Children's Healthcare Is a Legal Duty, Inc.

Box 2604
Sioux City IA 51106
Phone 712-948-3500

Number 1, 1994
Writer and editor Rita Swan

Equal rights for children under the law

***Jetta Bernier,** Director of the Massachusetts Committee for Children and Youth*

Victory in Massachusetts

On December 28, 1993, Governor William Weld, R-Massachusetts, signed S.219 into law. The bill made child abuse a crime and repealed a religious exemption from the criminal code. Massachusetts thereby became the third state in the nation to remove all religious exemptions from a duty to provide medical care to a sick child. South Dakota repealed such exemptions in 1990 and Hawaii in 1992.

The victory in Massachusetts is an especially significant achievement in that the international

continued on p. 3

Mississippi minister pleads guilty in faith death; first case in U. S. history

On May 23, parents and a minister pled guilty to felony charges in the death of 13-year-old Rebecca Davis. It is, to our knowledge, the first case in U. S. history in which a minister or faith healer has been tried or convicted for encouraging parents to withhold medical care from their child.

Rebecca Davis died May 16, 1991, at her home. in Aberdeen, Mississippi. An autopsy report showed that she was diabetic, but cause of death was listed as suffocation due to breathing in vomit, which in turn was caused by overfilling of the stomach. According to the coroner's office, her body was still hot with fever even after death.

Her parents, David and Ann Davis, belonged to Grace Baptist Church, which was independent of the Southern Baptist denomination. The women and children of the congregation had been on a fast for three weeks before her death as a ritual for restoring the minister's health.

Apparently, Rebecca's health deteriorated so much during the fast that the Davises finally decided to give her inordinate amounts of food.

Inside

Medical care condemned

According to court documents, the minister, Richard Vaden, taught the Grace Baptist congregation to rely exclusively on prayer, fasting, anointing, and his personal intercession with God for healing disease. Those who sought medical care were considered sinners who must be shunned and avoided.

According to a source, twelve church members, including Vaden and his wife, were in the Davis home when Rebecca died. The source also claims that, during Rebecca's final hours, Davis made such statements as, "She was borned by c-section and that was wrong" and "I've got six more I'll bury before I would call a doctor."

A local CHILD member heard that one of Rebecca's siblings was also sick and attempted to get the Department of Human Services (DHS) to intervene. DHS declined to get involved, citing the state's religious exemptions from child abuse and neglect charges. The member then asked the District Attorney for help. Subsequently, DHS got all of her siblings examined by a physician.

Accessory to negligence

In December, 1991, the Davises and Rev. Vaden were charged with manslaughter in the girl's death. Assistant Monroe County District Attorneys Rob Coleman and Rowland Geddie prosecuted the case.

Coleman and Geddie researched cases from around the country in developing their approach to the case. Some legal thinkers held that there could be no accessories to negligence. They argued that someone could not aid and abet another person *not* to do something.

But Coleman and Geddie believed that Vaden became criminally liable because his teachings and orders prevented the parents from rescuing the child. Although Vaden himself had no legal duty to the child, Coleman and Geddie said he had a duty not to stop the parents from helping the child.

The prosecutors planned to use Amanda Blanton and Chris Barker, ex-members of Vaden's church, as witnesses. Their testimony would have indicated that Vaden had a high degree of control over the members. (See Amanda Blanton's article in the CHILD newsletter 1992 #1.)

They did not indict the other church members present at Rebecca's deathbed because those members did not have the control over the parents that Vaden did. They also said that a conspiracy charge would not have been appropriate because the case dealt with an omission rather than a commission.

Plea bargain

One of Rev. Vaden's attorneys was Bobby Lee Cook of Summerville, Georgia, upon whom the *Matlock* television series was based. Cook has defended parents in other cases of children dying because of religious beliefs against medical care. We heard that the defense had evidence that the Davises practiced faith healing before they joined Grace Baptist. Vaden's attorneys appeared to be preparing a vigorous defense for trial.

On May 23, 1993, however, plea bargains for all three defendants were struck. Under a non-adjudication statute, David and Ann Davis pled guilty to culpable manslaughter and Rev. Richard Vaden pled guilty to culpable manslaughter as an accessory before the fact in Monroe County Circuit Court. The convictions establish the defendants as principals in the commission of a felony.

They are expected to be sentenced to supervised probation. Upon completion of probation, records of the case will be expunged.

Minister and parents abandon opposition to medical care

Davis owned and operated a cabinet shop. All his employees were members of Grace Baptist. Davis gave Rev. Vaden a substantial percentage of his income.

A few days after Rebecca's death, Vaden reportedly went to a doctor for his own health problems and preached a sermon criticizing the Davises.

The Davises then left Grace Baptist Church and lost their work force. Vaden and the congregation closed Grace Baptist, established a new church in West Point, Mississippi, and set up a rival cabinetry business.

According to sources, Vaden no longer espouses a doctrine of withholding medical care.

The Davises have also built new lives. The prosecutors said they were very remorseful about their daughter's death and cooperated with the state fully from the beginning.

Convictions of ministers in beatings

Ministers have been convicted in the United States for encouraging parents to beat their children. Since 1982, Rev. William Lewis of the House of Judah was convicted in the fatal beating of John Yarbough near Allegan, Michigan, in 1983; Steven Jackson, leader of the Covenant Community Fellowship, was convicted in the fatal beating of toddler Bradley Lonadier in DeMotte, Indiana, in 1982; Dorothy McClellan, leader of Stonegate Christian Commune, was convicted in the fatal beating of toddler Joey Green near Charles Town, West Virginia, in 1982; and Douglas Kleber, leader of the "No-Name Fellowship," along with another church elder, pled guilty as accomplices to criminal mistreatment in the death of Aaron Norman in Mead, Washington, in 1987.

McClellan was not physically present when the parents beat their son to death, but had repeatedly ordered parents to hit their children until they "accepted" their punishment. The West Virginia Supreme Court declined to review her conviction.

Pastoral liability

Many observers have wondered when an American clergy person would be charged for encouraging parents to withhold medical care from a child. In Canada pastor liability was established in 1925 when a Christian Science practitioner was charged as an accessory to manslaughter in a child's death. See *Rex v. Elder*, 35 Manitoba Reports 161 (1925).

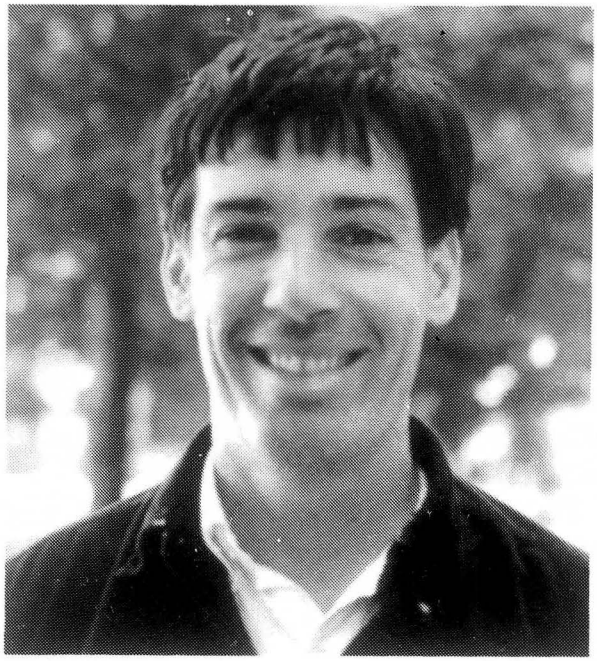
American grand juries indicted Christian Science practitioners Virginia Scott and Mario Tosto for the deaths of Seth Glaser in Culver City, California, in 1982 and Ian Lundman in Independence, Minnesota, in 1989 respectively. But the charges were later dropped. Rev. Hobart Freeman, leader of Faith Assembly, was indicted in the death of Pamela Menne in Warsaw, Indiana, in 1984, but died before the case came to trial.

The conviction of Vaden does not establish a legal precedent because it will not be appealed. It nevertheless sends a strong message that faith healers may be criminally liable for the deaths of children.

Taken in part from *The Aberdeen Examiner*, 25 May 1994.

Victory in Massachusetts, *continued from p. 1*

headquarters of the Christian Science church is located there. It was the culmination of a five-year struggle.



Ken Casanova

1986: Repeal of religious exemption sought

The project began as the vision of one Boston-area CHILD member, Ken Casanova. In 1986 Ken read about a toddler named Robyn Twitchell who died in suburban Boston of a bowel obstruction because his Christian Science parents did not get him medical care.

Ken also read about a religious exemption statute in Massachusetts that the Christian Science

church said gave the parents the right to withhold medical care. Ken called his Representative, John McDonaugh, and asked him to work for the repeal of this religious exemption.

Origins of religious exemption: 1967-1971

Massachusetts passed its religious exemption four years after a Christian Science mother in Barnstable was convicted of manslaughter in 1967. Dorothy Sheridan allowed her five-year-old daughter, Lisa, to die of pneumonia without medical care. The child was sick for three weeks, and an autopsy found more than a quart of pus in one of her lungs. The case is described in a book entitled *The Crime of Dorothy Sheridan* by Leo Damore, which is currently available in a Dell paperback.

The Christian Science church pushed a religious exemption through the legislature in 1971. At the time, church officials described it as a very small thing they were asking for, an exemption to a misdemeanor that carried a $200 fine. Their presentation to legislators did not mention the Sheridan case. But once the law was passed, the church claimed it was a response to the case and evidenced the legislature's intent to prevent prosecutions of Christian Scientists. (See John Kennedy, "Key to manslaughter case is 1971 law change," *Boston Globe*, 27 April 1988, and *Legal Rights and Obligations of Christian Scientists in Massachusetts,* 1983 edition, p.19.)

The law the church obtained in 1971 was an ambiguous exemption to a neglect charge. Although the charge was only a misdemeanor, the church promoted the exemption as a defense to manslaughter.

1988: Bill finally filed–support solicited

In the fall of 1988 Representative McDonaugh recontacted Ken and was ready to file a bill. This bill, filed late in 1988, did not repeal the exemption, but added an amendment requiring parents to provide medical care when "necessary to protect the child from suffering serious physical harm or illness."

McDonaugh asked Ken to build support for the bill. Ken spoke with the Massachusetts Council of Churches, the Massachusetts Public Health Association, the Massachusetts Office for Children, the Department of Social Services, the Department of Public Health, the Massachusetts Society for the Prevention of Cruelty to Children, the Catholic church, the Children's Trust Fund, the Massachusetts Association of Social Workers, and the Massachusetts Bar Association. All of these organizations declined to endorse the bill when Ken first asked them for their support.

Ken obtained a statement by the American Academy of Pediatrics (AAP) calling for the repeal of religious exemptions. He met with Dr. Michael Grodin, Dr. Jonathan Caine, and other Boston-area pediatricians. The Massachusetts Chapter of the AAP endorsed the bill, and Grodin helped get an endorsement from the American Society for Law and Medicine. Caine lobbied for the bill throughout the long struggle. The Massachusetts Medical Society also endorsed the bill that first year.

Ken also called upon Jetta Bernier, the Director of the Massachusetts Committee for Children and Youth. Jetta immediately gave her support for repealing the exemption. She became one of the strongest and most skillful players in the long fight for repeal.

1989: Legislative opposition

In 1989 the Judiciary Committee held a hearing on the McDonaugh bill. Chairman Salvatore DiMasi showed Ken a pile of over 100 letters from the Christian Scientists and suggested that Ken get an equal number for the bill. DiMasi did his best to keep the bill from getting out of committee though he became one of our supporters in later years. Our legislative allies kept pushing for a vote. They finally got the committee to vote 9 to 5 for the bill after it was too late to move the bill any further.

Also in 1989 a criminal child abuse bill was filed. One section of it required parents to provide medical care to children. The Christian Science church went to the Criminal Justice Committee and got them to add a religious exemption to the bill. The bill went to the floor, but Ken alerted legislators who got the bill recommitted to the committee where it died.

Advocates organize to plan strategy

That same year Jetta Bernier began holding regular meetings in her office with child advocates to plan a strategy against the exemption.

Ed Brennan, the lobbyist for the AAP Chapter, was one of the most helpful participants at the meetings because he always had accurate inside knowledge on the legislature and was willing to do the one-on-one contact work that it takes to compete with the Christian Science church.

1990: Obfuscation yields gridlock

In 1990 the bill changing the religious exemption went to the Health Committee, which was not favorable to it. The bill was sent to the House counsel, who said that the legal force of the religious exemption was questionable. Late in 1986, the legislature had repealed the neglect law to which the religious exemption related. The religious exemption had been left in the code, but it no longer related to a specific crime. It was an exemption to nothing.

Also in 1990 the criminal child abuse bill was presented to the Criminal Justice Committee again. At the request of the Christian Science church, the committee dropped the entire neglect portion from the bill. The committee did not, however, grant the church's request for a religious exemption to the abuse part of the bill.

When the bill got to the floor, the church tried to add language from Colorado, which allows parents to withhold medical care from sick children if they have prayer treatments that are paid for by insurance companies and recognized by the Internal Revenue Service as a medical care expense. (Only Christian Science prayers meet these criteria.)

In 1990 both the pediatricians and the Massachusetts Committee on Children and Youth opposed making child abuse a felony. Both the child abuse bill and the bill restricting the religious exemption died that year.

1991: Coalition seeks outright repeal

In 1991 a coalition to work for the repeal of the religious exemptions was formalized. More than two dozen organizations endorsed repeal and sent representatives to the meetings in Jetta's office. They did not think that outright repeal was politically possible, but they did not want to amend the existing religious exemption and thereby give it more status. After a long debate, they finally voted to seek straight repeal.

Ken Casanova wrote the coalition's major position paper, "Death by Religious Exemption," a 46-page statement.

Massachusetts Coalition to Repeal Religious Exemptions to Child Abuse Laws:

American Jewish Congress
American Pseudo Obstruction and Hirschprungs Disease Society
Boston University School of Public Health
Brightside for Families and Children
Cambridge Family and Children's Services
Children's Advocacy Network
Children's Friend and Family Service Society
Communities for People, Inc.
Concord-Assabet Adolescent Services
Harbor Schools (Newbury)
Humanist, Atheist and Ethical Organizations of Massachusetts
Italian Home for Children (Jamaica Plain)
Jewish Big Brother and Big Sister Association of Greater Boston
Jewish Family and Children's Service (Boston)
KEY, Inc. (Framingham)
Legislative Children's Caucus
Massachusetts Adoption Resource Exchange (MARE)
Massachusetts Chapter of the American Academy of Pediatrics
Massachusetts Child Welfare League of America, Executive Group
Massachusetts Civil Liberties Union
Massachusetts Committee for Children and Youth
Massachusetts District Attorneys Association
Massachusetts Society for the Prevention of Cruelty to Children
Massachusetts Medical Society
Massachusetts Nurses Association
New England Home for Little Wanderers (Boston)
Office for Children, State Advisory Council
Parents Anonymous of Massachusetts

Intervention opposed

The Judiciary Committee held meetings on the repeal bill in 1991. Dean Kelly of the National Council of Churches testified against it, but the Council has no official position on the issue. Kelly argued that those believing in faith healing should be allowed to withhold medical care for children because "medical science has its failures too" and

because poverty, substance abuse, and child pornography are "more widespread perils."

In his conclusion, though, Kelly conceded that in cases "involving contagion," the "public health and safety may require civil intervention."

Like several legislators that year, he was willing for Christian Science children to die for their parents' beliefs and supported state intervention only when a child's illness might jeopardize *public* health.

Federal judge Thomas Griesa also testified for the Christian Science church. Although Griesa is a dissident Christian Scientist who has spearheaded a lawsuit against church officers, he fully supported the church's "right" to withhold medical care from children.

Stalemate: no criminal child abuse law

Massachusetts was one of two states in the country without a criminal child abuse law. However, nearly all the child advocacy groups in Massachusetts opposed the child abuse bill.

Ken proposed a conference with the district attorneys, who wanted the bill, and the advocacy groups opposed to it. Their first meeting was held in June of 1991. After months of dialogue and negotiation, deep divisions remained. Jetta Bernier's Committee on Children and Youth and the state chapter of the American Academy of Pediatrics were willing to support a criminal child abuse bill, but other organizations were not.

Two child abuse bills were introduced. Representative Shannon O'Brien had allowed a religious exemption to be added to her bill. Representative James Brett introduced a bill which did not deal with criminal neglect, but did make child abuse and the permitting of child abuse a crime.

Bernier urged the Criminal Justice Committee to put the O'Brien bill into a study. All fall she and the pediatricians tried to negotiate improvements to the Brett bill.

Under heavy pressure from the Christian Science church, the House Judiciary Committee agreed that the church would have the chance to add a religious exemption to the abuse bill on the floor of the House. If the church was not successful, or if the abuse bill did not come to the floor by midautumn, the Judiciary Committee would allow the repeal bill to come out for a vote.

The abuse bill did not come out of committee in 1991. Weary of the stalemate, Representative Douglas Stoddart, R-Natick, brought the repeal bill to the House floor in December and delivered his maiden speech urging its passage. Stoddart was booed by fellow legislators, who voted to send the bill back to committee.

1992: Coalition gives up repeal effort

In 1992, Bernier, Casanova, and Brennan gave up on their effort to repeal the religious exemption and focused on working for the criminal child abuse bill. They thought legislators would rather vote "for" something than "against" an existing statute.

They noticed that, even though the church had gotten the neglect portion of the bill removed, the last paragraph prohibited parents from "permitting" a child to suffer serious physical injury. They reasoned that the law would apply to those who withheld medical care on religious grounds.

Many members of the coalition quit. They did not like the child abuse bill and would not even help stop the Christian Science church from adding a religious exemption to it.

Battle to kill amendment

The bill passed the House without objection from the Christian Science church. But in the Senate, the church quickly derailed the bill. Senator Linda Melconian, D-Springfield, added an amendment on the floor with only a handful of Senators present. It stated that "any person who, having care and custody of a child, provides such child with health care by treatment solely by spiritual means through prayer in accordance with a recognized religious method of healing, shall not be considered to have caused or permitted such child to suffer any physical injury or to have committed a criminal offense for the sole reason he did not provide medical treatment for such child. . . ."

The amendment put us in a defensive posture. Ken had to prepare more fact sheets urging legislators to defeat it, spend days trudging around the State House, and get others to write legislators.

In November Ken and our other allies got the bill reconsidered by a 16 to 15 floor vote.

New opposition from domestic violence groups

Also that fall, to our dismay, domestic violence groups announced their opposition to the child abuse bill. They objected to a criminal penalty for caretakers who "negligently [permit] serious physical injury to a child." They argued that some women are so terrorized by their partners that they cannot prevent abuse of their children.

John Kiernan, who had prosecuted the Twitchells, pointed out that the crime of negligence presumes a capacity to act. If a woman was psychologically unable to protect her child in a violent household, she already had a defense. She could offer evidence of her state of mind to the court.

But the domestic violence groups insisted that the penalty for permitting serious physical injury should be dropped. In other words, every parent should have the right to sit around and let his or her child be beaten to a pulp.

"No excuses for child abuse"

Bella English wrote a powerful column in the November 30th *Boston Globe* entitled, "No Excuses for Child Abuse" attacking the "Christian Science exemption" and the "battered women's syndrome exemption." It generated many angry phone calls to the Senate.

However, the district attorneys voted to support a willful and wanton standard for the permitting of child abuse. This meant that people having care and custody of a child could permit the child to suffer substantial bodily injury from abuse unless they maliciously intended for the child to be harmed.

This surprising development seemed to pull the rug from Bernier and Brennan, who had agreed to support the criminal child abuse bill wanted by the prosecutors after months of negotiations.

Prosecutors convinced to change position

John Kiernan was especially alarmed. Kiernan pointed out four different standards that prosecutors can be held to in proving charges: negligence, gross negligence, wanton and reckless conduct, and willfulness. Negligence is the lowest, and willfulness is the highest. Kiernan said Massachusetts has a negligence standard for drunken drivers and ought to have a negligence standard for those who allow child abuse.

Finally, Kiernan got the district attorneys to change the standard to "wanton and reckless." The domestic violence groups also agreed to this compromise standard.

After all that work, the bill died once again in 1992.

1993: Governor speaks out–decisive House vote

In the spring of 1993, Governor William Weld-R held a press conference urging the legislature to pass a child abuse bill. He also stated his opposition to religious exemptions.

Shortly afterwards, the bill was put out on the House floor. After extensive debate the House voted 99 to 56 to reject the religious exemption amendment proposed by the Christian Science church and then passed the bill by 112 to 37.

The bill then went to the Steering and Policy Committee. "Willful" was added to the "infliction of abuse" prohibited by the bill, perhaps at the request of the Massachusetts Civil Liberties Union and some child advocates.

Tougher compromise bill negotiated

John Kiernan again went to work and got the district attorneys mobilized in opposition to a willfulness standard.

Some defense attorneys and legislators thought the abuse bill was too harsh and brought forward a different bill.

Elected to the Senate in 1992, Shannon O'Brien was a skillful, tireless, and dedicated negotiator. She lowered the penalties on her abuse bill and changed "infliction of abuse" to "assault and battery." By those concessions, she was able to keep out a willfulness standard.

Supreme Court ruling on religious exemption

In August the Massachusetts Supreme Court ruling on the Twitchell case established that the extant religious exemption did not provide a defense to manslaughter. CHILD members and other allies pointed out that, since there was not a religious

exemption when the child died, there should be not be an exemption in cases of serious injury to children either.

On September 15, 1993, the coalition once again met in Jetta's office. O'Brien and Senator Robert Antonioni attended. They promised the coalition that they would try not only to get the abuse bill passed without a religious exemption, but to repeal the existing religious exemption. They planned to gather the votes for repeal quietly and then introduce a repeal amendment on the floor without the Christian Science church's knowledge.

Church renews fight for criminal exemption

The week before the vote the church pulled out all stops to try to get the Senate to add a religious exemption to the child abuse bill. More than a hundred Christian Scientists packed one senator's office imploring him to support an exemption. More than 35 came to Senator Marian Walsh's office.

October 1993: Senate acts

On October 18, the criminal child abuse bill came out on the Senate floor. A religious exemption amendment was introduced. There were 2 yeses and 4 or 5 no's. The Senate chairman announced that the amendment was defeated. The church's spokesmen did not ask for a roll call. It appeared that they did not want their support for the church to go on record.

Then a senator introduced another version of a child abuse bill wanted by defense attorneys, but he could not get even a second for this bill.

Next the chairman called for a vote on O'Brien's abuse bill with its reduced penalty compromise. Nobody voted, but he said the aye's had it.

Old religious exemption also repealed

Then O'Brien rose and said there was one more thing that needed to be taken care of on the bill. She introduced a motion to repeal chapter 273, section 1 (the religious exemption). There was no discussion. The chairman called for a vote. Nobody voted, but he said the aye's had it.

O'Brien introduced a motion for reconsideration of her bill. There was no discussion. The chairman called for a vote. Nobody voted, but this time he said the motion was defeated.

O'Brien's parliamentary maneuver prevented anyone else from calling for reconsideration later.

Leadership united for repeal

Both the House and Senate leadership supported repeal of the exemption, so the conference committee was dominated by our supporters. The child abuse bill including the repeal amendment was approved by the conference committee, returned to both houses for another vote, and then sent to the Governor's desk.

On Tuesday, December 7, the Massachusetts District Attorneys Association held one of their regular meetings with the Governor. They expressed their pleasure that the religious exemption had been repealed by the legislature.

Governor flip-flops

Governor Weld gave them no reason to believe he objected to repeal, but on Friday, December 10, he returned the child abuse bill to the legislature and asked them to restore the religious exemption.

Weld pointed out that the Massachusetts Supreme Court had recently ruled in the Twitchell case that the religious exemption was not a defense to manslaughter. Weld wrote that repeal of the exemption was therefore "unnecessary. However, this provision may afford protection in civil proceedings, and I believe it is fair for the law to continue to afford such protection."

We and other advocates were shocked. Prosecutors all over the state faxed protest letters to the Governor. The American Academy of Pediatrics wrote a forceful letter, reminding Weld that he had publicly supported repeal of the exemptions a few months earlier. There was speculation that Christian Scientists at the national level of the Republican party had persuaded Weld to do this because of his aspirations for national office.

***The Christian Science Monitor* speaks**

The church was ready with a long column and a lead editorial in the December 13 *Christian Science Monitor*. The editorial, entitled "Prayer is not Criminal," tried to educate society:

> It needs to be better understood that for Christian Scientists, prayer is not just instead of treatment, or in support of treatment: Prayer *is* treatment. The decision to rely on prayer instead of "shunning conventional medicine," as the familiar wire-service phrase now has it, is a positive one, not a negative one. And in the case of even young children, it is a decision generally made with their active consultation to a degree not widely appreciated.
>
> When Christian Scientists endure an apparent failure of their methods, as in some recent publicized cases, they face pressure to pull them into the general net of medical, insurance, and legal practices. . . .
>
> We appreciate Governor Weld's action discerning among the competing interests and we are confident that the legislative, executive, and judicial system can discriminate between criminal and spiritual matters.

Message of legislative intent

Senator Shannon O'Brien charged that Weld was sending Christian Science parents "the wrong message" by proposing restoration of the exemption. Other observers pointed out that restoration of the religious exemption under such circumstances would be the worst kind of legislative record. If another death of a Christian Science child was prosecuted, the court might decide that the legislature consciously chose to have a religious defense to a serious crime.

***The Boston Globe* speaks**

Bella English wrote another powerful column in *The Boston Globe*. Entitled "Weld flip-flop may risk lives," the editorial suggested that Weld had "caved in to some heavy-duty lobbying by high-level Republican officials in the Christian Science Church."

English continued:

> Weld has called his version of the bill "a minor amendment," but it's hardly minor to all those children who may suffer needless pain, permanent impairment, and even death because Mom and Dad wouldn't call a doctor.

English interviewed Doug Lundman, an architect who now lives in the Boston area and whose son died of diabetes because his mother was a Christian Scientist and withheld medical care. His son Ian "was just a normal kid," Doug said. "He wanted to live. He was interested in playing games, not some abstract religion. If something was wrong, he wanted someone to fix it."

English asked, "Is [Weld] really willing to kill a child abuse bill that has been painfully hammered out over four years?"

"The legislature ought to send this bill back promptly, as is. And Weld, a father of five, ought to sign it," she concluded.

House and Senate stand firm–Governor signs

Both the House and Senate passed the bill once again with the repeal of the religious exemption and returned it to the Governor. On December 28, 1993, Weld signed the bill into law, but hinted that he might propose a new religious exemption in the future.

Church silent

On December 30, *The Christian Science Monitor* briefly noted the signing and added, "There was no comment from The First Church of Christ, Scientist, in Boston, which opposed the bill because it removes the accommodation for spiritual healing." The church also declined comment in August about the Massachusetts Supreme Court's ruling that the then existing exemption was not a defense to manslaughter.

Rep. Byron Rushing, who has the church's headquarters in his district, has introduced a bill with a new religious exemption this year, but we do not think it will get far. Massachusetts legislators do not want to deal with this issue again. And we have learned through the years that it is a hundred times easier to kill a bill than to pass one.

We hope that this victory in Massachusetts will be an incentive for other state legislatures. If the home state of the Christian Science church can remove all religious exemptions from a duty of care for a sick child, other states can do it too.

Taken in part from *The Boston Globe*, 30 Nov. 1992 and 15 Dec. 1993, and *The Christian Science Monitor*, 13 and 30 Dec. 1993.

Mom talks about losing two babies in Christian Science

Between 1979 and 1990, CHILD founders Rita and Doug Swan were the first and only ex-Christian Scientists to discuss publicly the loss of their child due to Christian Science beliefs against medical care.

In 1990, though, Emilie Sullivan, then of suburban Boston, wrote a local newspaper a poignant letter about the loss of two of her babies under Christian Science treatment.

At a CHILD meeting for ex-Christian Scientists, Emilie discussed her experiences in more detail. She described her parents as very active in the church and also very controlling.

She eloped at age 17 and gave birth to a son, Nicholas, in 1952. The baby was sickly throughout his life and died in his crib of pneumonia at eight months old. Although her young husband was not a Christian Scientist, he allowed Emilie to rely exclusively on Christian Science to heal the baby.

She never took any pictures of her first child because she knew the Christian Science church expects all its members to "express perfect health" and her baby did not meet the standard.

Her marriage disintegrated shortly after Nicholas' death, and Emilie had to return to her parents' home for financial support.

Emilie decided that what she had done wrong was to marry a non-Christian Scientist. She went to a Christian Science reading room and asked the librarian about eligible young men in the local church.

Soon she was married to a Christian Scientist. They had a healthy baby named Peter and in 1959, a son named David.

Unfortunately, David was chronically ill. After several months, concerned neighbors insisted that Emilie take David to a doctor and she finally did so. The doctor diagnosed him as anemic and prescribed medicine. Emilie gave the baby the medicine for a week, but could not see any improvement.

Her Christian Science friends urged her to discontinue the medication. Finally, Emilie decided that the medicine was worthless, as Christian Science says it is. She threw it out and resolved to rely "radically" on Christian Science from then on.

Then she really was trapped. There was no way she could rationalize trying medical science again. David died in his crib of pneumonia at 19 months old.

In the shock of their baby's death, both Emilie and her husband left Christian Science. They also left each other.

Later Emilie had to go through the agony of losing a third son, Jonathan, who was killed by a car.

Emilie has, though, found peace of mind as an evangelical Christian. She witnesses to her faith in Christian fellowships and in a prison ministry.

Emilie was very helpful in winning repeal of the Massachusetts religious exemption. She wrote powerful letters to her legislators and appeared on television.

Diphtheria suspected in death of Christian Science child

Diphtheria is suspected in the death of a Boston-area Christian Science child. Nathan Eberlein, age 4, died March 2nd in the affluent suburb of Weston, Massachusetts.

The child had received no immunizations and had never been seen by a physician. He was enrolled in a preschool for Christian Science children. His mother, Carol Eberlein, is a Christian Scientist and a graduate of a Christian Science boarding school. His father, John Eberlein, is not a Christian Scientist.

The parents told officials the child exhibited only symptoms of a cold and then died suddenly. The Massachusetts Department of Social Services found no evidence of neglect. Middlesex County District Attorney Tom Reilly has said that he has no plans to file criminal charges.

Officials suspected diphtheria because the parents spoke of their son having a sore throat, a classic symptom of the disease. Blood tests by the Massachusetts Health Department were inconclusive. The department is still awaiting results of

DNA tests from the Center for Disease Control in Atlanta.

Thirty-four people who came in contact with the child have been examined and cultured. All of those tests were negative for diphtheria.

Some sources say the cause of death may never be determined because diphtheria is usually confirmed from living tissue and because lab results were compromised by a fixative used on the body.

Neighbors said the Eberleins were loving parents, but many also expressed anger at their failure to immunize their child and the consequent risk to others.

The Eberleins have gotten their surviving child immunized.

Diphtheria has been vaccine-preventable since 1927 and is therefore very rare. The last confirmed case in Massachusetts was in 1973.

In 1961 a Christian Science child in the Boston area died of diphtheria. In 1982 Christian Science child Debra Ann Kupsch died of diphtheria. She was sick for a week with a sore throat at a Christian Science camp in Colorado and then traveled home to Manitowac, Wisconsin, on a bus with many other unvaccinated children. It cost Wisconsin Public Health about $20,000 to track down and culture over a hundred children and adults with whom she came in contact.

Taken in part from *The Boston Globe*, 31 March and 1 April 1994.

Parental duty clarified in Canada

As reported in the CHILD newsletter #2 of 1992, there has been confusion in Canada about whether parents must meet subjective or objective standards of reasonableness in providing children with the necessities of life.

Although Canada has no religious exemptions from child abuse or neglect laws, two convictions involving medical neglect because of sectarian belief systems were overturned by Canadian appellate courts in 1989 and 1992 because judges did not allow "honest belief" in methods relied on by the parents to be raised as a defense.

CHILD honorary member Paul Pellman, a Toronto attorney, reports below, however, that the Supreme Court of Canada has recently ruled that the standard is objective. Parents must provide children with the necessities of life, including medical care, according to objective community standards of what a reasonably prudent parent would do.

Criminal proof required in failure to provide necessities: the meaning of Rex v. Naglik

by Paul Pellman

The issue determined by the Supreme Court of Canada in this case related to the test of one's criminal intent, wherein the charge is failing to provide the necessaries of life to an infant child. Is the test to be an objective standard of conduct? If so, does this objective standard violate Section 7 of the Canadian Charter of Rights and Freedoms? It is suggested that this most recent decision, despite remitting the matter to further trial, clarifies the issues in this regard and provides an objective standard of conduct which properly protects the interests of the child.

The evidence established that Peter Naglik, then aged 11 weeks, was brought to hospital where he was found to have sustained a number of serious injuries, including a broken collar bone, fractured ribs in at least 15 places, a fractured vertebrae, two separated skull fractures, and hemorrhaging of the brain and retina which had caused permanent damage. The injuries had been sustained over a period estimated by physicians to be four weeks. The accused gave exculpatory statements concerning her child's condition to the police and other authorities which were inconsistent with the medical evidence at trial. She did not testify at trial. Her common-law husband did testify, denying any involvement in causing the injuries to the child and claiming that the female accused was the primary caregiver.

This case did not involve a parent who was pleading that the failure to provide necessaries was based upon any religious doctrine or otherwise, but the test referred to is relevant to cases where such a defence of religious freedom is raised.

Appropriate test is an objective one

In his charge to the jury the trial judge remarked that the appropriate test to be applied to the charge of failure to provide necessaries was an objective one and that the jury should convict if they were of the view that the parent "knew or ought to have known the seriousness of the child's condition and that it required medical attention." The jury returned verdicts of guilty for both accused. Both were convicted and sentenced to four and one-half years on the first count (aggravated assault) and two years on the second count (failure to provide necessities) to be served concurrently. The Court of Appeal for Ontario allowed the accused appeal from her conviction with respect to the failure to provide necessaries and ordered a new trial on the basis that lack of subjective knowledge or honest belief (whether reasonable or not) was sufficient to negate criminal intent required to prove the offence. The Crown cross-appealed the ruling with respect to the *mens rea*, or state of mind required to be proven in a failure to provide necessities charge.

Standard of a reasonably prudent person

The Supreme Court of Canada held that the standard must be one of a reasonably prudent person and that the reference to failure to perform a duty re necessities suggested that the accused's conduct in a particular circumstance needs to be determined on an objective, or community, standard. The law therefore punishes a marked departure from the conduct of a reasonably prudent person in circumstances where it was objectively foreseeable that the failure to provide the necessities of life would lead to a risk of danger to the child or risk of permanent endangerment to the health of the child.

Duty to provide required

The relevant section of the Canadian Criminal code for failure to provide necessaries notes in pertinent part:

> 215 (1) Everyone is under a legal duty
>
> (a) as a parent, foster parent, guardian, or head of a family, to provide the necessaries of life for a child under the age of 16 years;
>
> (2) Everyone commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies upon him, to perform that duty, if
>
> (a) with respect to a duty imposed by Paragraph 1(a) of (b),
>
> (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently;
>
> (3) Everyone who commits an offence under subsection (2) is guilty of
>
> (a) an indictable offence and is liable to imprisonment for term not exceeding two years; or
>
> (b) an offence punishable on summary conviction.

Section 7 of the Charter of Rights and Freedoms notes:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Religious belief ruled irrelevant

The Supreme Court of Canada noted previous decisions on point, one of which involved a case wherein religious exemption or lack of criminal intent was pleaded. It stated that these cases were not persuasive. As the court notes,

> With respect to the wording of Section 215, while there is no language in Section 215 such as 'ought to have known' indicating that Parliament intended an objective standard of fault, layout of Section 215 referring to the failure to perform a 'duty' suggests that the accused's conduct in a particular circumstance is to be determined on an objective, or community, standard. The concept of a duty indicates a societal minimum which has been established for conduct: as in the law of civil negligence, the duty would be meaningless if every individual defined its content for him or herself according to his or her subjective beliefs and priorities. The policy goals of the provision support this interpretation. Section 215 is aimed at

> establishing a uniform minimum level of care to be provided for those to whom it applies, and this can only be achieved if those under the duty are held to a societal, rather than a personal, standard of conduct.

The Court goes on to note that:

> Section 215, (2)(a)(ii) . . . punishes a marked departure from the conduct of a reasonably prudent person in circumstances where it was objectively foreseeable that the failure to provide the necessaries of life would lead to a risk of danger to the life, or a risk of permanent endangerment to the health of the child.
>
> There is no minimum penalty for this hybrid offence, and a maximum prison term of two years if the Crown proceeds successfully by indictment. The lack of a minimum penalty means that the sentencing judge can deal with the sentence to the circumstances of the particular offence and offender, eliminating the danger of the accused being punished to a degree out of proportion to the level of fault actually found to exist.

No conflict with Charter of Rights and Freedoms

The Supreme Court of Canada held that this section of the Criminal Code was not contrary to the Charter of Rights and Freedoms and that there ought to be a new trial wherein the trial judge must charge the jury on the objective basis of liability with regard to the accused's particular personal capacities and circumstance of the offence (if raised) found to be relevant.

See *Rex v. Naglik*, (1993) 3 Sup Court Reports 122.

Does your child's camp have religious exemptions?

by Rita Swan

A few weeks after our daughter was accepted at a summer camp, we received a health form from the camp. She had to get a medical exam, return the form with a doctor's signature, and provide evidence that she was up to date on immunizations against six diseases.

The form added, however, that these requirements would be waived if her parents had religious objections to medical care.

What is the purpose of requiring medical exams and immunizations for campers? Is it just a frivolous gesture or is there a reason for them? If exams and immunizations are important to the welfare of those at camps, they should be required for all campers and staff.

We wrote the camp three long letters protesting the religious exemptions. We provided information about outbreaks of contagious disease in religiously-exempt groups. We pointed out that the camp had no legal obligation to provide the religious exemptions.

After five months and some consultations with lawyers, the camp finally decided that they would remove references to religious exemptions from their health form. The camp nurse added, however, that if parents asked for religious exemptions, the camp might still grant them. She promised that the camp's position would continue to evolve in response to developments and asked us to send her the CHILD newsletter.

CHILD urges parents to find out if their child's camp has religious exemptions from health care requirements and to protest the exemptions.

Christian Science church excommunicates critic on children's healthcare

In October, 1993, the Christian Science branch church in Kirkwood, Missouri, excommunicated Suzanne Shepard for speaking publicly about injuries to children when medical care is withheld.

Suzanne was a fourth-generation member of the Christian Science church and had been a church-approved spiritual healer for over a decade.

In 1987 her daughter Marilyn went into a coma and turned yellowish-green after three days of suffering. Suzanne remembered seeing Rita and Doug Swan tell on the Donahue program about the loss of their son Matthew because of Christian

Suzanne Shepard with daughter Marilyn
by Wes Paz of the ST. Louis Post Dispatch

Science. She decided to take her daughter to a doctor.

Marilyn remained unconscious for another three days in the hospital. Sepsis caused by a ruptured appendix was drained from her abdomen with a tube for several days. But she had a complete recovery.

After a 12-year-old Christian Science child died of untreated diabetes in the St. Louis area, Suzanne decided to tell the press about her experience. The *St. Louis Post-Dispatch* published a front-page article about her on March 27, 1993.

In October, the Christian Science church in Kirkwood asked Suzanne to meet with a committee considering her expulsion.

The committee asked her to write *The St. Louis Post-Dispatch* and retract her statements. She refused to do so.

According to Shepard, the chairman suggested her media interviews had been motivated by feelings of guilt for taking Marilyn to a doctor. Shepard denied that was her motivation.

She said the committee also criticized her for using her CPR training to try to revive a person who collapsed during a church service.

Committee member had let daughter die

After the interview, the committee voted unanimously to excommunicate Shepard. One of the committee members, Penny Stitt, had let her own daughter die without medical care. Jennifer Stitt died of untreated septicemia at age 17 in 1984.

On October 12, the church board sent a letter to Shepard informing her of her excommunication. The board accused her of three infractions: not repudiating the *Post-Dispatch* article, criticizing Christian Science in a public speech, and communicating with "a disaffected Christian Scientist."

The last charge is believed to refer to her contacts with CHILD president Rita Swan.

The board also complained that Shepard's public statements showed "a departure from a radical reliance on spiritual methods as a basis for practicing Christian Science." Shepard tried to form a support group for those who wanted to combine Christian Science with medical science.

No penalty for going to doctor

The Christian Science church frequently claims that it does not punish or ostracize members in any way for going to doctors. One church official reportedly told Shepard they were not penalizing her for going to a doctor, but for telling the press about it.

Suzanne Shepard discusses these experiences in the July, 1994, issue of *Redbook* magazine.

Taken in part from *The St. Louis Post-Dispatch*, 2 November 1993.