

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law



Herbert and Catherine Schaible are third-generation members of the First Century Gospel Church, which considers illness to be a test from Satan and getting medical care to be idolatry that upsets a jealous God.

Two-year-old Kent died of bacterial pneumonia. The parents described his symptoms over ten days as congestion, diarrhea, labored breathing, lethargy, poor appetite, a sore throat, fussiness, and “feeling really warm at times.”

The parents were charged with child endangerment and manslaughter. Their attorneys argued at trial that the reason they withheld medical care was not their religion, but rather that they just didn’t know their son was seriously ill.

However, Mr. Schaible had told a social worker right after the boy died, “We tried to fight the devil, but in the end, the devil won.” The jury convicted the Schaibles on all counts.

Other government agents were less enlightened than the jury. The medical examiner said there were no indications of abuse or neglect. According to the Department of Human Services report, the department sought permission from the parents to examine the six surviving children. Their pastor gave permission to check the children’s “vitals and temperatures.” So a DHS caseworker and nurse examined them only for “signs of bacterial pneumonia, i.e. high temperature and being sweaty.” The children did not have fevers. It was hard to get them to talk, the DHS noted.

Pennsylvania religious objectors lose a second baby

“With God’s help this will never happen again,” Herbert Schaible said on February 2, 2011, when he and his wife were sentenced for letting their toddler Kent die of bacterial pneumonia without medical treatment.

On April 18, 2013, however, it did happen again when their seven-month-old son Brandon died of bacterial pneumonia without medical treatment.

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“Legitimate religion”: case closed

The DHS report also said the department followed “best practice” by “research[ing] the legitimacy” of the religion that purportedly governed the parents’ behavior. So the DHS legal department “researched the church and found it to be a legitimate religion.” DHS personnel “all agreed that DHS has to adhere to the rights of the family’s religion. The case is based on religious reasons and the case was closed.”

Thus, after one visit, two days after Kent died, DHS ended its involvement with the Schaible family.

Probation terms inadequate

The sentencing by Common Pleas Court Judge Carolyn Temin was also tragically inadequate. Rejecting jail time, she sentenced the Schaibles to ten years’ probation during which time they were required to have their children examined annually by a qualified medical practitioner. She also required them to consult a “medical practitioner whenever a child exhibits signs of being sick” and “to follow the medical practitioner’s advice to the letter.”

In 1998 Temin also presided when Faith Tabernacle parents Dean and Susan Heilman were convicted of letting their hemophiliac toddler bleed to death without getting medical care. Temin rebuked the prosecutor who asked for jail time, saying the parents were also “victims.” She did, however, impose better sentencing terms for the Heilmans than for the Schaibles. Temin required the Heilmans to purchase health insurance and to put their children under the care of a licensed pediatrician. She also imposed fines.

As it turned out, there was a big difference between putting the children under the care of a pediatrician and having them examined once a year by a qualified provider.

Both prosecutor and defense attorney ask for DHS oversight

Judge Temin also made a serious mistake in directing only the probation office to oversee the Schaibles. Both the prosecutor and, remarkably, defense attorney Mythri Jayaraman asked the judge to order the DHS to monitor the welfare of the children.

Temin refused to do so because the DHS had already closed its case on the Schaibles.

Warning bells

The warning bells were there at the time. While Mr. Schaible said they were sorry for the loss of their son, he did not say they would get medical care for a sick child in the future. Mrs. Schaible said nothing.

Outside the courtroom Schaible said, “We’ll follow the judge’s orders.” But when a journalist asked if that included providing medical care for his children, he said, “We have no comment.”

Schaible said in response to a similar question: “We’re not trying to live ten years at a time. And when tomorrow comes, God will be with us. . . . He will show us what to do.”

Also, Jayaraman voiced her concern “about their ability within their faith or their willingness to proactively take their children to get medical attention.”

“They’re not my children”

Nevertheless, the probation office classified the Schaibles as low-risk, which meant that the office scheduled no home visits. Four months later Judge Temin held a compliance hearing on the case. The prosecutor complained that the children still had no medical exams. The probation officer testified that she had no information on their health “because they’re not my children.”

The prosecutor again urged that DHS monitor the children’s welfare and again the judge refused to order DHS involvement. The case was, however, reclassified as high-risk, and the Schaibles had their children examined at a district health center once in 2011 and once in 2012. Mr. Schaible reported to his probation officer four times a year.

Baby seen only once

In August, 2012, Brandon Schaible was born. He was examined at the district health center ten days after birth, and that was the only time he was seen by a licensed health care provider. Seven months later he was dead.

If the children had been placed under the care of a pediatrician after Kent’s death, they would have gotten immunizations and health screenings. The parents would have been given a lot of information about disease symptoms and direction on when to call a doctor. Brandon would have had several medical exams.

Intentional probation violation

The state's poor handling of the Schaibles' sentencing and probation for Kent's death does not excuse the parents. They acknowledged to homicide detectives that they knew baby Brandon was sick. They described his symptoms as a rash, diarrhea, loss of appetite, crying, fitful sleep, labored breathing and gasping for air.

Though their probation terms plainly required them to seek medical care when a child was sick, the Schaibles told the detectives that they did not because their religion prohibited it and God wanted them to trust Him for healing.

Their surviving children were placed in foster care immediately after Brandon's death.

At a probation violation hearing Judge Benjamin Lerner told them they had "knowingly, intentionally, callously, and hypocritically" violated their probation.

Death ruled a homicide

On May 21 the medical examiner ruled Brandon's death a homicide and the cause of death to be dehydration and pneumonia from a *Streptococcus B* infection. The medical examiner cited the baby's sunken eyes, dry lips, and flaky scalp among the symptoms of dehydration.

The next day the Philadelphia District Attorney filed charges against the Schaibles of third-degree murder, involuntary manslaughter, conspiracy, and endangerment.

The Schaibles were put in jail and denied bail because Judge Benjamin Lerner said people with similar religious beliefs might hide them in other areas of the country.

A month later Lerner again denied bail for Mr. Schaible.

Mom granted bail

Catherine Schaible's attorney argued that she was less culpable than her husband because their church teaches female submission.

Her pastors supported that argument, testifying that wives have "a say" but husbands must make the decision.

Prosecutor Joanne Pescatore argued strongly that both parents had equal responsibility for their baby no matter what church they belonged to.

Nevertheless, Judge Lerner granted Catherine Schaible bail on the basis that the surviving children

needed to have more contact with one of their parents than their twice-weekly visits at the jail.

Mrs. Schaible was ordered to stay in her parents' home with electronic monitoring and allowed to leave only to go to court, meet her lawyer, or have court-supervised visits with her children.

Sources include a Philadelphia Dept. of Human Services report May 21, 2009, WCAU tv June 2 and 13, 2013, and many articles in the *Philadelphia Inquirer* and *Philadelphia Daily News*.

Did the Schaibles do what their church wanted them to do?

The Schaibles' First Century Gospel Church plainly says on its webpage, "Our commitment to God means that we trust God alone for physical healing without the use of medicine, drugs, prescriptions, pills, or human remedies."

A church pamphlet, "Healing—from God or medicine?," states, "It is a definite sin to trust in medical help and pills; and it is real faith to trust on the Name of Jesus for healing."

Total reliance on Christ's atonement

Members are told that the "blood sacrifice of Jesus Christ" has redeemed them from sickness and they must trust in it to control every aspect of their lives. They are not to use seat belts, guns, or any other device designed to protect people from accidents or loss.

They are told not to purchase insurance or "have any financial assets." They expect a rapture and Christ's return to earth soon.

The church has 525 members and 134 students in its K-10 school. The Philadelphia congregation is the only First Century Gospel Church in the U.S., but it has several branches in Africa and one in the Philippines.

Dad intends to withhold medical care again

In the early weeks after baby Brandon Schaible died, FCG Pastor Nelson Clark defended the Schaibles' decisions. He told the press that Herbert Schaible did not obey probation conditions because "he knows he has to obey God rather than man" and calling a doctor "would never enter his mind" even after losing two children. Instead, if another child

gets sick, Schaible will “confess his sins, repent. . . , and ask [God for healing].”

Clark told the press that trusting doctors is idolatry, which provokes God’s jealousy, and only complete faith in God’s power heals disease.

Kids died because of parents’ sin

Although he endorsed the Schaibles’ decision to rely exclusively on faith, he also said that their children died because of the parents’ “spiritual lack.” The Schaibles “must get back to God, to seek wisdom from him, to find where the spiritual lack is in their heart and life . . . so this won’t happen again,” Clark said.

Pastor criticizes dad in court

At the June bail hearing Clark further separated himself from responsibility for the Schaibles’ actions. He testified that he spoke to Herbert twice before Brandon died and suggested that the father call his probation officer, but the father refused.

Schaible felt that calling anyone “would be a denial of his faith in God’s ability to heal the child,” Clark recalled.

“I felt that he could let someone know [the child was sick] without denying his faith,” Clark testified.

Pastor Clark also wrote to the prosecutor and called Mr. Schaible “domineering and overbearing.”

The pastor raises many questions in CHILD’s view. Did the pastor know that the Schaibles had spiritual deficiencies that would prevent them from getting a faith healing? Did he know that after their first child died? If so, did he warn them to correct their deficiencies before trusting in faith healing again? When he knew that Schaible would not call his probation officer, did Clark consider that he himself should call the officer or child protection services?

One reporter suggested Clark’s testimony might be a strategy to win bail for the mother.

Pastor Clark has made many pronouncements on what his church will and won’t allow, but we don’t hear him say that a child’s welfare is his priority.

Like several other religions First Century Gospel Church lays down absolute rules but later rationalizes some exceptions.

Sources include the church webpage at www.fcchurch.org, the *International Business*

Times May 24, *Philadelphia Inquirer* Apr. 28, June 21 and 22, and *Philadelphia Daily News*, June 23.

Policy change called for a decade ago

In 2002 the Philadelphia Department of Human Services received a report that 9-year-old Benjamin Reinert was sick and not getting medical care. A worker visited the next day. The father called the problem “a sore foot.”

Social worker believes dad’s diagnosis

The worker advised him to seek medical care. He replied that his Faith Tabernacle beliefs prohibited it. Seeing that the boy’s foot was “not bruised or swollen,” the worker did not think the problem was serious. She told the father that the agency would seek a court order for medical care if the boy got worse.

“You do what you need to do,” Reinert replied.

Another worker visited two days later and thought Ben looked “about the same.” The next day Ben died of leukemia. His aunt, also a Faith Tabernacle member, said Ben had been unable to walk and, on the last day of his life, unable to talk or eat. The medical examiner found severe anemia and a swollen brain. A pediatric oncologist told CHILD that Ben’s “sore foot” was likely pain from inflammation caused by the cancer in the bone.

County must “closely monitor” children

Pennsylvania has a religious exemption in its domestic relations code that says parents who withhold “needed medical care” on religious grounds cannot be adjudicated for abuse but instead “the county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child’s life or long-term health.” 23 Penn. Consolidated Stat. § 6303(b)(3)

The DHS used the words of the exemption to justify its handling of the case, saying it had “closely monitor[ed] the situation, but could not obtain a court order because the boy’s injuries did not appear life-threatening.”

The exemption suggests that parents have no duty to get medical care for a child and instead DHS

workers will get the medical care when the child's life or long-term health is threatened.

Such a scheme is transparently substandard protection for children. The intervention allowed by Pennsylvania's religious exemption was worse than none at all in the Benjamin Reinert case. For the worker to come in, look at the child, and then leave without attempting to get medical care confirms the parent's claim that the problem is not serious.

No evidence of DHS policy change

CHILD wrote to the Philadelphia Department of Human Services twice after Benjamin's death calling for repeal of the religious exemption and asking if the boy's death had led to any change in departmental policy. We got no answer.

Sources include *The Philadelphia Inquirer*, Jan. 21, 2003; *Philadelphia Daily News*, Feb. 1 and 5, 2003; and *Newsday*, Feb. 4, 2003.

Fixing Pennsylvania law and policy

CHILD opposes all religious exemptions from child health and safety laws. Pennsylvania has never had a religious exemption in its criminal code, a fact which has made it possible to pursue criminal charges and get convictions upheld on appeal.

Its religious exemption in the civil code, however, causes several problems and serves no useful purpose in our view. See Penn. Stat. 23 §6303(b)(3). It prohibits an adjudication of abuse (the definition of abuse in Pennsylvania includes failure to provide) when parents withhold "needed medical care" on religious grounds.

Coupled with the fact that few cases of religion-based medical neglect are prosecuted in Pennsylvania and no one to our knowledge has been charged with failure to report these cases, a law exempting devotees of faith healing from abuse charges sends a message that they do not have to get medical care for their children.

Social workers decide if illness is life-threatening

It shifts responsibility for the child's welfare from the parent to the county social workers whom the exemption law directs to "closely monitor" a sick child getting no medical care because his parents believe in faith healing and to get a court

order for medical treatment if the child's "life or long-term health" is threatened.

This arrangement saves the parent from violating his faith but is severely inadequate protection for children. If the child needs medical care, s/he should be given medical care then without waiting for social workers to decide the illness is life-threatening. "Needed" means "necessary" after all.

Social workers do not have medical training and may not comprehend the seriousness of the child's illness. They cannot monitor the child as "closely" as parents can and should do.

Will medical neglect be reported?

The religious exemption may discourage reports to child protection services. The law requires certain professionals to report suspected abuse, but when the law says depriving the religious objector's child of medical care is not abuse, the professional may feel there is no abuse to report.

CHILD's webpage has a list of 31 Pennsylvania children who have died since 1971 after medical care was withheld on religious grounds. In the case of Christian Science child Kris Ann Lewin the Allegheny County District Attorney publicly refused to file charges and said the mother had a religious right to withhold medical care. Though the child was sick for an entire year and the Christian Science practitioner who gave her spiritual "treatment" was a mandated reporter, the practitioner publicly said she did not report because Kris "was not abused or neglected." The practitioner was not charged with failure to report.

More recently, the intervention allowed by the state's exemption law in the Benjamin Reinert case was a disaster, as described in the preceding article.

And in 2009 the Philadelphia Dept. of Human Services closed its investigation of the Schaibles after only one visit because of the religious exemption. Ironically, the DHS claimed it was following "best practices" to "research the legitimacy" of the Schaibles' church and dismiss the case when their lawyers determined that it was "a legitimate religion." This sounds more like a violation of the Establishment Clause than a best practice.

Child's best interest should be the standard

There should not be a law saying that parents in some churches can abuse their children. The courts should have the flexibility to make adjudications

based on the harm to the child and the child's best interest. In many cases it is better to simply have the child declared dependent so that medical care can be temporarily ordered without affecting the parent's legal status. In other cases, however, longer-term monitoring may be desirable.

Medical diagnoses needed

CHILD also advocates that Pennsylvania's child protection law require social workers to consult with a health-care provider in medical neglect cases and that the service agency be empowered to seek a court order for a medical diagnosis if needed to determine the seriousness of a child's illness.

Stronger reporting law needed

Finally, CHILD advocates two changes in the reporting law. Pennsylvania clergy and Christian Science practitioners have an exemption from reporting anything disclosed in "confidential communications." 23 Penn. Stat. § 6311(a) We disagree with the exemption, but the Catholic church has for millennia held "confession" to be a sacrament that a priest must never disclose to anyone. It is unlikely that the exemption can ever be repealed.

Some states, however, have laws that require clerics to report if they learn of the abuse or neglect from any source other than confession or confidential communication. For example Arizona Stat. § 13-3620 requires clergy to report if they have reason to suspect abuse or neglect from "personal observations" of the child and California requires a cleric to report when he is "acting in some other capacity that would otherwise make him a mandated reporter." Cal. Penal Code § 11166(d)

We believe Pennsylvania law should explicitly require clergy to report when they have reason to suspect abuse or neglect from any source other than confidential communication.

Secondly, CHILD believes that "anyone called upon to render aid or assistance to a child" should be added to the list of mandated reporters. In several states every citizen is required to report child abuse and neglect. Pennsylvania limits the mandated reporters to professionals who have reason to suspect abuse from their "training and experience." 23 Penn. Stat. § 6311(a) Pennsylvania may fear overwhelming their system with reports by untrained citizens or nosy neighbors, but if

someone is actually called upon to help a child and sees that the child is at substantial risk of harm because of a caretakers' action or inaction, CHILD believes the person should be required to report.

Such a law would make relatives, church members, and clergy who are called to a child's bedside to pray and perform rituals mandated reporters.

Sources include the transcript of the coroner's inquest into the death of Kris Ann Lewin.

Attempts to reduce belief exemptions

The percentage of American schoolchildren with personal belief exemptions from immunizations has been climbing for several years and has contributed to many outbreaks of vaccine-preventable disease. CHILD maintains a partial list of these outbreaks at its web site, www.childrenshealthcare.org. (Click on "Belief exemptions from immunization and screening" and then "Many disease outbreaks tied to belief exemptions" at the top of the list.)

Several states have recently enacted laws requiring parents to get risk-benefit information about vaccines before they can have a belief exemption.

Washington requires contact with provider

In 2011 Washington State enacted a bill, SB5005, requiring parents seeking a belief exemption to first get "information about the benefits and risks of immunization to the child" from a health-care practitioner. The National Vaccine Information Center and other vaccine opponents complained bitterly about the expense and trouble this would be for them to find a provider willing to sign the exemption form.

Several concessions were made to them as the bill moved through the capitol. The objectors had to do it only once. The information could be given over the phone. A hotline was authorized to help parents find providers (it got very few calls). And finally religious objectors were exempted from the education requirement as well as from immunizations if they signed a statement that they were members of a "church or religious body whose beliefs or teachings do not allow for medical treatment from a health care practitioner."

Exemptions declined after law was passed

Washington's law is widely praised as a success because the percentage of kindergarteners with exemptions (including medical ones) dropped 25% the year the law took effect. That is important and desirable, but other factors could also be in play. Washington had five deaths of babies from pertussis and 6352 pertussis cases from 2010 through 2012. Such grim data could have influenced many belief objectors to get their children vaccinated.

We also point out that exemptors are not randomly distributed. Though the statewide exemption rate for kindergarteners was 4.6% in the 2012-2013 school year, it was 33% in the Summit Valley School District.

Furthermore, Washington has no requirements for vaccination of home-schooled children unless they also take classes in schools.

Vermont requires review of "evidence-based educational material"

In 2012 a bill was introduced in Vermont to repeal the state's philosophical exemption, but letting the religious exemption remain. Publicly disagreeing with his own Health Commissioner, Governor Peter Shumlin, a Democrat, opposed the bill, saying, "I do not believe it is the job of government to mandate what parents should do."

Mobilized by the National Vaccine Information Center, vaccine opponents mounted a ferocious and sustained challenge in hearings that went on for many hours. One claimed her son's leg swelled because of a vaccine and was still swollen 18 months later. A school district spokesman testified that they would lose a considerable amount of funding if all the children with vaccine exemptions withdrew and became home-schooled.

Representative George Till and other bill supporters pointed out that neighboring Quebec was in the midst of a measles epidemic of more than 700 cases and that several vaccine-preventable diseases were reappearing in Vermont. One man told of his vaccinated child contracting pertussis, likely from an unvaccinated carrier at school, and coughing for more than 100 days.

The final bill, S.199, allowed both philosophical and religious exemptions but required all belief exemptors to sign a form verifying that s/he "has reviewed and understands evidence-based

educational material provided by the department of health, . . . understands that failure to complete the required vaccination schedule increases risk to the person and others, . . . and understands that there are persons with special health needs attending schools and child care facilities who are unable to be vaccinated or who are at heightened risk of contracting a vaccine-preventable communicable disease and for whom such a disease could be life-threatening."

Incriminating, compelled speech charged

NVIC opposed that compromise also, complaining that a parent is forced "to sign incriminating statements that they are putting their child and society at risk," though the bill also provided that the signed form could not be admitted in any civil proceeding.

Later, vaccine opponents complained that requiring them to "understand" anything was "compelled speech" in violation of the First Amendment. The Health Department capitulated and rewrote their regulations so that now belief objectors must only "review" educational material.

Calif. requires contact with provider; Brown orders Health Dept. to exempt religious objectors

In 2012 California also passed a law, AB2109, requiring belief exemptors to have a form signed by a health care provider verifying that the provider had given them information about the risks and benefits of immunization to the child and the community. Governor Brown signed the bill, but simultaneously directed his Health Department to waive the requirement for religious objectors. See the CHILD newsletter 2012 #3 in the newsletter archives at www.childrenshealthcare.org.

Oregon: info must be consistent with CDC

This year Oregon enacted a law, SB132, requiring belief exemptors to obtain a health care provider's signature verifying that the provider reviewed with them risk-benefit information "consistent with information provided by the Centers for Disease Control" or to certify that "the parent has completed a vaccine educational module" developed by the Health Department.

Best features for education requirements

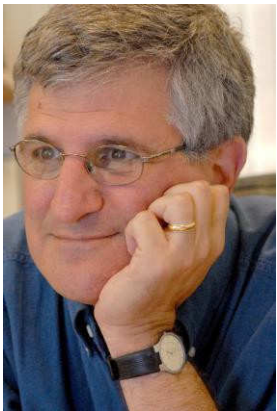
Vaccine avoidance is a serious public health threat. CHILD therefore supports pragmatic measures that may raise vaccination rates though we would rather have no belief exemptions at all. We prefer the vaccine objectors be required to get information directly face-to-face with a licensed provider rather than just “reviewing” educational material.

We also think it is important for legislatures to require that the risk-benefit information be consistent with that provided by responsible sources such as the CDC particularly since these bills include naturopaths among the providers of the information.

CHILD officers and members spent hundreds of hours contacting legislators about these bills.

Sources include the *Burlington Free Press*, March 29, 2012, and Washington Health Dept. data.

Deadly choices indeed



Paul Offit does not equivocate. The title of his book says it all: *Deadly Choices: How the Anti-Vaccine Movement Threatens Us All*.

Dr. Offit is the Chief of the Division of Infectious Disease and the Director of the Vaccine Education Center at Children's Hospital of

Philadelphia. He is widely admired for his willingness to debate vaccine opponents on television.

He's also an honorary member of CHILD.

The book lays out the history of vaccines and public policy. It describes old and new objections to vaccines and debunks them in easy-to-understand explanations. It describes the return of some infectious diseases because of our falling vaccination rates.

Offit dresses his impeccably persuasive scientific argument with narrative drive, suspense, engaging chapter titles, and epigraphs that grab and hold readers. For example, “The judgment of history is without pity” and “If they can get you asking the wrong questions, they don't have to worry about the answers.”

Father achieves new polio vaccine policy

For all the power of his defense of vaccines, Offit's tone is never shrill. He freely admits that some vaccines did cause real harms. He tells about a boy crippled by polio contracted from the oral polio vaccine and how the father got a safer vaccine made from killed virus available in the U.S.

The oral live-virus vaccine had its advantages. It was easier to administer and it protected more people around the vaccinated individual. The chances of its causing polio were one in 2.4 million. But now because billions of parents went to the trouble to immunize their children and accepted the minuscule risk of the oral vaccine, polio has nearly been eliminated from the world and the U.S. can switch to the even safer killed-virus vaccine.

Community spirit called for

Offit's last chapter is an impassioned plea for a sea change in American culture. He calls for a feeling of responsibility for the community, a willingness to give up some of our personal freedom and do what's best for the community.

Conference on “child-friendly faith”

On November 8 the Child-Friendly Faith Project will hold a conference at St. David's Episcopal Church in Austin, Texas. CHILD President Rita Swan will speak on “Religion, culture, and criminal law.”

Other speakers include Ann Haralambie, a certified family law attorney in Tucson, Arizona; David Jensen, a theology professor at Austin Presbyterian Theological Seminary; Rabbi Ze'ev Smason of Nusach Hari B'nai Zion, an orthodox congregation in St. Louis; and Sam Brower, a private investigator who has worked on criminal and civil liability cases against Warren Jeffs and his Fundamentalist Church of Latter-day Saints.

There will also be a panel discussion of survivors of abusive sects, including CHILD member Liz Heywood. The discussion will be led by Steve Hassan, an anti-cult speaker and licensed counselor in Massachusetts.

Registration before September 1 is \$95. See www.childfriendlyfaith.org for more information.