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HEALING OR HOMICIDE?: WHEN PARENTS REFUSE MEDICAL TREATMENT FOR THEIR CHILDREN ON RELIGIOUS GROUNDS

BY EMILY CATALANO*

I. INTRODUCTION

"You can't beat, sexually abuse or starve your kids, but the law allows a parent to refuse medical care in favor of magic. This is not just a social phenomenon, but a public-health issue."\(^1\)

-Dr. Seth Asser, pediatrician and author of "Child Fatalities from Religion-motivated Medical Neglect"\(^2\)

Many people, historically and in today's society, let religion guide their everyday lives. In certain cases, one's beliefs prohibit him from accessing medical care in favor of holistic medicine or spiritual healing. While adults reserve the right to refuse any and all medical treatment, this behavior crosses over into controversial territory when those adults also refuse medical treatment for their children. This decision, while often harmless, necessitates state involvement in cases of children suffering from more serious illnesses. Some would argue that these children, because of circumstances beyond their control, are not given the care they need – care that is sometimes the difference between life and death.

When parents refuse medical treatment for their children on religious grounds, numerous Constitutional issues are raised, such as freedom of religion, right to privacy, and fundamental liberty interests associated with parenting. Courts are often forced to pit the religious freedom and liberty interests of parents against the state and federal governments'

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interest in protecting the lives of children. This is a frustrating matter for all involved because ultimately, someone’s rights are infringed. Worse though, is when government intervention occurs too late, and a child’s life is, many would say, senselessly lost. Between 1975 and 1995, 172 children died because medical care was withheld from them on religious grounds. These are only documented cases; it is predicted that a large number of cases are never reported.

The media characterizes this situation in a way that portrays the parents involved as religious fanatics who blindly choose faith over their children. Their children are portrayed as “religious sacrifices” that should have been taken away by child protective services long before they fell ill. In reality, however, this is typically not the case. These parents love their children and do not wish to see them die or suffer. They also sincerely believe that they are acting in their children’s best interest by refusing them medical treatment. The doctors involved have similar interests – they too do not want the child to suffer or die and believe modern medicine is in the child’s best interest.

If a child is truly at risk, it is the doctor’s job to influence the child’s guardian that the medical treatments available will increase the child’s chance of survival. In some extreme cases, the courts are asked to intervene. This dilemma can be better understood by exploring the intellectual, emotional, and legal issues encountered by each party involved.

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II. INTERESTS OF THE STATE

"The child is a citizen of the State. While he 'belongs' to his parents he belongs also to his State. . . . When a religious doctrine espoused by the parents threatens to defeat or curtail such a right of their child, the State's duty to step in and preserve the child's right is immediately operative."5

-Judge Alexander, Court of Common Pleas of Ohio, In re Clark

Protecting the welfare of children is a fundamental concern of the state, and one for which the state may intervene if absolutely necessary.6 Despite this sincere interest, the United States gives parents ample freedom to raise their children how they see fit; for example, parents may regulate their child's dress, diet, and overall lifestyle.7 The United States has always been characterized by individual autonomy, particularly in the family realm. Perhaps this is why the United States is still one of the only nations not to ratify the United Nations Convention on the Rights of the Child8 because Americans do not like being told how to raise their children. In order to regulate how parents raise their children, the state must show a compelling interest, which is a high standard to meet.9

When the state does play a role in the way parents raise their children, it is to avoid abuse and neglect and to support children with sound minds and bodies.10 This involvement

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5 In re Clark, 90 Ohio Law Abs. 21, 185 N.E.2d 128, 132 (Ohio Com. Pl. 1962).
7 See generally Meyer v. Nebraska, 262 U.S. 390 (1923) (holding that a parent's decision of his child's educator is protected by the Fourteenth Amendment).
10 Id. at 828 ("Under [a reasonable Christian Scientist] standard, when the Christian Scientist appellants were put to a choice between fidelity to religious belief or serious injury and potential death to the child-judged by
encompasses the areas of discipline and education. The state’s interest in educating children, however, was challenged on freedom of religion grounds in Wisconsin v. Yoder.\textsuperscript{11} There, Amish parents appealed their convictions for violating Wisconsin’s compulsory school attendance law by declining to send their children to school past the eighth grade.\textsuperscript{12} While the state’s interest was an important one, the court conceded that the state’s interest in universal education was “not totally free from a balancing process when it impinged on other fundamental rights,” such as those protected by the free exercise clause.\textsuperscript{13} The court held that the state’s interest in education was not so compelling as to overrule the First Amendment rights of the parents.\textsuperscript{14}

The courts may choose freedom of religion over the state’s interest in a child’s education in some instances, but they take a markedly different stance on life-saving medical treatment. The Supreme Court addressed the conflict between religious freedom and the state’s interest in a child’s welfare in Prince v. Massachusetts, a case in which a woman was convicted of furnishing a minor with religious magazines knowing that the minor would unlawfully sell them on the street and work against the law.\textsuperscript{15} The Court held:

\begin{quote}
The right to practice religion freely does not include liberty to expose the community or child to communicable disease or the latter to ill health or death. . . . Parents may become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the full age of legal discretion when they can make that choice for themselves.\textsuperscript{16}
\end{quote}

\textsuperscript{11} Wisconsin v. Yoder, 406 U.S. 205 (1972).
\textsuperscript{12} \textit{Id.}
\textsuperscript{13} \textit{Id.} at 214.
\textsuperscript{14} \textit{Id.} at 215.
\textsuperscript{15} Prince v. Massachusetts, 321 U.S. 158, 160 (1944).
\textsuperscript{16} \textit{Id.} at 166-67, 170.
In *In re Clark*, an Ohio court addressed the tension between religious freedom and child welfare.\(^\text{17}\) Here, the interests of the state trumped that of Jehovah’s Witness parents who would not authorize a blood transfusion for their severely burned three-year-old son.\(^\text{18}\) The court stressed that the parents have an absolute right to believe that blood transfusions are forbidden by Holy Scripture and to act in accordance with that belief, but that “this right of theirs ends where somebody else’s right begins.”\(^\text{19}\)

In 2009, the interests of the state prevailed again in Minnesota, in the case of Daniel Hauser, a thirteen-year-old suffering from Hodgkin’s lymphoma.\(^\text{20}\) Daniel and his parents, practicing members of the Native American faith Nemenhah, refused to continue chemotherapy after five different medical doctors agreed that it was necessary to save the boy’s life.\(^\text{21}\) Ultimately, the constitutional rights of Daniel and his parents were bypassed in favor of the state’s compelling interest in his health. The court noted, “there can scarcely be imagined a governmental interest more compelling than protecting the life of a child.”\(^\text{22}\) While parents are free to provide their children with complimentary or alternative therapies, they are first required to provide their children with necessary medical care\(^\text{23}\) to maximize that child’s prospects for survival.

Nevertheless, state and federal governments have created many statutory religious exemptions and defenses to child abuse and neglect, allowing parents to withhold some medical care from children.\(^\text{24}\) States with a religious defense to serious crimes against children include Iowa and Ohio, which provide a religious defense to manslaughter; Delaware and

\(^{17}\) *In re* Clark, 90 Ohio Law Abs. 21, 185 N.E.2d 128 (Ohio Com.Pl. 1962).

\(^{18}\) *Id.*

\(^{19}\) *Id.* at 132.


\(^{21}\) *Id.* at *3.

\(^{22}\) *Id.* at *4.

\(^{23}\) *Id.*

West Virginia, which provide religious defenses to the murder of a child; and Oregon, which provides a religious defense to homicide by abuse, neglect, manslaughter, criminal mistreatment, and nonsupport.25 Similar exemptions can be found in all states except Hawaii, Massachusetts, Nebraska, and North Carolina.26

In 1996, the first religious exemption allowing parents to withhold medical care was placed into federal law.27 The Child Abuse Prevention and Treatment Act requires states in the federal grant program to include failure to provide medical care in their definition of child neglect, but also states: “Nothing in this Act shall be construed . . . as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian . . . .”28 These defenses make it clear that the state’s interest in saving a child’s life from illness is not always compelling enough to override the religious freedoms of parents, for it often exempts them from liability after a child is found neglected or dead.

III. INTERESTS OF THE PARENTS

"Every parent has a fundamental right to rear its child. . . . [G]reat deference must be accorded a parent’s choice as to the mode of medical treatment to be undertaken. . . ."29

-Judge Jasen, New York Court of Appeals, In re Hofbauer

While the state has a compelling interest in protecting children, “parents enjoy a well established legal right to make important decisions for their children."30 This right is not absolute, but the state typically has the burden of proving with clear and convincing evidence that intervention into a parent-child relationship is required to ensure the child’s health or the

25 Swan, supra note 3.
26 Reaves, supra note 24.
27 Swan, supra note 3.
29 In re Hofbauer, 393 N.E.2d 1009, 1013 (1979).
protection of the public.\textsuperscript{31} Again, this is a very heavy burden to meet.

At the beginning of the twentieth century, many faith groups advocated prayer instead of medicine, but today the membership of those groups continues to drop.\textsuperscript{32} Nonetheless, many groups today still espouse these beliefs, including Christian Scientists, the largest of all faith healing groups in the United States, with over 100,000 members.\textsuperscript{33} Numerous other religious groups hold similar beliefs, including Jehovah's Witnesses, who believe the Bible prohibits ingesting blood, including blood transfusions, even in cases of medical emergency.\textsuperscript{34}

Daniel Hauser's parents practiced Nemenhah, a Native American tradition that promotes only natural methods for healing and declares some members, including Daniel, "medicine m[en]" who do not need treatment.\textsuperscript{35} Additionally, the Unleavened Bread Ministries, an online faith outreach group, shuns all medical intervention,\textsuperscript{36} and Faith Tabernacle, a Christian denomination, reads the Bible narrowly to prohibit the use of medicine completely.\textsuperscript{37} Other smaller religious groups that refuse medical intervention for children include Faith Assembly, Followers of Christ, End Time Ministries, and Church of God Chapel, among many others.\textsuperscript{38} Members of some of these faith-healing churches isolate themselves in communities and minimize contact with law enforcement and

\textsuperscript{31} Id.
\textsuperscript{33} Swan, \textit{supra} note 3.
\textsuperscript{34} Children's Healthcare is a Legal Duty, Inc., Frequently Asked Questions, http://www.childrenshealthcare.org/.
\textsuperscript{35} \textit{In re} the Child of Colleen Hauser & Anthony Hauser, No. JV-09-068 (JRR) 2009 WL 1421504, at *3 (D. Minn. May 14, 2009).
\textsuperscript{38} Children's Healthcare is a Duty, Inc., \textit{supra} note 34.
other tenants of modern society. Fatalities have occurred in twenty-three religious denominations across thirty-four states.

Believers in faith-healing have set forth multiple Constitutional arguments in favor of refusing medical treatment for their children. First is their First Amendment right to religion, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." The First Amendment allows citizens to freely practice their religion how they choose without experiencing any undue governmental intervention. Daniel Hauser's mother argued that God intends for the body to be healed in a natural way, even though medical experts concluded that her son would have only a five percent chance at survival without conventional medical treatment. The core tenet of her long-held beliefs was "do no harm," which led her to view chemotherapy and radiation as poison. These beliefs, regardless of their truth, are protected by the First Amendment.

Parents also raise Fourteenth Amendment due process claims, asserting liberty and privacy interests in the raising of their children. The fundamental right to raise their children, they argue, includes determining what medical care their children should receive. Accordingly, the Supreme Court ruled that parents should be free from excessive interference in the upbringing of their child in Meyer v. Nebraska. Being forced to raise children a certain way takes away a parent's ability to impose their values and belief system upon their children and impedes their autonomy as people in a free state.

Some parents argue that they are not neglecting their child by withholding medicine, but merely exploring medical alternatives. In In re Hofbauer, a parent declined to follow a

39 PETERS, supra note 4, at 13.
40 Id. at 11.
41 U.S. CONST. amend. I.
42 See id.
44 Id. at *11.
45 262 U.S. 390, 400 (1923).
physician's recommendation for chemotherapy and radiation to treat her son's Hodgkin's disease and instead opted for metabolic therapy.\textsuperscript{46} The alternative treatment was accepted by the court, and conventional medical intervention was not forced on the child.\textsuperscript{47} The court ruled that a parent provides adequate medical care "once having sought accredited medical assistance and having been made aware of the seriousness of their child's problem and the possibility of a cure if a certain mode of treatment is undertaken."\textsuperscript{48} Also, the chosen treatment must be recommended by their physician and must not have been "totally rejected by all responsible medical authority."\textsuperscript{49}

These parents have a strong interest in raising their children with specific religious beliefs and without government interference. If the state can interfere with a parent's right to choose a mode of medical treatment, their influence may expand into many other, more personal aspects of our lives.

\textbf{IV. INTERESTS OF MEDICAL PROFESSIONALS}

"The professionals involved are to be commended for seeking compromise, and in ultimately doing their best to honor both of their obligations: to protect human life and to respect persons with differing beliefs."\textsuperscript{50}

-Dr. Robert Orr, director of clinical ethics at the Center for Bioethics and Human Dignity, Bannockburn, Illinois

The first party to intervene when a parent may be detrimentally denying medical care to their child is not the courts, but a medical professional. Medical professionals encounter children who have suffered substantial harm, even to the point of death, from untreated conditions including

\textsuperscript{46} In re Hofbauer, 393 N.E.2d at 1011.
\textsuperscript{47} See id. at 1014.
\textsuperscript{48} Id. at 1014.
\textsuperscript{49} Id.
meningitis, hemophilia, bowel obstruction, diabetes, pneumonia, and cancer.\textsuperscript{51} Because cure rates for many childhood illnesses are more than fifty percent with standard medical care, withholding treatment from a child can be personally and professionally difficult.\textsuperscript{52} Doctors not only must balance and appease the viewpoints of all parties involved, but they must struggle with many biomedical ethical concerns of their own.

Medical professionals must consider many ethical issues in responding to a parent’s refusal for standard medical care on behalf of their child. This includes respect for autonomy, which in these instances, is exercised through a surrogate (the parents).\textsuperscript{53} Doctors also struggle with autonomy in relation to benefiting the patient (beneficence) and doing no harm to the patient (nonmaleficence).\textsuperscript{54} Often, a patient’s ability to make his or her own decisions conflicts with what decisions will be in his or her best interest medically. The physician’s obligation to distribute proportionately benefits and burdens (or justice) is also a problem in weighing a parent’s request for no medical intervention.\textsuperscript{55}

Doctors may consider overriding the wishes of parents when the success rate for conventional medical treatment is very high. Consequently, when the success rate of a treatment plan is very low, doctors, as well as courts, may give in to the wishes of the parents and forego the treatment.\textsuperscript{56} In \textit{Newmark v. Williams}, the court grappled with the proposed treatment of a three-year-old suffering from Burkitt’s Lymphoma when his Christian Scientist parents wanted to refuse medical intervention.\textsuperscript{57} The parents argued that removing the child from their home violated their First Amendment right to

\textsuperscript{53} Id at 5455.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{57} Id. at 1109.
freedom of religion and that Delaware abuse and neglect statutes exempted those who treat their children's illnesses "solely by spiritual means." The court ruled in favor of the parents because the Division of Child Protective Services' custody petition sought to administer, against the parents' wishes, an "extremely risky, toxic, and dangerously life threatening medical treatment offering less than a 40% chance for 'success.'"

Doctors also understand that life-saving treatments are not only physically hard on the patient, but also emotionally difficult for the patient's family. Uncomfortable side effects, remissions, and relapses are emotional and physical hardships that could understandably sour a family on the medical treatment into which they put so much hope. Daniel Hauser's mother surprisingly consented to her son's chemotherapy initially, but after one round, accompanied by terrible side effects, she refused more treatment for him and expressed her wish to use prayer to heal him instead. To make the court's final decision more of a compromise, Daniel's parents were allowed to choose the oncologist to oversee the mandated treatment.

Professionals must take care in explaining the prognosis and treatment regimen to these parents, while making sure not to polarize them for their religious beliefs. From a medical prospective, the child's best interests are served by implementing conventional treatment, but from a religious perspective, the best interests of the family are served by honoring parental beliefs and delaying medical treatment as long as possible. Doctors seek to find understanding and compromise in these interests, while still making clear to the parent their objective interest in the child's healthcare needs.

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58 Id. at 1109-10.
59 Id. at 1110.
60 Hord, supra note 52, at 5455.
62 Id. at *16.
63 See American Academy of Pediatrics, supra note 51.
64 See Orr, supra note 50.
65 Id.
In cases where the success rate with conventional medical treatment is high, but a parent still will not compromise their religious beliefs, doctors may have to make a referral to a child protection agency in hopes of persuading the parents to allow the conventional treatment. The trouble for doctors is defining where the threshold of a treatment's likely success lies, at which point doctors should seek judicial authorization to treat the child despite the parent's wishes. Professionals are trained thoroughly in assessing these competing interests in order to avoid conflict and keep the focus on the child.

V. HOW THE COURTS WEIGH COMPETING INTERESTS

"The free exercise clause of the First Amendment protects religious belief, . . . but not necessarily conduct."  

Judge Vincent Howard, Marathon County Circuit Court, presiding over the case of Madeline Kara Neumann, who died from undiagnosed and untreated juvenile diabetes

The informed consent doctrine underlines parental decision-making for children and operates on the idea that medical decisions should be made by someone with the appropriate decisional and legal capacity. Many minors are incapable of giving informed consent for their own treatment, and thus parental discretion is accepted on their behalf. However, pediatricians have long recognized that some adolescents have adequate decision-making capacity and should have some right to make autonomous medical decisions. Recently, the courts have begun to recognize the mature-minor doctrine, which expands the rights of minors

66 Id.
68 See Thomas Jacobs, 2 CHILDREN & THE LAW: RIGHTS & OBLIGATIONS § 10:6 (2010),
69 See id.
(usually age twelve or older) by allowing them to prove that they are mature enough to make their own medical decisions.\textsuperscript{70}

In most cases, however, courts are not dealing with mature minors who have the capacity to make health decisions. Generally, parents are allowed to refuse everyday medical treatment for their children, including routine checkups, as part of their fundamental right to raise their children as they see fit.\textsuperscript{71} A line is crossed, however, when a child’s health is put in jeopardy. In these cases, despite protections conferred by the Constitution, the faith-healing practices of parents can be regulated by the courts.\textsuperscript{72}

In instances like these, the courts will weigh the interests of each party on a case-by-case basis. Factors the courts take into consideration when deciding whether to override parental wishes in favor of conventional medical treatment include: the child’s specific ailment and prognosis; therapeutic risks and complications; the parents’ beliefs and the genuineness of those beliefs; and whether the alternative therapy is under the direction of a licensed physician.\textsuperscript{73}

While courts hesitate to take a child away from their parents because of treatment refusal, social services has the right to enter homes and petition courts for the removal of children.\textsuperscript{74} Unfortunately, cases where medical care is withheld from a child often escape attention until it is too late, and parents are not immune from liability if their actions result in their child’s death.\textsuperscript{75} Some might argue that prosecuting already grieving parents is wrong, but in some cases, such inadequate care is given by parents that a court

\textsuperscript{70} Id.

\textsuperscript{71} See Meyer v. Nebraska, 262 U.S. 390 (1923) (holding the freedom to “bring up” one’s child is a fundamental right).

\textsuperscript{72} PETERS, supra note 4, at 25.


\textsuperscript{74} Johnson, supra note 67.

\textsuperscript{75} See Walker v. Superior Ct. of Sacramento County, 763 P.2d 852 (Cal. 1989).
must view the behavior as abuse and neglect, reckless endangerment, or even negligent homicide.

Many cases involve ailing children left at home, suffering and without care until their death; others are placed into the care of doctors so late that they have little to no chance at living. In these sad situations, a district attorney will often take action against a parent if they are not completely barred by a religious exemption statute. Even if such an exemption exists, if the state can prove that a parent could have known that death was probable without medical intervention, a parent may be held liable.

In 2009, the parents of Madeline Neumann were convicted of second-degree reckless homicide and sentenced to six months in jail and ten years probation by a Wisconsin court for praying instead of seeking medical care for their daughter. The couple could have received up to twenty-five years in prison. Madeline suffered from an undiagnosed, but treatable form of diabetes and grew so weak that she could not walk or speak. When she was finally rushed to an emergency room because of a 911 call by a relative, she was pronounced dead on arrival. As part of their probation, the Neumanns are required to bring their living children to the doctor every few months and for any serious injuries. Wisconsin law exempts parents who treat a child with no more than prayer from being criminally charged with neglecting child welfare laws, but only “as long as a condition is not life threatening.” The girl’s mother stated at her sentencing, “I do not regret trusting truly

76 See Johnson, supra note 67.
78 Id.
79 Id.
81 Parents Given Jail Terms for Relying on Prayers to Save Dying Daughter, supra note 76.
82 Johnson, supra note 67.
in the Lord for my daughter's health. . . . Did we know she had a fatal illness? No. Did we act to the best of our knowledge? Yes.”83 The judge presiding over the trial called the Neumanns "very good people, raising their family who made a bad decision, a reckless decision."84

Courts generally decline to prosecute the churches who preach refusal of medical treatment to culpable parents.85 In fact, these churches often have substantial funds to lobby for religious exemption statutes. The Christian Science Church, specifically, spends a great deal of time and money to maintain legislative support for their practices, thus upholding the status quo of religious exemption laws and avoidance of liability in cases of child death.86

For example, the Minnesota Court of Appeals held in Lundman v. McKown that the Christian Science Church did not owe a duty of care to a child who died of juvenile diabetes under Christian Science care.87 The Court also held that an award of punitive damages against the church violated the church's constitutional right to "espouse religious faith and doctrine."88 The Court held punitive damages, a remedy at law available to punish those who show a deliberate disregard for human life, were not appropriate because it was clear that the Church acted in good faith.89

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83 Parents Given Jail Terms for Relying on Prayers to Save Dying Daughter, supra note 76.
84 Id.
85 See Swan, supra note 3.
86 Id.
87 Lundman v. McKown, 530 N.W.2d 807, 824 (Minn. Ct. App. 1995).
88 Id. at 812.
89 Id. at 817.
VI. CONCLUSION

"What often confounds the courts is that these parents are so transparently sincere and that state manslaughter and child-neglect statutes, with their myriad religious exemptions, do not always reflect the widespread view that the rights of the child are paramount."\(^9\)

-S Shawn Francis Peters, author of *When Prayer Fails: Faith Healing, Children, and the Law*

Even though religious parents are expected to seek modern medicine if their child is seriously ill, thirty states adopted criminal statutes that provide some protection for parents practicing faith-healing.\(^9\) Not only are many parents protected from criminal prosecution, but different state statutes have resulted in legal inconsistency and patchwork policy throughout the country.

The American Academy of Pediatrics (AAP) is seeking to change the law in order to remedy these problems.\(^9\) First and foremost, the AAP supports the elimination of state and federal exemption clauses to send the message to parents that they need to "seek appropriate medical care for their children."\(^9\) They also believe that parents who withhold medical treatment from their children should not be exempt from criminal or civil liability where appropriate.\(^9\)

In the short term, a middle ground between religious parents and legal authorities is necessary to ensure that the senseless deaths of children are avoided. Doctors and social services should show sensitivity to and flexibility toward different religious beliefs and practices that may conflict with modern medicine. At the same time, child advocacy organizations, religious institutions, state officials, and medical professionals should educate these parents, and each other,

\(^9\) Id. at 279.
\(^9\) Id. at 280.
about the legal obligations to obtain necessary medical care for children. Parents should also be taught to distinguish life-threatening from non-life threatening illnesses afflicting children. Compassion and clarification are positive first steps in avoiding the deaths of children while more long-term, formal changes to the law are made.