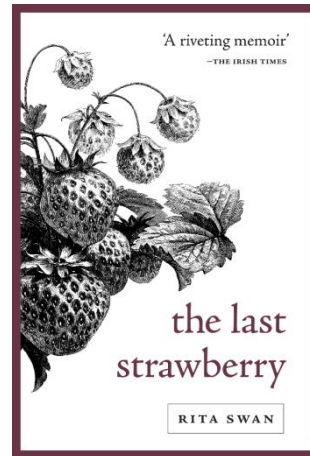
⁷ Quoted in Ron Meyer, “Christian Science will end ObamaCare,” at realeclearreligion.org, March 31, 2012.

⁸ *Loc cit.*

⁹ Jeff Krasner, “Christian Science provision sought in health care law,” *Boston Globe*, Aug. 28, 2006.

Swan memoir reissued

In 2010 CHILD President Rita Swan’s memoir was published in a signed and numbered edition of 100 copies. Titled *The Last Strawberry*, it describes her family’s ordeal when she and her husband Doug lost their only son Matthew in 1977 because of relying on Christian Science practitioners to heal him.



That edition is sold out, but another edition was recently printed. It is available at www.hagsheadpress.com or directly from CHILD at \$8 for CHILD members and \$10 for non-members plus \$2.50 for postage and handling.

Caroline Fraser, author of *God’s Perfect Child: Living and Dying in the Christian Science Church*, says of it: “Eloquent, harrowing, unsparingly honest, *The Last Strawberry* is the ultimate Christian Science ‘testimony,’ the last word on this cold, dwindling American delusion. Readers will take courage from Rita Swan, who faced the most devastating loss, learned its hard lessons, and turned to helping others escape the clutches of magical thinking.”

About CHILD

A tax-exempt charity, CHILD works to stop child abuse and neglect related to religious beliefs, cultural traditions, or quackery. CHILD provides research, public education, and amicus briefs. It opposes religious exemptions from child health and safety laws as discriminating against children and does a limited amount of lobbying for equal protection of children.

CHILD membership dues are \$40 a year for an individual or family or \$15 a year for a full-time student. A membership form is at our webpage, www.childrenshealthcare.org.
