

RELIGIOUS EXCEPTION DEFENSE

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Introduction

An exclusive reliance on faith to treat a minor or self-limited condition may be benign. However, for serious disorders or injury the result is often preventable disability or death.

A few religious denominations practice faith healing to the exclusion of medical care. In some jurisdictions politics, law, and other factors may be enabling this dangerous behavior. In most places it remains possible to prosecute when children are harmed or killed. This is an essential method of placing these groups on notice that parents must provide their children with the necessities of life regardless of their religious beliefs.

By looking at the history of the sects involved along with illustrative cases, investigators, medical examiners, and prosecutors can gain an understanding of both the need to bring criminal charges and the strategies required. This article describes cases from the United States. While laws may vary among jurisdictions, cases similar to these are found worldwide. The focus of authorities should be to understand the issues involved within the context of local laws in order to best protect children.

Background

In its infancy in the nineteenth century, the science-based medical model of healthcare found competition from a range of modalities such as homeopathy, folk practices, and so-called mind cures. Mind cures partially inspired the development of some faith-healing sects. These sects also drew upon cultural inclinations to seek healing by divine intervention, vitalism, and notions that illness could be caused by sin. If illness

was due to sin, then acceptance of salvation through faith could remove disease and restore health.

Modern medical and public health advances improved health and dramatically increased life expectancy in the twentieth century. Nevertheless, we begin the twenty-first century with much public interest in traditional practices. Some of these, such as homeopathy, have been scientifically disproved. Others, such as herbal potions, have yet to yield results that are commensurate with their claimed benefits. None has had such a profoundly damaging effect on children's health as an exclusive reliance on faith healing for serious disorders.

Faith-Healing Sects

Groups that use prayer or religious ritual as their only response to illness fall predominantly into two types. Several Pentecostal churches, sometimes called "full gospel" or "word" churches, interpret passages in the New Testament to command them to seek healing through faith. Some claim medicine to be demonic and physicians to be agents of Satan. Others insist that accepting healing through divine intervention is a required demonstration of faith. These sects tend to be small and without a centralized hierarchy, although a few have been responsible for dozens and possibly hundreds of deaths. Examples of denominations with exclusive reliance on faith healing are given in **Table 1**.

The other type is Christian Science, whose members follow the principles of founder Mary Baker Eddy. In the late nineteenth century, Eddy claimed to have discovered a method of healing that was revealed exclusively to her. Unlike other faith healers who accept that disease is real, Eddy's followers maintain that symptoms, and all physical matter, are an illusion. Illness is caused by sin or improper thoughts, and these thoughts can be corrected through the method of prayer exclusively taught in Eddy's church. Diseases of infants and toddlers are attributed to sins or thought errors of the parents, who must pray to

Table 1 Groups that refuse medical care for children

Christ Assembly
Christ Miracle Healing Center
Church of God Chapel
Church of God of the Union Assembly
Church of the Firstborn
Faith Tabernacle
Faith Temple Doctoral Church of Christ in God
First Church of Christ, Scientist (Christian Science)
Followers of Christ
Jesus through Jon and Judy
Northeast Kingdom Community Church
The "No Name" Fellowship
The Believer's Fellowship
The Body
The End Time Ministries
The Faith Assembly
The Source

correct these. Older children are often told that their complaints are not real or scolded for their inability to correct their thinking and improve their health.

In addition to calling their religious practices "scientific," they have co-opted medical terms and claim a system of healthcare based on their faith. Church-trained "practitioners" charge fees for prayers that they refer to as "treatments;" these prayers are typically offered in response to telephone calls.

Christian Science "nurses" offer custodial care. These unlicensed individuals self-certify their credentials. They must state that they accept the tenets of the church as the only requirement for being listed in official church publications. They have no medical training or even first-aid training. Furthermore, their theology prohibits any reliance on material means to heal, prevent, or monitor disease or relieve discomfort. The nurses do not take a pulse or blood-pressure reading or use a fever thermometer. They will not carry out even simple nonmedical measures to relieve pain, such as applying heat or ice to injured areas of the body or giving massage.

In a wrongful-death lawsuit in the case of a boy with untreated diabetes, one Christian Science nurse testified that cutting sandwiches into interesting shapes was all she had been taught specific to the care of children.

The church also runs unregulated "sanatoria" for the ill, staffed by its nurses. While many denominations operate hospitals and clinics, all others do so with qualified and licensed providers.

Once a thriving religion, membership in the Christian Science church has declined markedly in the past 60 years. Despite waning membership, this church has been successful in advancing its political agenda. In the early 1900s, when licensing and regulation were established for physicians, the church succeeded in gaining exemption from such oversight in the USA.

Fees for the church's practitioners are considered a tax-deductible medical expense.

The US government pays Christian Science sanatoria millions of dollars annually for what is, by statute, called "religious non-medical health care." The church has also obtained reimbursement for its practitioners and nurses from many private health insurers.

Exemptions to Child Abuse Charges

In 1974 the US Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) to help states enhance or create child protection systems. In response to requests from Christian Science lobbyists, government regulators required that states receiving CAPTA funds have exemptions to child abuse or neglect laws for parents relying on spiritual healing. These requests were successful, in part because of the previous accommodations for the church's practices in medical licensing statutes. The result has been a wide variety of such exemptions in civil codes concerning child welfare as well as criminal child abuse laws.

In response to many preventable deaths and the concerns of child advocates, the federal government dropped the requirement for exemption laws in 1983, but still allowed states to keep those already passed. By then, nearly all states had such exemption laws and most still have them today. In the 1996 reauthorization of CAPTA, Congress codified states' option to enact exemptions, despite hundreds of reported child deaths in faith-healing sects. Congress did require that states maintain mechanisms to seek court-ordered treatment for children, but many do not come to the attention of authorities in time. Most professionals are familiar with cases of Jehovah's Witnesses who refuse blood transfusions and with court orders for medical treatment of their children. However, unlike the Witnesses, who do avail themselves of medical care, children of members of faith healing sects are generally out of contact with medical providers or child welfare authorities.

Death Statistics

A study of autopsy records by a medical examiner in the state of Washington found that Christian Scientists died earlier, sometimes from treatable disorders, than others in the community. William Simpson studied death rates of graduates of a Christian Science college. They were compared with those from a secular institution and from a Seventh Day Adventist college. The latter group has similar lifestyle prohibitions against caffeine, tobacco, and

alcohol as Christian Scientists. Death rates were significantly higher among Christian Scientists. Most notably, rates were up to fourfold higher in cohorts 30 or more years following graduation.

At the other end of the age spectrum are children. A study of perinatal events among the Faith Assembly showed a threefold increase in infant mortality and an 80-fold increase in maternal mortality compared with surrounding populations. Older children have also been affected.

In an investigation of the deaths of 172 children from 21 faith-healing sects during the two decades following the passage of CAPTA, 140 had conditions with expected survival rates exceeding 90% with medical care. All but three children would have clearly benefited in some way from such care.

Many of the deaths occurred after prolonged illnesses, sometimes lasting months, from disorders such as diabetes or leukemia. Others occurred after shorter but no less agonizing periods with conditions such as appendicitis, pneumonia, or dehydration. It can be recognized how readily salvageable these children were by their diagnoses. Examples of the diagnoses from this series are given in [Table 2](#).

Massachusetts Citizens for Children has studied testimonial claims of healings through Christian Science and found no credible scientific evidence of efficacy. They estimated that death rates from diabetes were 70-fold higher while death rates from meningitis

were over 100-fold higher among Christian Science children than in the general population.

In 1998, an Oregon newspaper reported on deaths of children from the Followers of Christ Church in Oregon City. Reporters documented over 70 headstones of children in the private church cemetery in just over 40 years. Several mothers also died during childbirth. Many cases had evidence or documentation that the fatalities were from readily treatable or preventable disorders. Church Elders were interviewed and responded that they put their children in God's hands, not doctors' hands. Based upon the size of the congregation, a comparison of crude death rates to those in Oregon overall shows a risk of death that was three- to fivefold higher for neonates, infants, and children in this group. Similar to the data from the Faith Assembly from the 1970s, maternal death rates were more than 100 times higher in this sect.

Not only are the numbers of children dying of otherwise treatable conditions intolerable, but the pain and suffering that the children endure in the process are also abhorrent.

Illustrative Cases

Case histories illustrate the suffering involved and also suggest strategies for investigators and prosecutors. While exemption statutes in some jurisdictions may prevent charges for minor offenses, in most states charges for serious crimes such as felony neglect, manslaughter, child endangerment, or murder are appropriate and sustainable.

An eight-month-old girl with several days of fever became increasingly unresponsive. During her final 24 h her parents phoned a Christian Science practitioner 20 times. She succumbed to bacterial meningitis. A two-year-old female suffered partial airway obstruction from aspirating a bite of banana. Her parents frantically called for members of their prayer circle who arrived to pray. She gasped and attempted to breathe for an hour before she died.

A physician left his residency to join a church so opposed to modern medicine that they would not allow members to wear eyeglasses or use canes. His five-month-old son had several respiratory arrests on the last day of a five-day febrile illness that was later determined to be meningitis. The father performed mouth-to-mouth rescue breathing, claiming the action was to rebuke the spirit of death, but he did not summon an ambulance nor take the child to a hospital.

Many parents and others attending these deaths have represented to authorities that they were not aware of the gravity of the child's condition. However, the record generally belies this claim. Examination of

Table 2 Cause of death in medical neglect cases from 21 faith-healing sects

Appendicitis (7)
Birth trauma (5)
Dehydration (6)
Diabetes (12)
Diphtheria (3)
Epilepsy
Ewing's sarcoma
Foreign-body aspiration
Hemorrhagic disease of newborn
Intussusception (3)
Leukemia, acute lymphocytic (3)
Measles (7)
Meningitis (14)
Neonatal asphyxia (22)
Neonatal respiratory failure (3)
Osteogenic sarcoma (3)
Pericarditis
Pertussis
Pneumonia (22)
Renal failure (3)
Small-bowel obstruction
Ventricular septal defect, small (2)
Volvulus (2)
Wilms tumor

Data from Asser SM, Swan R (1998) Child fatalities from religion motivated medical neglect. *Pediatrics* 101: 625-629.

phone records may reveal the timing and frequency of attempts to seek prayer or religious ritual for the child. The presence of fellow church members or sect leaders in the home is another indication that they recognized the seriousness of the illness. Friends, neighbors, and relatives are often aware of the practices of sect members, and also aware of the duration or severity of symptoms. Proper investigation into the timeline of events can establish the degree of parental concern as well as intent to avoid timely medical attention.

A 12-year-old girl from Arizona was kept home from school because of “a problem with her leg.” Her school arranged for a teacher to visit her at home. The teacher went to visit a number of times over a 3-month-period, but was always denied entrance. Finally, when the girl’s mother told the teacher at the door that they placed God before their own lives, the school alerted child protection services. A court-ordered medical evaluation was too late. The osteogenic sarcoma on her leg had grown to a circumference of over 105 cm. She was in heart failure from severe anemia and her buttocks and genitals were covered with bedsores.

Despite her complaints to hospital nurses about the agony she endured and the recommendation of her physician to amputate her leg to alleviate pain, child services officials came to an agreement with the parents that allowed her transfer to a Christian Science residential facility. There, receiving no medication, she was told by her attendants to suppress her cries so as not to disturb the other residents. She died shortly thereafter.

Mandated reporters of child abuse have often cited religious exemption statutes or parental prerogative as rationale for inaction. While most courts would order life-saving treatment over parental objections if notified in time, laws that fail to define all medical neglect as child abuse in effect discourage reporting of such cases and thus need to be changed.

After a 36-h labor attended by unlicensed midwives, a father became so disturbed by his wife’s persistent screaming that he summoned an ambulance. At the hospital, the mother delivered a macerated, decomposing stillborn infant and died shortly thereafter from sepsis. The medical examiner noted that the infant was so foul-smelling that it would have been inconceivable for those in attendance not to be concerned.

Dozens of other infants have died near or at birth. Almost all were term, well-developed infants who died for no reason other than lack of trained assistance. Typically, local authorities performed little or no investigation of these tragedies as infants who had not yet taken a breath were called “stillborn” and

thus not legally persons. However the unlicensed midwives may still be liable for the death.

Other church agents may also be liable. In the case of a 13-year-old girl with diabetes, the church pastor who anointed her with oil and was at her bedside as she lay dying pled guilty to manslaughter (*State v. Davis* (1994) Cause #13038, Monroe Cty. Circ. Ct., Miss.). While clergy have a First Amendment right to express their religious beliefs, their conduct may be actionable if they know the child is seriously ill and contribute to the child’s demise. In some states they can be charged as accessories to a crime or participants in a conspiracy.

Civil liability may also accrue. The father of an 11-year-old Minnesota boy called the boy’s mother, the custodial parent and a practicing Christian Scientist, and asked to speak to his son. The mother told him that the boy was sleeping. In fact, the child was in a diabetic coma and died shortly thereafter. Criminal charges were filed, but the court dismissed them because of fair notice problems created by a religious exemption law (*State v. McKown* (Minn. 1991) 475 NW 2d 63, *cert. denied*, 328 US 833 (1992)).

However, the father filed a wrongful-death action in civil court, naming the mother, stepfather, Christian Science practitioner, nurse, and the Christian Science church as defendants, and won a multimillion-dollar jury award. While the church itself was dismissed from the case on appeal, the cause of action against the practitioner, nurse, mother, and stepfather was upheld (*Lundman v. McKown* (Minn. 1995) 503 NW 2d 807; *cert. denied* US (1996)).

Investigation and Prosecution

The first obstacle to be overcome is the reluctance to blame otherwise law-abiding and well-meaning parents for an unfortunate outcome. The lack of intent to cause harm is not a requirement for prosecution. Most physically abusive parents do not intend the level of injury that results from their assaults. Medical neglect can lead to results as devastating to children as other forms of abuse. Authorities must treat medical neglect with all due gravity.

Most parents who have been convicted of medical neglect because of their reliance on faith healing have not been incarcerated unless they simultaneously physically abused their children or if there was a prior conviction. However, conditions of probation have generally included a requirement to get medical care for other children in the family.

The purposes of prosecutions, in addition to punishment for law-breaking, are to prevent future neglect and to put the community on notice that medical neglect of children is not acceptable. A number of

families and sects have lost multiple children. Without legal consequences, the deaths will continue. In England and Canada, where there are no religious exemptions from child abuse laws, Christian Science church officials counsel their members to take ill children to doctors.

Elements of Successful Prosecution

1. Look for the generally present evidence that caregivers knew that something was amiss with the child and had sufficient opportunity to act. This will often contradict statements by caregivers denying the gravity of the illness. Even the most ardent Christian Scientists, known for their detachment from the reality of pain and suffering, frequently begin to panic when faced with a seriously ill child. Examination of phone records and interviews with neighbors, relatives, and even other members of the sect will provide appropriate evidence.
2. Compare the victim's care with the standard in the community at large. Investigate all of the parents' practices on healthcare for their children rather than just the incident that caused the child's death or disability. The parents may have withheld all preventive and diagnostic measures from their children. They may not have health insurance for their children even though they are able to afford it. Jurors are usually unsympathetic to parents who systematically ignore the medical needs of children while they themselves have often gone to great lengths to get treatment for their own children.
3. In jurisdictions that have some exemption laws, charge using statutes that do not have exemptions. If child abuse laws have exemptions, then charge under manslaughter or criminally negligent homicide. While some convictions have been overturned because of fair notice problems created by religious exemptions, many have been upheld on appeal despite religious defenses in one section of the criminal code (*People v. Rippberger* (1991) 231 Cal. App. 3d 1667; *Hall v. State* (Ind. 1986) 493 NE 2d 433).
4. Provide copies of literature from medical journals and be prepared to explain why these are to be relied upon and why church testimonials are not. Defenses in these cases often attempt to claim that the parents or others relied on the healing record of prayer in previous cases. Proponents of faith healing will often claim a record of efficacy equivalent or superior to that of modern medicine. They may attempt to deflect blame from themselves by statements such as: "Doctors aren't perfect, either. After all, children die in hospitals, too."
5. Any physician or medical examiner should be qualified to explain to a jury why anecdotes and testimonials of healing, in most cases in individuals with self-limited disorders or who have not been medically diagnosed, are not evidence of efficacy. The children who have died have not had esoteric or intractable problems, but rather common disorders that would be easily treatable in any community medical facility. This should be explained clearly as well.
5. Be prepared to explain why Christian Science prayer is not "treatment" and why their "nurses" are not what the public would generally recognize as nurses. Most jurors would be appalled at the suggestion that someone without the training to take a temperature or a blood-pressure reading would be sufficiently qualified to care for a seriously ill child.
6. Look for evidence that some forms of medical care had been used by the family or group on other occasions. Jurors will be perplexed by a defense that asserts that obstetric care (allowed by Christian Scientists) is good enough for a parent but somehow other medical care is not appropriate for a child. The father of one infant who died from pneumonia had previously had a vasectomy. After joining a church that encouraged him to procreate for the perpetuation of the group, he had his vasectomy surgically reversed. The irony of such an incident would not be lost on a court.
7. In the case of a stillborn infant in which an unlicensed church midwife attended the delivery, although a coroner or medical examiner may not be able to declare the case a homicide, an investigation should still be completed and the case referred to the local prosecutor for consideration of charges. While the law does not require assistance at delivery, when it is provided it must be competent, otherwise negligence will attach.
8. Strongly consider charges against all whose actions added to delays or prevented access to care in cases of treatable illness. While clergy may have some constitutional protections for their religious speech, their behavior is still subject to the law. Many sects do not have formal hierarchies, but investigations often uncover leadership roles and specific actions by group members that contributed to deaths. In one case an emergency crew was turned away by a church member who stated that a miracle had occurred despite an infant's ongoing distress. Others may have been criminally negligent because of failure to act in an apparent emergency.
9. Two organizations that may be helpful in obtaining relevant literature and case materials are Children's

Healthcare Is a Legal Duty (CHILD) Inc. (www.childrenshealthcare.org), of Sioux City, Iowa and The American Prosecutors' Research Institute of Alexandria (www.ndaa-apri.org), Virginia. Both have records from previous prosecutions and contacts with experts that may be of assistance.

Conclusion

It would be a mistake to consider the investigation and prosecution of child deaths from religion-motivated medical neglect as serving an antireligion purpose. There is no other form of child maltreatment that has religious exceptions in the law. One cannot molest, beat, or starve a child and claim a religious imperative, despite some attempts to do so.

In fact, virtually all theologians and clergy would consider the denial of medical care to a sick child to be incongruous with respect for the divine. The Talmudic scholar and physician Maimonides wrote:

If someone suffers from hunger and turns to bread and, by consuming it, heals himself from his great suffering, shall we say that he has abandoned trust in God? Just as I thank God when I eat for His having provided something to satisfy my hunger . . . thus I should thank Him for having provided that which heals my sickness when I use it.

Likewise, the exercise of religious freedom is not to be confused with license to disregard the welfare of others. The US Supreme Court has best expressed the responsibility of a parent for the welfare of a child and the interest of the state to intervene when that responsibility is unmet. In *Prince v. Massachusetts* ((1944) 321 US 158) the court ruled: "The right to practice religion freely does not include the liberty to expose the . . . child to . . . ill health or death. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children."

See Also

Autopsy: Pediatric; **Children:** Legal Protection and Rights of Children; **Crime-scene Investigation and Examination:** Death-scene Investigation, United States of America; Suspicious Deaths; **Neonaticide**

Further Reading

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