

Approved: February 28, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice Chairperson Senator Jerry Moran at
10:05 a.m. on February 4, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Winter who was excused.

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Linda Kenney, Kansas Department of Health and Environment
Mike Paredes, Kansas Child Abuse Prevention Council
Donna Whiteman, Kansas Department of Social and Rehabilitation Services
Dr. William Bartholome, Association of Pediatrics
James Clark, Kansas County and District Attorneys Association
Senator Norma Daniels
Judge Dan Mitchell, Shawnee County

Vice Chairman Moran called the meeting to order by opening the hearing for SB 477.
SB 477 - death of a child; review by health and environment; spiritual treatment exception.

Linda Kenney, Kansas Department of Health and Environment, testified in support of the concept of SB 477 and offered amendments for consideration by the Committee. (ATTACHMENT 1)

Mike Paredes, Kansas Child Abuse Prevention Council, testified in support of SB 477 but in opposition to the spiritual treatment exception. (ATTACHMENT 2)

Donna Whiteman, Secretary of the Kansas Department of Social and Rehabilitation Services, testified in opposition to SB 477 unless it could be modified so Kansas would not lose federal grant monies. (ATTACHMENT 3)

Chip Wheelen, Kansas Medical Society, testified in opposition to SB 477. (ATTACHMENT 4)

Dr. William Bartholome, American Academy of Pediatrics, testified in opposition to SB 477 because of the spiritual treatment exception, otherwise they would have no objections to the bill. (ATTACHMENT 5)

James Clark, Kansas County and District Attorneys Association, testified in opposition to SB 477 stating the language was too broad. He added that the issue would be better addressed by a State Medical Examiner to meet the overall needs of the State. (ATTACHMENT 6)

Senator Norma Daniels addressed the Committee in opposition to SB 477. She presented written testimony from Dr. Alan Hancock, President of the Kansas Coroner's Association, also in opposition. (ATTACHMENT 7) She suggested to the Committee that the viable parts of SB 477 should be amended into a comprehensive coroner's bill; to be introduced in the near future, as a more appropriate way to address the issue of child death reporting and investigation.

Vice Chairman Moran announced the hearing on SB 477 closed due to time constraints. He called on Judge Mitchell to present testimony on the matter he wished to address.

SB 536 - notice to SRS before placing child in need of care in secretary's custody.

Judge Dan Mitchell, Shawnee County District Court, testified in opposition to SB 536. He expressed his concerns with where and how a child in an emergency situation would find shelter and care if a 24-hour notice was required to the Secretary of SRS prior to placement.

The hearings for SB 477, SB 536 and SB 529 were continued to a date to be announced.

The meeting was adjourned at 11:00 a.m.



Department of Health and Environment

Azzie Young, Ph.D., Secretary

Reply to:

Testimony presented to

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill 477

Perhaps one of the most tragic of all child deaths is when the death is not anticipated, or occurs from no apparent cause. In this situation the grief and sense of guilt is intense. The death forces the child's family and community to ask numerous questions. When outwardly healthy infants die in their sleep or apparently healthy children die unexpectedly, the parents feel they have done something wrong, while others are suspicious of abuse and neglect.

Through the expansion of the age categories for mandatory autopsies and reporting as outlined in S. B. 477, answers to these questions should be available to the parents, community, law enforcement and social service. Requiring these autopsies should eliminate the recording of "dead on arrival", "cause unknown", or potentially erroneous causes of death on the death certificate.

It must be recognized, however, that the cause of death, based on autopsy findings, may not be the final answer. Missouri, along with Colorado, Georgia, Maryland, Michigan, Minnesota, Oregon, South Carolina, and Vermont have instituted multidisciplinary team-review systems in cases of death reflected in this bill. Missouri's efforts came as the result of a 1990 maltreatment death. Following an initial autopsy, a general pathologist concluded, although the body was discolored from bruises head to toe, that the cause of death was peritonitis from a ruptured intestine, a natural disease process. Due to persistence of the child's family member and in coordination with a chief county medical examiner, a second autopsy was completed with a ruling that the child had been kicked and punched in the stomach with such brute force that his intestines had ruptured. The step father was subsequently charged with murder.

More close to home, was the case of Jose Lumbrera, of Garden City, Kansas. Five of his siblings had previously died in Texas. Authorities had certified one case of death as pneumonia or SIDS, one as blood poisoning, one as acute heart failure and two as aspiration, or choking on vomit. The pathologist, Eva Vachal, felt these were "wastebasket diagnoses". Vachal's autopsy showed Jose seemed perfectly healthy, yet there were unusual pinpoint hemorrhages around the boy's eyelids and on the membrane covering each eye. The only explanation was a sudden cutoff of oxygen and a sharp rise in blood pressure. That meant asphyxiation. Vachal came to a chilling conclusion: Jose had been smothered. Jose's mother was subsequently charged with murder and subsequent to a trial was sentenced to life in prison.

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Based on the Center for Disease Control estimates, approximately 5 of the 50 deaths attributed to Kansas SIDS deaths and 3-4 of the 7-10 unexplained deaths to Kansas children ages 1-9, may be a result of child maltreatment. Increasing the mandatory autopsy age category to include the 1-9 year olds and death review process amendment will support the a system similar to that being implemented by Missouri and the other nine states previously mentioned.

RECOMMENDATIONS:

- 1) Delete exceptions to the mandatory autopsies for religious reasons in line with American Academy of Pediatrics recommendations.
- 2) Support the expansion of the age group for child deaths requiring autopsies from 0-1 to 0-9.
- 3) Amend Section 2 (a) from "under circumstances in which death is not anticipated" to "under circumstances in which the death is unexplained" to exclude accidental deaths such as motor vehicle estimated at about 100 per year.
- 4) Amend Section 2 (b) to reflect that autopsies completed under the circumstances outlined in this bill should include a cranial autopsy, more appropriately termed an internal cranial examination, not just for children under the age of one as is stated in the current amendment. This requirement is consistent with the Sudden Infant Death Autopsy Protocol prepared by KDHE in October, 1988.
- 5) Amend Section 2 (d)(a) to read internal cranial examination.
- 6) Amend Section 2 (e) to include the requirement that the autopsy report AND a summary of the circumstances surrounding the death, prepared by the attending physician and coroner should be submitted to KDHE. The autopsy report in isolation does not provide adequate information for a case review. Additional information may be needed by KDHE, but this procedure should be outlined in the rules and regulations to this section that will be promulgated by the Secretary of Health and Environment.
- 7) Amend Section 2 (e) to include the requirement that the autopsy report AND a summary of the circumstances surrounding the death, prepared by the attending physician and coroner for ALL children, as outlined in this bill, irrespective of the payor source, should be submitted to KDHE.

SUMMARY

The Kansas Department of Health and Environment strongly supports efforts to obtain data and information related to unexplained deaths among children in order to implement public health strategies to improve the health of Kansas children. KDHE supports a revised SB 477 which incorporates the above recommendations. No fiscal resources were included for this activity in the Governor's budget.

Testimony presented by: Linda Kenney
Acting Director
Bureau of Family Health
February 4, 1992

1-2/2



Kansas Child Abuse Prevention Council

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Special Committee on Judiciary
Senator Wint Winter, Jr., Chairperson

February 4, 1992
Testimony in Regard to S.B. 477

AN ACT concerning children; relating to the death of children; requiring autopsies in certain situations; relating to spiritual treatment; amending K.S.A. 22a-231 and 22a-238 and K.S.A. 1991 Supp. 38-1522 and repealing the existing sections.

Mr. Chairperson, Members of the Committee, I appreciate the opportunity to appear before the committee in support of legislation requiring careful review of deaths of children, particularly those involving suspicious circumstances. In order to ensure a review that would fully address all aspects of a child death, our organization also recommends the creation of a formal child death review process at the State level. This group would include representatives from medicine, the law, public health, social services and coroners. This review process would involve sharing law enforcement records, social services records, autopsy reports, hospital and medically-related data and other information that might have bearing on the involved child and family. To protect the confidentiality of case information, each Committee member would sign a confidentiality statement which clearly states that information secured through a review will remain confidential and not be used for reasons other than that for which it was intended.

Many child deaths are preventable and better identification and understanding of the underlying causes can lead directly to the reduction and eventual elimination of many child deaths. With S.B. 477, the State and other child protection agencies, can realistically hope to accomplish these objectives.

However, Mr. Chairperson, our organization stands in opposition against certain language in the bill which we feel are not in the best interest of the State and other child protection services in their role of providing protection to children.

The bill provides an exemption from "an investigation or autopsy in any case where death occurs without the attendance of a licensed physician solely because the child was under treatment by spiritual means through prayer". The bill also precludes a finding of abuse and neglect if a "child is furnished with spiritual treatment solely through prayer" under the Kansas Code For Care of Children.

The National Committee For the Prevention of Child Abuse and KCAPC reaffirm their position that children have a right to a healthy and nurturing environment. When the denial by parents due to religious beliefs of available necessary medical care is life threatening or may be disabling, then the child's rights and interests take precedence over the rights and interests of the parents or caregivers. Therefore all child abuse, neglect, and medical neglect statutes should be applied to provide protection to all children without potential or actual exemption for the religious belief of their parent or caretaker.

Moreover, the State has a compelling interest in not only protecting its children, but also preventing further harm or death in cases such as these.

Mr. Chair, if this bill is passed, it will have the following consequences:

-There would not be a procedural mechanism by which to investigate whether the absence of a licensed physician at the time of a child's death was a meritorious practice of religion in accordance with a recognized religious method of healing.

-There would not be a procedural mechanism for determining that a reasonable suspicion exists that a child's death was due to abuse or neglect.

-It would open certain "cultic" practices under the pretext of free exercise of religion.

-It would be in direct conflict with the State's declaration of policy "to provide for the protection of children who have been subject to physical, mental or emotional abuse or neglect..." K.S.A. 38-1521.

The death of any child is a tragedy. We compound that tragedy when we fail to accurately determine the cause of death, particularly when faced with suspicious circumstances and when the rights of parents to their free exercise of religion may be a pretext to their abusive conduct or unlawful inactions.

It is difficult to discuss and prioritize prevention issues and associated systems changes when the cause of death and their proportionate frequency in the community are unclear and not known. Additionally, when deaths of children involved with child protective services and other community agencies are reviewed and aggregated, valuable information can be gained to help in planning for the future prevention of similar deaths.

KCAPC supports S.B. 477 except language providing an exemption from an investigation or autopsy in a child's death without the presence of a licensed physician because the child was under treatment by spritual means through prayer and precluding a finding of abuse and neglect if a child is given spiritual treatment sole through prayer.

Testimony submitted by Mike B. Paredes, J.D.
Coordinator of Training and Public Information
Services/Legal Counsel, KCAPC, Inc.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

Committee on the Judiciary
Wint Winter Jr., Chairperson

February 4, 1992
Testimony in Regard to S.B. 477

AN ACT concerning children; relating to the death of children; requiring autopsies in certain situations; relating to spiritual treatment; amending K.S.A. 22a-231 and 22a-238 and K.S.A. 1991 Supp. 38-1522 and repealing the existing sections.

Mr. Chairperson, Members of the Committee, I am appearing today regarding S.B. 477. While the Department can support the concepts embodied in the bill, some of the provisions may be in conflict with Federal law and may, therefore, render Kansas ineligible for Federal assistance if it is adopted as presently worded.

Purpose of the bill:

The bill amends the Kansas Criminal Code to provide exemption from investigation or autopsy in the death of a child where the death was unattended by a physician because the child was under treatment by spiritual means. It also amends the Kansas Code for Care of Children to preclude a finding of abuse and neglect under the same circumstances. Other provisions of the bill are not of concern to the Department and are not addressed in this testimony.

Background:

In order for the Committee to understand the impact of this bill, let me describe how cases involving deaths of children are typically handled:

Child fatalities normally come first to the attention of emergency medical response teams or hospital emergency facilities. The law requires that if any of these (or other) persons has reason to believe that the death may have been the result of child abuse or neglect or the result of a crime, a law enforcement officer and/or SRS is notified. Almost without exception, it is law enforcement who receives the notice. The law enforcement agency will request the services of SRS when the situation requires. Generally, SRS is involved only when there are surviving siblings and there are unresolved questions about their safety.

Kansas civil and criminal statutes regarding investigations of alleged child abuse and neglect currently reflect a concern both for the protection of children and for the rights of parents to their free exercise of religion. The statutes generally hold that while a parent may not be labeled abusive or neglectful for legitimately exercising their right to their religious beliefs and practices, the State has a legitimate interest in over-riding the objections of parents in the interest of protecting children. The law was not intended as a shield for parents to avoid discovery that their actions or inactions imperiled the child nor did the law contemplate placing surviving children at risk for the sole reason that their sibling did not survive and was thus beyond the power of the state to investigate or make a finding.

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Attachment 3

Because it was the policy of the State to protect children, the statutes were drafted to closely follow the requirements of the federal Child Abuse and Neglect Prevention and Treatment Act (CAPTA)(P.L. 100-294) and for that reason the State has been found eligible to receive federal funds to prevent and treat cases of child abuse and neglect.

Discussion:

If S.B. 744 is adopted as worded, it will likely have the following effects:

As neither an autopsy nor an investigation are required, there is no mechanism for determining the existence of a "reason to believe" a child has been abused or neglected or probable cause that a crime has been committed. The police will not investigate, and SRS will not be notified. This situation can exist even if there are other children in the home who are at risk. Additionally, since a physician may not be in attendance at the death of the child, this avenue for determining if abuse or neglect is suspected is not available.

The bill may render the State ineligible for over \$420,000 in Federal grants which now go to the prevention and treatment of cases of child abuse and neglect. Due to this concern, the Department requested an unofficial opinion from the federal Region VII office of the Administration for Children and Families, Department of Health and Human Services in Kansas City, Missouri. ACF sought clarification by phone from the Washington office of the National Center for Child Abuse and Neglect (NCCAN). The opinion of the regional Child Welfare Specialist and NCCAN was that the language of S.B. 477 would make Kansas ineligible for the Basic State Grant under the Child Abuse Prevention, Adoption, and Family Services Act.

Recommendation:

The Department requests that S.B. 477 be modified to address the above issues.

Donna L. Whiteman
Secretary
Department of Social and
Rehabilitation Services

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dr



KANSAS MEDICAL SOCIETY

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February 4, 1992

TO: Senate Judiciary Committee
FROM: Kansas Medical Society *Chip Freeman*
SUBJECT: Senate Bill 477; Deaths of Children

If you read current law found at lines 17-30 on page 1, coupled with the provisions of K.S.A. 22a-233 as amended by the 1991 Legislature, it becomes abundantly clear that any time a suspicious death occurs regarding a person of any age, the coroner or the district attorney may order an autopsy. Senate Bill 477 implies that district coroners and district attorneys are not performing their statutory duties. We must question whether at any time during discussions of 1991 HB 2582 or proposal #12 during the 1991 interim, anyone came forward with genuine evidence that there are suspicious child deaths occurring in Kansas that are not being properly investigated under current law. Perhaps such information exists but we are not aware of it.

We also must question the appropriateness of allowing an employee of the Department of Health and Environment to review an autopsy report for purposes of determining whether an inquest should be held. We would argue that interpreting an autopsy report constitutes the practice of medicine and surgery. While we would be enthused if we could be assured that KDHE would employ the skills of a physician licensed in this state, we have serious doubts as to whether that would occur. The net result could likely be unnecessary inquests at the expense of the local taxpayers. Furthermore, one must ask if it is proper to delegate authority to an agency of the executive branch to oversee the activities of district coroners and district attorneys who are officers of the court. Could this be a violation of the constitutional doctrine of separation of powers?

Finally, we must comment that we understand the rationale for the language at subsection (f) of section 3 regarding religious protection from prosecution. We must object, however, to the amendatory language in section 1. The amendment to K.S.A. 22a-231 could potentially become a legal haven for abusive parents who desperately delay an autopsy and use the law to complicate matters and thereby impair the ability of district coroners and district attorneys to perform their duties.

Thank you for considering our concerns about this very serious matter. We respectfully request that you report SB 477 not recommended for passage.

CW/cb

*Senate Judiciary Committee
February 4, 1992
Attachment 4*

Testimony Before the Special Committee on Judiciary
of the Kansas Senate
Regarding Senate Bill No. 477
4 February 1992

Provided by:
William G. Bartholome, MD, MTS
Associate Professor of Pediatrics
The Kansas University Medical Center
and
Fellow of the American Academy of Pediatrics
Kansas Chapter

I appear before you today to express my opposition to provisions in Senate Bill No. 477 which would provide a "religious exemption" to requirements for investigation or autopsy following the death of a child.

In January of 1988, a statement developed by the Committee on Bioethics, "Religious Exemptions from State Child Abuse Statutes," was approved as the official policy of the American Academy of Pediatrics. [Copy of document attached as Appendix A.] I was a member of the committee during the consideration and drafting of that policy statement. The statement calls for members and state chapters to take the lead to increase public awareness of the hazards to children related to these exemptions and to work with other child advocacy organizations to develop coordinated and concerted public and professional actions for recision of these provisions. This call has been echoed by a wide variety of health care professional and child advocacy organizations some of which will testify before you today.

My concern is that the proposed action not only fails to address the concerns which prompted the call for recision of religious exemption provisions, but proposes to amend existing law to provide for additional exemptions. Child abuse, neglect and medical neglect statutes have been enacted throughout the United States to call attention to our ethical and legal commitment to ensure that all children have the opportunity to grow and develop safe from physical harm to the extent that we can make that possible. The burden of protecting children from physical harm falls primarily on the shoulders of their parents. When children suffer harm or experience neglect at the hands of their parents, we have enacted laws that mandate that the state respond. When a child under the care of parents is injured or suffers harm or is neglected, the state is obligated to intervene to protect such a child. I heartily endorse the claims made by the Academy of Pediatrics that: the basic principles of justice and protection of children as vulnerable citizens require that all parents and caretakers be treated equally under the laws and regulations that have been enacted by the state and federal government to protect children; and, that no statute should exist that permits or implies that denial of medical care necessary to prevent death or serious impairment to children can be supported on religious grounds.

*Senate Judiciary Committee
February 4, 1992
Attachment 5*

The religious exemption provisions proposed in Senate Bill 477, would allow parents to refuse to allow state officials to discharge an important ethical and legal duty, namely to undertake an investigation and conduct an autopsy on a child whose death occurs without the attendance of a health care provider. The implication of the exemption is that the state has no interest at stake when a child dies while "...under treatment by spiritual means through prayer alone..." I strongly disagree. Parents must come to understand that they have an ethical and legal obligation to do all in their power to bring sick and dying children to the attention of licensed health care professionals. Parents must come to understand that responding to the plight of a sick child with "treatment by spiritual means through prayer alone" represents an ethical and legal failure that will not be tolerated in a society in which many of the diseases of children can be effectively prevented and treated. And, parents must understand that should a child die who is receiving "treatment by spiritual means through prayer alone" that they will not be exempt from laws and regulations that have been enacted to protect children or to investigate the circumstances of such deaths.

I want to live in a society in which adults are free to believe and practice religion to the greatest extent possible. I want to live in a society in which adults are free to reject any and all forms of medical treatment and to seek healing in any way they wish. However, I also want to live in a society in which children are not asked to suffer abuse, neglect or medical neglect in the name of religion. I want to live in a society in which all parents are judged by the same standards in terms of the discharge of their duties and obligations to children.

In closing, I would draw your attention to an interesting and telling irony that relates to these proposed exemptions. It is my understanding that these exemptions were proposed on behalf of members of the Christian Science church among others. The implication is that the requirement for an investigation or autopsy is a violation of the beliefs or practices of members of this religious community. It is my understanding that many Christian Scientists hold this view. Yet, the "Manual of the Mother Church" written by the founder of Christian Science, Mary Baker Eddy, contains the following "by-law of the church: "Article IX; MARRIAGE AND DECEASE; **Sudden Decease.** Sect. 2. If a member of The Mother Church shall decease suddenly, without previous injury or illness, and the cause thereof be unknown, an autopsy shall be made by qualified experts." [Appendix B.]

I would also like to leave with you today a copy of a special booklet prepared by a very special and dedicated woman who has dedicated her life to making sure that all parents, but especially Christian Science parents, understand that "Children's Healthcare Is a Legal Duty." [Appendix C.]

5-422

I would be happy to answer any questions you may have regarding my testimony or to respond to questions or requests for additional information in the future. Thank you for affording me the opportunity to share my concerns with you today.

Contact:

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Biographical Sketch: William G. Bartholome, MD, MTS

Dr. Bartholome grew up in the Kansas City area. Following high school and college at Rockhurst College, he attended the University of Kansas School of Medicine. He received his M.D. degree in 1969 and went to Johns Hopkins Hospital in Baltimore, Maryland for his pediatric residency. Following completion of his residency in 1972 and two years of service in the Air Force, he was awarded a Joseph P. Kennedy, Jr. Fellowship in Medical Ethics and completed two years of graduate studies at Harvard University receiving a Masters of Theological Studies degree in 1976. He served on the faculties of the University of Texas Medical School in Houston and the University of Illinois College of Medicine at Chicago before returning to Kansas City in 1986 to take his present position as an Associate Professor of Pediatrics in the Department of the History and Philosophy of Medicine at Kansas University Medical Center. Although he continues to work in Pediatrics, Dr. Bartholome's primary role at the medical center is the development of programs in clinical ethics. He is chair of the Human Subjects Committee as well as the medical center's Hospital/Medical Staff Ethics Committee and its Pediatric Ethics Committee.

He also serves on the boards of Kansas City's own Midwest Bioethics Center and the Kansas Committee for the Humanities. He is a past member of the Committee on Bioethics of the American Academy of Pediatrics. Although he is widely published and has given many invited presentations on a wide range of topics in clinical ethics, his primary area of philosophical research has been in the area of pediatric ethics.

AMERICAN ACADEMY OF PEDIATRICS

Committee on Bioethics

Religious Exemptions From Child Abuse Statutes

Children sometimes die or become disabled when they fail to receive medical treatment because of the strongly held religious or philosophical beliefs or practices of their parents. The numbers of such incidents of neglect are hard to ascertain reliably, but there are increasingly frequent reports in the mass media. We believe the reported cases represent the most extreme examples of a larger problem. According to newspaper reports, the following are some specific cases that have come to recent attention: (1) A 4-year-old girl in Sacramento, CA, died of bacterial meningitis; her only treatment was spiritual healing by a Christian Science practitioner (*Sacramento Bee*, April 21, 1984). (2) Two children died of pneumonia and meningitis in Indiana. Both sets of parents were prosecuted for withholding medical care from their children. The parents belonged to the Faith Assembly, a sect that relies exclusively on faith healing (*Medical World News*, Oct 4, 1984). (3) A 2½-year-old boy died in Boston of bowel obstruction in April 1986 following five days of treatment by a Christian Science practitioner and nurse (*Boston Globe*, April 10, 1986). (4) A 16-month-old Santa Monica, CA, boy died of bacterial meningitis; his only treatment was prayer by a Christian Science practitioner. (*Los Angeles Times*, April 30, 1984). (5) Parents of a 13-month-old boy in Coshocton, OH, who died with bacterial (*Streptococcus pneumoniae*) pericarditis were tried and released because of religious exemption protection. The child had received no medical care because the parents were members of the Christ As-

sembly, a group that believes in healing by prayer (*Columbia Citizen-Journal*, June 15, 1984). (6) A 23-month-old girl died of bronchopneumonia in Celina, OH, in April 1986. The parents have claimed that their religious beliefs prevented them from seeking medical care. Although the parents were prosecuted, charges were dismissed because of the religious exemption clause¹ (*Akron Beacon-Journal*, May 6, 1986).

ETHICAL AND LEGAL ISSUES

Religion plays an important role in the growth and development of many children and families. However, when parental practices have potentially harmful consequences for the child, state intervention may be warranted.

The boundary between parental freedom in child rearing and the interest—or even basic rights—of the child is unclear. The limits to parental decision making for children are uncertain, but it is widely accepted that parents generally will make decisions that do not directly threaten the welfare of their children. Tradition, social forces, and belief systems shape the limits of acceptable nurturance, of parental imperatives and privileges, and even of physical force used in the discipline of children. These, of course, change with time. However, the constitutional guarantees of freedom of religion do not sanction harming another person in the practice of one's religion, and they do not allow religion to be a legal defense when one harms another.

Because the efficacy or necessity of many medical practices are arguable, those who claim that much of common medical practice can be replaced or improved by various forms of nonmedical intervention or "faith healing" will inevitably find some basis for their claims. Although there will always remain areas of legitimate debate, it is the intent of this Committee to exclude from that debate for

This statement has been approved by the Council on Child and Adolescent Health.

The recommendations in this statement do not indicate an exclusive course of treatment or procedure to be followed. Variations, taking into account individual circumstances, may be appropriate.

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the purpose of defining medical neglect: medical interventions of clear efficacy that can prevent, ameliorate, or cure serious disease, incapacity, or loss of life and interventions that will clearly result in prevention of future handicaps or disability for the child.

Recognition of the prevalence and serious consequences of child abuse and neglect has led society to develop increasingly comprehensive systems for its detection and reporting and to the establishment of legislation and procedures by each of the states. Federal rules, in addition to mandating that certain procedures for reporting be adopted for each state, also confirm the inclusion of standard medical treatment in the category of those rights assured to children and establish the withholding of medical treatment in some circumstances as a form of child abuse or neglect.

In the United States, the constitutional guarantee of protection of religious practice from intrusion by government has been used by some religious groups to seek exemption from legislative or regulatory requirements regarding child abuse and neglect. Certain groups have succeeded in obtaining exemption from reporting or prosecution for child abuse and neglect, including medical neglect, in more than three quarters of the states. There are now statutes in 44 states which contain a provision stating that a child is not to be deemed abused or neglected merely because he or she is receiving treatment by spiritual means, through prayer according to the tenets of a recognized religion. Although these exemptions take various forms and interpretations in different state jurisdictions, the overall effect has been to limit the ability of the state to prosecute parents for abuse or medical neglect of children when such occurrences may be the result of "religious practice." Severe (even fatal) physical discipline, failure to seek needed medical care, or refusal of a proven efficacious treatment of a critically ill child may be protected from remedy because of the so-called religious exemption clauses now found in the majority of state codes.

Two important sets of interests are in apparent opposition—those of children in the benefits of proven medical and health care and those of parents in making decisions about their children's well-being. Some parents believe that a constitutionally protected freedom of religion allows them to deny their children some or all of the benefits of standard medical intervention. However, this interpretation of the US constitution is in contradiction to important court rulings to the effect that parents may not martyr their children based on parental beliefs² and that children cannot be denied essential medical care.^{3,4}

STATEMENT

The Committee on Bioethics asserts that (1) the opportunity to grow and develop safe from physical harm with the protection of our society is a fundamental right of every child; (2) the basic moral principles of justice and of protection of children as vulnerable citizens require that *all* parents and caretakers must be treated equally by the laws and regulations that have been enacted by state and federal governments to protect children; (3) all child abuse, neglect, and medical neglect statutes should be applied without potential or actual exemption for religious beliefs; (4) no statute should exist that permits or implies that denial of medical care necessary to prevent death or serious impairment to children can be supported on religious grounds; (5) state legislatures and regulatory agencies with interests in children should be urged to remove religious exemption clauses from statutes and regulations.

It is not the intent of the Committee to encourage the development of separate legal systems to respond to parents who abuse or neglect their children for religious or philosophical reasons. The usual procedures of detection, reporting, and remediation by established civil or criminal court processes are, in most jurisdictions, sufficiently developed and functional. Rather, it is the Committee's concern that those procedures designed to help children who are victims of their caretakers and to prevent neglect be applied evenly to *all* caretakers. Claims of exemption from responsibility for care—as defined above—should not be honored on religious or philosophical grounds, and offending parents or caretakers should not be treated more or less stringently than those who make no such claim. The Committee does not intend by this statement to advocate punishment of offending parents as a solution to the problem of child abuse and neglect, but rather, we are calling for equal treatment of all abusive parents.

RECOMMENDATIONS

The American Academy of Pediatrics recommends that all pediatricians, pediatric surgeons, and AAP state chapters vigorously take the lead to (1) increase public awareness of the hazards to children growing out of religious exemptions to child abuse and neglect legislation; (2) support legislation in each state legislature to correct statutes and regulations that permit harm to children under the shield of religious exemption; (3) work with other child advocacy organizations and agencies to develop coordinated and concerted public and

professional actions for rescision of religious exemptions.

The Academy must unequivocally defend the rights of *all* children to the protection and benefits of the law and medicine when physical harm—or life itself—is in the balance.

COMMITTEE ON BIOETHICS, 1986-1987

Norman C. Fost, MD, Chairman

William G. Bartholome, MD

William Reed Bell, MD

Alan R. Fleischman, MD

Arthur F. Kohrman, MD

William B. Weil, Jr, MD

Liaison Representative

Kenneth J. Ryan, MD

AAP Section Liaison
Anthony Shaw, MD

REFERENCES

1. Ohio Rev Code 2919.22(A). [This religious exemption clause was held unconstitutional in *State v Mishimens*, 22 Ohio Misc.2d 43, 49ONE.2d 931 (Ohio Com Pl, 1984). However, because this was a lower court decision, it only applies in the local jurisdiction of that court and is not effective throughout the entire state of Ohio]
2. *Prince v Massachusetts*, 321 US 158 (1944)
3. *Jehovah's Witnesses of Washington King County Hospital*, 278 F Supp 488 (Washington, DC 1967), affirmed per curiam 390 US 598 (1968)
4. *Raleigh Fitkin—Paul Morgan Memorial Hospital v Anderson*, 42 NJ 421, 201 A. 2d 537 (1964), certiorari denied 377 US 985 (1964)

5-7/22

EIGHTY-NINTH EDITION

Manual of The Mother Church
The First Church of Christ
Scientist
in Boston, Massachusetts

BY

MARY BAKER EDDY

DISCOVERER AND FOUNDER OF CHRISTIAN SCIENCE
AND AUTHOR OF SCIENCE AND HEALTH WITH
KEY TO THE SCRIPTURES



A handwritten-style signature of Mary Baker Eddy in cursive script.

PUBLISHED BY THE
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BOSTON, U.S.A.

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cherish no enmity toward those who do believe in such doctrines, and will not harm them. But whenever God calls a member to bear testimony to Truth and to defend the Cause of Christ, he shall do it with love and without fear.

Uncharitable Publications. SECT. 26. A member of this Church shall not publish, nor cause to be published, an article that is uncharitable or impertinent towards religion, medicine, the courts, or the laws of our land.

The Golden Rule. SECT. 27. A member of The Mother Church shall not haunt Mrs. Eddy's drive when she goes out, continually stroll by her house, or make a summer resort near her for such a purpose.

Numbering the People. SECT. 28. Christian Scientists shall not report for publication the number of the members of The Mother Church, nor that of the branch churches. According to the Scripture they shall turn away from personality and numbering the people.

Our Church Edifices. SECT. 29. The periodicals of our denomination do not publish descriptions of our church edifices, but they may quote from other periodicals or give incidental narratives.

No Monopoly. SECT. 30. A Scientist shall not endeavor to monopolize the healing work in any church or locality, to the exclusion of others, but all who understand the teachings of Christian Science are privileged to enter into this holy work, and "by their fruits ye shall know them."

Christian Science Nurse. SECT. 31. A member of The Mother Church who represents himself or herself as a Christian Science nurse shall be one who has a demonstrable knowledge of Christian Science practice, who thoroughly understands the practical wisdom necessary in a sick room, and who can take proper care of the sick.

The cards of such persons may be inserted in *The Christian Science Journal* under rules established by the publishers.

ARTICLE IX

MARRIAGE AND DECEASE

A Legal Ceremony. SECTION 1. If a Christian Scientist is to be married, the ceremony shall be performed by a clergyman who is legally authorized.

Sudden Decease. SECT. 2. If a member of The Mother Church shall decease suddenly, without previous injury or illness, and the cause

thereof be unknown, an autopsy shall be made by qualified experts. When it is possible the body of a female shall be prepared for burial by *one of her own sex.*

ARTICLE X

DEBATING IN PUBLIC

No Unauthorized Debating. SECTION 1. A member of this Church shall not debate on Christian Science in public debating assemblies, without the consent of the Board of Directors.

ARTICLE XI

COMPLAINTS

Departure from Tenets. SECTION 1. If a member of this Church shall depart from the Tenets and be found having the name without the life of a Christian Scientist, and another member in good standing shall from Christian motives make this evident, a meeting of the Board of Directors shall be called, and the offender's case shall be tried and said member exonerated, put on probation, or excommunicated.

Violation of By-Laws. SECTION 2. A member who is found violating any of the By-Laws

or Rules herein set forth, shall be admonished in consonance with the Scriptural demand in Matthew 18:15-17; and if he neglect to accept such admonition, he shall be placed on probation, or if he repeat the offense, his name shall be dropped from the roll of Church membership.

Violation of Christian Fellowship. SECTION 3. Any member who shall unjustly aggrieve or vilify the Pastor Emeritus or another member, or who does not live in Christian fellowship with members who are in good and regular standing with this Church, shall either withdraw from the Church or be excommunicated.

Preliminary Requirement. SECTION 4. No Church discipline shall ensue until the requirements according to the Scriptures, in Matthew 18:15-17, have been strictly obeyed, unless a By-Law governing the case provides for immediate action.

Authority. SECTION 5. The Christian Science Board of Directors has power to discipline, place on probation, remove from membership, or to excommunicate members of The Mother Church. Only the members of this Board shall be present at meetings for the examination of complaints against Church members; and they alone

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CHURCH MANUAL

ARTICLE XXXV

For The Mother Church Only. SECTION 1. The Church Manual of The First Church of Christ, Scientist, in Boston, Mass., written by Mary Baker Eddy and copyrighted, is adapted to The Mother Church only. It stands alone, uniquely adapted to form the budding thought and hedge it about with divine Love. This Manual shall not be revised without the written consent of its author.

Seventy-third Edition the Authority. SECT. 2. The Board of Directors, the Committee on Bible Lessons, and the Board of Trustees shall each keep a copy of the Seventy-third Edition and of subsequent editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority.

Amendment of By-Laws. SECT. 3. No new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled, without the written consent of Mary Baker Eddy, the author of our textbook, **SCIENCE AND HEALTH.**

5-19/22

Cry, the Beloved Children

by Rita Swan

1991

Children's Healthcare Is a Legal Duty
Box 2604, Sioux City IA 51106
712-948-3500

5-11/22

Children's Healthcare Is a Legal Duty (**CHILD Inc.**) is a children's rights organization founded in 1983 and headquartered in Sioux City, Iowa. **CHILD Inc.** affirms that children have a right to health care of proven value without exception for religious belief. **CHILD** has members in 44 states and 3 foreign countries.

We would like to share with you some of the children who have died in recent years because of religiously-based medical neglect. In our view, their parents are neither bad people nor morally innocent. They loved their children as much as any parent does. We feel their tragically wrong behavior is motivated mainly by fear and confusion. Religious exemption laws add to the confusion because they are used by certain churches as evidence that the state endorses the withholding of medical care on religious grounds. The parents do not comprehend the risk they are taking with their child's life when they believe that the state endorses their action. The Christian Science church even uses the religious exemption laws as evidence that legislators agree with them that Christian Science can heal all diseases as effectively as medical care.

We believe that the cases below show the need to remove religious exemptions from child health care requirements. Surely they illustrate the fact that the state cannot always protect children with court orders. People have many inhibitions about reporting child abuse. Parents have custody of children and they must, therefore, have a legal duty to provide them with necessary medical care.

Christian Science Cases

Michael Schram, age 12, died of a ruptured appendix in Mercer Island, Washington, in 1979. His natural father, who was not a Christian Scientist, was not informed of his son's illness. His mother and Christian Science "practitioner" (church parlance for a professional faith healer) prayed over his dead body for several days before notifying a funeral home. One of the funeral home staff vomited when he saw the boy's partially decomposed body.



Amy Hermanson, 7, died in 1986 in Sarasota, Florida, of diabetes. A talented little girl, she took piano, violin, harp, and drawing lessons, and excelled in academic subjects also. Many teachers and employees at her mother's business observed Amy's weight loss and lethargy over a four-week period, but did not report to Child Protection Service (CPS). They did not know she had diabetes. Some assumed the parents were providing medical treatment. One employee said she did not report to

CPS because Amy's mother "was signing [her] paycheck." A neighbor urged her mother to take her to a doctor, but the mother refused. A few minutes later, Amy crawled in from another room on her hands and knees and begged her mother to take her home. Her aunt said that she was incoherent and unable to focus her eyes the day before she died.



Ian Burdick, age 15, died of diabetes in 1987 in Van Nuys, California. His parents were in Hawaii when he died. He was cared for by a Christian Science "nurse" (without medical training) and a church healer who gave "absent treatments." He was 5'8" tall and weighed less than 90 pounds when he died.



Ian Lundman, age 11, died of diabetes in 1989 in suburban Minneapolis. His natural father had left Christian Science, but did not have custody. A school official noticed a fruity odor on Ian's breath, a classic diabetes symptom, but did not recognize it as such nor did she know the parents had religious beliefs against medical care. The father called and asked to speak to his son; his ex-wife told him Ian was fine, but asleep. Six hours later the boy died in a diabetic coma.

Long after the deaths of these two boys the Christian Science church was still publicly claiming that Amy was the last Christian Science child to die of diabetes.



Ronald Rowan, age 11, died of "aspiration asphyxiation" near Akron in 1979. In layman's terms, he strangled on his own vomit because he was too weak to expel it out of his mouth. The medical examiner reported the boy's body 30 to 40% dehydrated and said he had to have been running high fevers and vomiting frequently for several days before he died.

Robyn Twitchell, age 2, died of peritonitis and a twisted bowel near Boston in 1986 after a five-day illness. It began with his screaming and vomiting. By the second day, the parents were calling the Christian Science church's worldwide public relations manager for advice. He assured them that the law granted them the right to use Christian Science treatment instead of medical treatment. On the fourth day, a church nurse recorded: "Child listless at times, rejecting all food, moaning in pain, three wounds on thigh." The nurse force-fed him and directed his mother to feed him every half hour. On the fifth day, he was vomiting "a brown, foul-smelling substance." Autopsy photos showed bright red lips and chin, likely because the acid in the vomit had eaten the skin off. His scrotum and about 15 inches of his ruptured bowel were jet black because the blood supply had been

cut off. He was so dehydrated that his skin stayed up when pinched. Two neighbors closed their bedroom window so they would not hear the boy's screams.

A Christian Science practitioner testified at the Twitchells' trial that she achieved a complete healing of Robyn and that he ran around happily chasing his kitty cat fifteen minutes before he died. Rigor mortis had set in before the parents called 911.



Shauntay Walker, age 4, died of meningitis in Sacramento in 1984. She was home sick from nursery school for 17 days, but the school staff did not report to CPS. Her aunt observed that the little girl was comatose and threatened to call the police. Shauntay's mother then moved her to a Christian Scientist's home where she died.

Ashley King, age 12, died of bone cancer in Phoenix in 1988. She was out of school for seven months. School officials knew she was sick and knew the family were Christian Scientists, but let them set up a home study program for the girl. Finally, neighbors alerted CPS. The agency got a medical examination by court order. A tumor on Ashley's leg had grown to about 41 inches in circumference. Her hemoglobin count was 2.4. Her skin was stretched so thin around the tumor that she bled almost from being touched. Her genitalia were partially rotted away from lying in her own excrement. Because

the disease was by then terminal, the state allowed her to be placed in a church nursing home (not state licensed). Nursing records show 71 calls made to the Christian Science practitioner over three weeks for more spiritual treatment of Ashley's pain. One nurse reminded her "of the lateness of the hour and that other patients are sleeping" when she cried out in pain.



Photo credit: The Arizona Republic/Michael Meister 9/27/89

The photo shows Mrs. King flanked by lifesized cardboard cutouts she had made of her only child. She had called a press conference to present her view that Ashley made a personal, informed choice to have only Christian Science treatment of her illness.

Kris Ann Lewin, age 13, died in suburban Pittsburgh of bone cancer in 1981. A year earlier her mother took her to the hospital on the rationale that she might have a broken bone. (Christian Scientists are allowed to go to

doctors for setting of broken bones.) When doctors made a preliminary diagnosis of bone cancer, the mother said there was no cancer, signed a release form against medical advice, and took her daughter home. The following Monday she called a doctor at the hospital and said Kris was having "treatment" and was getting better.

Only six weeks later did hospital personnel learn that what she was actually having was Christian Science treatment. The mother hung up when hospital staff tried to talk with her on the phone. She refused delivery of certified mail. Presumably, her behavior was directed by the lawyer whom the Mother Church in Boston retained for her during the period.

The hospital filed an abuse report with CPS, but CPS concluded they could not intervene because of the state's religious immunity law. CPS destroyed all records of the case, which was their mandated procedure for unvalidated reports. By the time neighbors made a number of reports and case workers figured out a way to get a medical diagnosis, the cancer had spread to her lungs. They then decided to let her die without medical care.

Pennsylvania has a law specifically requiring Christian Science practitioners to report suspected child abuse and neglect. Kris Ann Lewin was seriously ill for an entire year, but at the coroner's inquest her Christian Science practitioner volunteered the information that she did not report the case to the state because she did not believe Kris was being abused or neglected.

Natalie Rippberger, 8 months old, died of meningitis near Santa Rosa, California, in 1984. Her parents said she had been sick for two weeks. A Christian Science nurse recorded that the baby was having many "heavy convulsions," but did not recommend medical help. Her nursing care consisted of bathing the baby and reading church literature to her. Phone records showed that the parents and the nurse called a church healer for absent "treatment" (an argument against disease) 18 times in one day.

Deaths in Charismatic Sects

CHILD Inc. has tracked deaths of children after medical care was withheld on religious grounds in more than fourteen sects during the 1980s. Causes of death include diarrhea, dehydration, blood poisoning, gangrene, diabetes, abdominal obstructions, a Wilm's tumor, and many infectious diseases.

The press has reported more than a hundred preventable deaths in Faith Assembly since this church was founded in the mid-1970s. The great majority are children and mothers in childbirth. Faith Assembly children have died of treatable conditions in Iowa, Michigan, Wisconsin, Illinois, Missouri, Indiana, Ohio, Kentucky, Louisiana, and other states.

Five babies died near Sioux Falls, South Dakota, in unattended home deliveries advocated by End Time Ministries.

Roger and Dawn Winterborne, members of a Faith Tabernacle church in Philadelphia, lost five children to pneumonia over a nine-year period, but reiterated their intention to withhold medical care from their surviving children.

The Survivors

Medical neglect during childhood has left many with permanent disabilities.

Carolyn Hyatt of Pleasanton, California, was adopted into a Christian Science home. At age 7, she had a series of infectious diseases and ear aches without medical treatment. She became profoundly deaf. The state allowed her parents to adopt two more children after she became deaf.

Paul Michener of Waynesville, Ohio, walks with a four-inch limp and has undergone several surgeries because his leg was burned in a gasoline fire when he was nine. He was bedridden for two years. He was fifteen years old before the injury grew closed with scar tissue. As a Christian Scientist, his mother would not obtain medical care for him.

Kim Scheck of Chestertown, Maryland, was frequently in great pain during childhood with illnesses that were never diagnosed. She had high fevers. She was often so weak she had to crawl up the stairs to bed. Her parents would not obtain medical treatment for her because of their membership in the Christian Science church.

Kim married and left Christian Science as an adult. But one of her lungs collapsed when she was 26. X-rays showed extensive scar tissue in both lungs. She died at age 44 of congestive heart failure and cor pulmonale syndrome. Treating specialists agreed that those conditions were brought on by severe, untreated respiratory infections in childhood.

Sue McLaughlin of Grand Forks, North Dakota, was born with hypothyroidism. A doctor diagnosed it and told her parents of the need for treatment. But they refused treatment because of their Christian Science faith. As a result, her mental and physical development were retarded and organs were damaged. She cannot support herself.

Duane Siebenmann of Park Forest, Illinois, was accidentally stabbed in the eye with scissors by a third-grade classmate. His parents bandaged the eye, but would not get medical care. School officials knew his parents were Christian Scientists. They knew Duane was not receiving medical care. But they did not request that any be provided. He lost his sight in that eye and suffered from near-constant headaches throughout childhood.

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Vaccine-preventable Diseases

The American Medical Association reported in 1987 that religious exemptions from immunizations "lower the general immunization level of the community," cause "explosive transmission of infectious disease" in church schools and camps, and can be "a source for transmission of disease into the general community."

Widespread outbreaks of infectious disease have occurred in recent years within several groups claiming religious exemptions from immunizations. In 1985, there were more than 180 cases of measles at a Christian Science college and camp including three deaths of young people. In 1989, Christian Science youth brought measles back from a church camp in Missouri to Davenport and Clinton, Iowa.

In 1982, Debra Kupsch, age 9, contracted diphtheria at a Christian Science camp in Colorado and then traveled on a bus with many other unvaccinated children to Wisconsin where she died. It cost the state of Wisconsin about \$20,000 to track down all the children and adults she had come in contact with and culture them.

In 1972, there was an epidemic of polio at a Christian Science boarding school in Connecticut. Eleven children were left paralyzed. The epidemic was not discovered by health authorities until twenty days after the first student had become ill with the disease.

In 1985, a child with a religious exemption from immunizations was the index patient for a measles outbreak that spread to 137 persons at the Blackfeet Indian Reservation near Glacier National Park.

In February and March, 1991, Philadelphia had 492 cases of measles and six deaths among children of the Faith Tabernacle Congregation and the First Century Gospel Church. Both churches shun immunizations.

To Be a Child
by Paul Engel of
the University of Iowa

This is to be a child:
To heighten
Each thing you handle,
To be shyer than rabbit in wide field,
To frighten
Deep dark that scared you,
To fly higher
Than kite or hunting hawk,
To brighten
Daylight, because you are a fire.

5-22/22

UPDATE

NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE

Volume 4, Number 9

September 1991

NDAAs Position on Religious Exemptions

On July 14, 1991, the National District Attorneys Association approved a resolution calling for the repeal of religious exemptions for child abuse and

neglect. In so doing, NDAAs joined other national organizations whose members confront the sometimes fatal results of denial of health care to children based on parental religious beliefs. These organizations include the American Medical Association, the American Academy of Pediatrics and the National Committee for Prevention of Child Abuse. Other organizations such as the American Humane Association have longstanding informal positions against the use of religion as a shield for parents who opt for spiritual rather than medical care for sick children. NDAAs' policy position reads:

WHEREAS, all children are entitled to equal access to all available health care, and
WHEREAS, all parents shall be held to the same standard of care in providing for their children, and that all parents shall enjoy both equal protection and equal responsibilities under law, regardless of their religious beliefs,
BE IT THEREFORE RESOLVED that the National District Attorneys Association shall join with other child advocacy organizations to support legislation to repeal exemptions from prosecution for child abuse and neglect.

"This is not a religious issue. It's not a partisan issue. And it's not a First Amendment issue. It's a children's health and children's rights issue."--John Kiernan, Special Prosecutor in Christian Science child death case, Boston, 1990.

The following remarks are drawn from John Kiernan's statement to the NDAA/APRI 1991 summer conference in Tucson, Arizona.

Each year scores of children die unnecessarily as a result of being deprived of available medical care. There are perhaps hundreds more whose cases go unrecognized, but who nevertheless suffer death and disability as a result of their parents exclusive reliance on spiritual healing. The difficulty in identifying these cases and existence of laws which purport to exempt parents from prosecution for religiously inspired neglect or abuse have served to heighten the crisis. I refer not to those parents who decline to adopt medical procedures that are at the frontier of medical science, but rather to those who decline basic medical procedures whose successes are well documented and whose efficacy is beyond the pale of argument.

Since the early 1970s nearly all states have adopted some form of religious exemption law. Essentially, the laws purport to exempt parents and custodians from prosecution for neglect or abuse of children if they rely upon spiritual healing when nothing more is required to preserve the well being or to protect the life of the child. The laws were never intended to exempt parents from their obligations to protect their children, and they do not prevent courts from ordering medical care over the parents' religious objections. Unfortunately, an increasing number of defendants are attempting to shield themselves from prosecution where children have died or been seriously disabled as a result of being deprived of available medical care.

In large measure, these religious exemptions were promulgated as a result of federal regulations which required states to adopt such laws to become eligible for federal funding in the area of child protection programs. In 1973, 11 states had such laws. In 1983, 47 states had such laws. How-

ever, in 1983 the federal "Child Abuse and Neglect Prevention and Treatment and Adoption Reform Act" eliminated the federal regulatory scheme which mandated the state statutes, and returned to the states jurisdiction to regulate child abuse laws. Currently, 43 states have religious exemption laws, and six more have made provisions for non-medical care for children. However, prosecutors have become much more inclined to initiate prosecution against parents who deprive their youngsters of readily available medical care.

Since 1982, there have been 36 such prosecutions nationwide, 23 of which have resulted in convictions. Most of the prosecutions have squarely confronted the issue of religious exemptions and have involved parents whose children died as a result of refusal to provide medical care for their children because of religious beliefs. The child victims' maladies included pneumonia, meningitis, diabetes and appendix rupture. They ranged in age from a few days after birth to young teens, and suffered without medical attention for as short as two days to as long as seven months.

The change in society's attitude toward these unnecessary deaths was articulated by California's Court of Appeals in *Walker v. The Superior Court*, 253 Cal. Rptr. 1 (Cal. 1988). "The expression of legislative intent is clear: when a child's health is seriously jeopardized, the right of a parent to rely exclusively on prayer must yield." *Id.* at 13. The defendant was convicted of manslaughter in 1990.

Those of us in the medical-legal community recognize the need to accommodate the many and varied philosophical and religious views existent throughout the United States. Differing views on child rearing and religious principles have to a large measure been accommodated by federal and state constitutions. However, legal

Are there any sick among you? Let him call for the elders of the church and let them pray over him, anointing him with oil in the name of the Lord and the prayer of faith shall save the sick. --James 5:14-15.

...It is not a violation of a duty of care, protection, or support...when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body. --Ohio Stat. sec. 2919.22 (1989).

*The right to practice religion does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death
....Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves.--Prince v. Massachusetts, 321 U.S. 158, 166-67, 170 (1944).*

*Senate Judiciary Committee
February 4, 1992
Attachment 6*

scenarios, jurists, legislators, physicians and lay people are all in agreement that the right to be free from government interference in raising children is limited by the more fundamental right of the youngster to life. As a consequence, legislatures nationwide have begun to consider whether religious exemption laws should be repealed and a greater burden placed upon parents to report the instance of serious bodily injury or sickness when it involves a young child.

"The crisis in health care has been exacerbated by drastic under-reporting of child abuse and neglect cases. This has been the result of myriad factors, which include the exemption from the mandated reporting requirements of certain religious practitioners." ...the child abuse instances involved here are submerged from the public's view, Kiernan commented separately at the Tucson conference, *The prosecutors don't see them, the medical community doesn't see them and the social services don't see them because someone else has made the determination that this is not neglect. Many religious sects proselytize that if spiritual healing is not neglect, those situations that normally would have to be reported don't have to be reported. So when a child dies of pneumonia, meningitis or some other generally recognized disease, the medical community doesn't suddenly say, "There's something wrong here." There are no bullet holes, no knife wounds, no strangulation. Therefore, there's no triggering mechanism for them or us.*

Kiernan proposed a four-point program:

1. A lobbying effort focused on protecting the health and safety of children. "...the legitimacy of the goal, that of preserving the integrity of the life, health and safety of children, is such that no good will need be expended by taking a strong stand."

2. Education of the medical and legal communities, including training staffs of prosecutors, hospitals and social services agencies to be alert for indications of child abuse framed as a religious issue and to develop multidisciplinary teams to immediately check suspicious incidents. The public must also be educated to understand that efforts to assert the rights of children in no way restrict religious freedoms and are fully supported by a long tradition of constitutional cases analyzing First Amendment protections. "...the repeal of religious exemption laws will be a celebration of children's rights...rather than restricting parental rights, repeal will ensure that all parents, of whatever religious belief or affiliation, will have equal rights and equal obligations regarding the care of their children."

3. Review of the criteria prosecutors use in deciding when to prosecute. "If we recognize that part of the problem is the under-reporting of abuse and neglect cases, then it is incumbent upon prosecutors to establish a system which identifies these cases. In this fashion prosecutors can appropriately bring charges against abusive parents, thereby deterring future misconduct."

4. Adoption of policy statements calling for elimination of exemption laws posing a risk to the health and safety of children. Kiernan suggested that organizations rely with full confidence on the Supreme Court ruling in *Prince v. Massachusetts* (see quote).

John Kiernan, an assistant district attorney for 14 years and Chief of the Homicide Division for eight years, is now a partner in Gilberg, Kurent & Kiernan in Boston, MA.

Legal Landmines

Religious exemption provisions are often

buried in a state's juvenile code or in support and neglect statutes. Twenty states, however, provide an affirmative defense to *criminal* child abuse and neglect when a parent or caretaker depends on spiritual means to treat a child's illness -- Alabama, Alaska, Arkansas, California, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, New York, Ohio, Oklahoma, Oregon, Texas, Virginia, West Virginia. Only Oklahoma appears to make an exception in cases in which permanent physical damage to the child could result from lack of medical care. Okla. Stat. Ann. sec. 852 (1990).

These statutes are landmines for prosecutors who bring manslaughter charges against parents who rely on prayer alone to heal a dying child. Parents often successfully argue that neglect statutes authorizing the use of spiritual treatment are an absolute defense. See *State v. McKown*, 461 N.W.2d 720 (Minn. Ct. App. 1990).

Appellate courts have rejected this reasoning, finding that the defense is limited to neglect and does not extend to cases in which a child dies. For example, in *Lybarger v. People*, the Colorado Supreme Court ruled that a parent who limits a child's access to medical care in a life-threatening situation or when the condition would result in serious handicap or disability is not acting in good faith and therefore cannot benefit from Colorado's religious exemption. 807 P.2d 570 (1991) (reversed on other grounds).

California's Supreme Court also refused to accept the religious exemption to misdemeanor neglect as a defense to manslaughter, arguing that the legislature intended only to exempt parents from misdemeanor liability, not felony neglect or manslaughter. *Walker v. Superior Court*, 253 Cal. Rptr. 1 (1989). Of 23 convictions, eight have been upheld on appeal and one reversed.

One of the issues raised in *Lybarger* (being tried for the third time by Fort Collins DA Stuart Van Mevern) is the law's focus on well established versus less common spiritual beliefs. A typical statute reads: "...in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner." It reflects, say critics, the powerful position of Christian Scientists, who advocated for such exemptions, in contrast to small sects such as Lybarger's own "Jesus Through Jon and Judy" group.

Overcoming statutory religious defenses to neglect is extremely difficult. The answer, according to many professionals, is to repeal such provisions rather than try to amend the law. "Regardless of how courts rule," says expert Rita Swan, "they discourage reporting, they discourage coroners from referring deaths to prosecutors, they send mixed messages to parents and, according to one law review article, they lower society's respect for the judicial system."

So far, only South Dakota has repealed both its civil and criminal religious immunity laws.

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APRI

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James W. Clark
Executive Director
KS County & Dist. Attys. Assn
827 S. Topeka Avenue, 2nd Flo
Topeka, KS 66612

6-2/2

Dear Mr. Winter

I am writing in opposition to Senate bill No. 477.

Starting with page 1, line 30, This amendment may create a situation in which a parent could delay or possibly prevent an autopsy by claiming that it was being done solely because the child was being treated by spiritual means. The statute should remain as it is, allowing the coroner to order an autopsy whenever he feels that it is needed without restriction.

Page 1, line 36, sec. 2 What is magic about age 10. K.S.A. 22a231 already requires this notification in all cases in which death is not anticipated and is found dead, cause unknown regardless of age.

Page 2, line 1. Again, what is magic about the age. The head should be examined in all cases regardless of age unless an adequate cause of death is found in the chest or abdomen. Even so, most autopsies include examination of the head and brain.

Page 2, line 1. Not needed. As sudden infant death syndrome is largely a diagnosis of exclusion, this diagnosis could not be made without examination of the head. All pathologists are well aware of this and it does not need to be specified in the statute.

Page 2, Line 17. gives the Kansas department of health and environment unacceptable control over the coroner. Inquests are special events and should be controlled only by the coroner. Furthermore, the determination that a crime has been committed is best made by the coroner and the law enforcement agency investigating the death. The department of health and environment has neither the expertise or the proximity to the case to properly be involved in the decision.

There is also no reason to send all autopsy reports on children to the district attorney. As in all unexpected deaths, the coroner and the law enforcement agency which has jurisdiction investigates the death and if evidence of foul play is found, the entire file is sent to the district attorney who determines if there is sufficient evidence for prosecution. The district attorney has no reason to be involved in deaths which are not of suspicious origin regardless of the age of the decedent.

The entire bill seems to have been introduced by someone who feels that there are a number of child abuse deaths which are going undetected and that if the state mandates autopsies, these cases will be uncovered. In Wyandotte County, we have far more homicides per capita than anywhere else in the state. We have autopsied all children which would be covered by this bill for several years and I cannot remember a single time in which unsuspected child abuse was discovered at autopsy. The autopsy has in many cases confirmed suspected child abuse and provided evidence for prosecution of the offender, but in all cases, the investigation has uncovered facts

*Senate Judiciary Committee
February 4, 1992
Attachment 7*

which led us to suspect child abuse prior to the autopsy.

In summary, the autopsy is an investigative tool and the person with the most expertise regarding when and how it should be used is the coroner. KSA 22a233 (a) allows the coroner to have an autopsy performed anytime he believes it is should be made. This is all that is needed to adequately investigate any death regardless of the age of the decedent. The department of health and environment may collect statistical data, but has no place in any ongoing criminal investigation. The district attorney should be brought into the investigation of a suspicious death, but does not need to be involved until the investigation suggests that a crime may have been committed.

In December, the coroner's association met in Wichita along with a representative from the Kansas Medical Society, two legislators and a representative from the revisor's office. A bill is to be introduced soon to correct the deficiencies in the coroner's law that we consider important. If bill No. 477 is not killed outright, I hope that it will be tabled so that it can be considered along with our bill. I believe that it would be better to make the necessary changes to the coroner's statutes at one time and then leave them alone for a few years rather than having bills introduced by special interest groups at each session and continually having piecemeal changes made to the statutes.

Sincerely,



Alan C. Hancock M.D.
President, Kansas Coroner's Association