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HEALTH LAW
Choosing Alternative Treatments for Children
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Adults have the right to reject any type of medical treatment, whether for religious or other reasons, as long as they are deemed to have decision-making capacity. When parents make decisions for their children on religious or other grounds, however, states may intervene because they have a duty to protect the well-being of children who are not legally old enough to make their own decisions. Many cases that have come to the attention of the state turn on the question of whether a parent has the right to choose alternative therapy over conventional medical treatment for a child.

Courts have not ruled consistently for one side over the other because the constitutional rights of parents, such as freedom of religion, right to privacy, and fundamental liberty to raise their children as they desire, provide strong support for parents' right to decide. However, courts must weigh the constitutional interests of parents against the state and federal governments' interests in protecting the children to whom they owe a duty [1]. Most cases that reach the courts seek state intervention to prevent serious injury or death of the child, but in cases in which the child has died, the charges brought against parents are not child abuse and neglect, but homicide.

Thirty-nine states have religious exemptions in their civil codes on child abuse or neglect, and 19 states have religious defenses to felony crimes against children that shelter parents from misdemeanor violations if they treat the children through prayer in accord with the beliefs of a recognized religion. The scope of religious exemption and defense laws varies widely, however [2].

In one of the following three cases, the state was determined to have legitimate concern for the well-being of a child; in another, the parents were given full control of their child's medical therapy; and in the third, a child's death sparked a homicide charge against the parents.

In the Matter of the Welfare of the Child of Colleen and Anthony Hauser **[3]**
Daniel Hauser, 13, was diagnosed with Stage IIB nodular sclerosing Hodgkin disease. Daniel's parents are strong believers in the holistic benefits of Nemenhah, a Native American healing practice, although they do not hold themselves out as Native Americans. In fact, the Hausers are traditional Catholics. The State of Minnesota intervened in Daniel's case when his physicians raised concerns about his not receiving medical treatments deemed imperative to his survival [4].The court ruled that Daniel's parents violated Minnesota's long-standing statutory requirement

that parents must provide "necessary medical care" for a child [5-8] and required them to consent for chemotherapy treatment for their son.

When Daniel was diagnosed, his family physician referred him to oncology specialists at a children's hospital where it was determined his cancer should be treated with chemotherapy. Daniel's mother consented to a first round of chemotherapy treatment for her son. Although Daniel's lymphoma responded well to the chemotherapy, he suffered side effects. Daniel reported being sick to his stomach, weak, and unable to walk. Daniel's parents consulted with five physicians at the Mayo Clinic and other academic medical centers for second opinions. All medical advice pointed the Hausers toward chemotherapy as the best treatment option for Daniel. Most children, 80-95 percent, in Daniel's situation go into remission within 5 years of the recommended chemotherapy. All of these physicians were of the opinion that if Daniel did not adhere to the treatment, he would not survive. Daniel's parents did not continue chemotherapy after the first round, based upon their strong beliefs in alternative medicine [9].

Daniel's mother testified that she was "starving" Daniel's cancer with methods including doses of high-pH water to make his body more alkaline (because cancer cannot survive in an alkaline environment) and a diet of greens, proteins, and no sugars. She admitted these remedies were found on the Internet. Daniel's physicians reported the Hausers to the county's department of child protective services after Daniel stopped chemotherapy [9].

The Minnesota court ruled that, while Daniel's parents might have strongly believed the alternative forms of therapy were best for him, they were, in fact, breaking Minnesota law. The court found Daniel's parents to be loving and caring parents and allowed him to stay in their custody, provided they continued the medically necessary therapy. The court stated it would have been bound by Minnesota law and intervened in Daniel's medical treatment whether or not his tumor had grown larger without the medically advised therapy. However, the court made mention of wanting to relax the state law to allow those who choose alternative forms of therapy to do so if the alternative forms of treatment have been proven effective [3].

In Re Hofbauer

When Joseph Hofbauer, 7, was diagnosed with Hodgkin disease, his physician recommended radiation and chemotherapy as the appropriate medical treatments. After receiving several opinions from medical doctors, Joseph's parents decided to take their son to Jamaica where he received nutritional or metabolic therapy, including injections of laetrile. When Joseph and his parents returned home to New York, the state intervened after learning that Joseph was not receiving the recommended chemotherapy from his attending medical doctor. The court ruled that Joseph's parents did not violate New York law since they were providing an acceptable course of medical treatment for their child, taking into consideration all of the surrounding circumstances [10].

New York law states that a neglected child is "one who is less than eighteen years of age whose physical condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent to exercise a minimum degree of care in supplying the child with adequate…medical…care" [10, 11].

The court ruled, based upon expert testimony, that Joseph's parents had chosen treatment for their son that was not completely rejected by all responsible medical authorities and had sought accredited medical opinions when making their decision. Several studies have proven that the metabolic treatment Joseph received could control his disease and is not as toxic as conventional treatment. A New York state-licensed physician, who was a proponent of metabolic therapy, monitored Joseph's case along with another physician. Joseph's parents and his physicians reported that he was responding well to the metabolic therapy and that his appetite and energy level were good. Joseph's parents also stated they would consider conventional medical treatment if at any time Joseph's condition seemed to deteriorate [12].

Taking all of the circumstances into consideration and aligning them with New York law, the court found that Joseph's parents consulted with numerous physicians, had continued to closely monitor their son's progress with several physicians, and never ruled out the option of conventional therapy if their son's condition worsened [13].

In this case, the court felt that Joseph's parents had made an educated and informed decision about their son's medical treatment. The fact that metabolic therapy is not wholly rejected by the medical community and that Joseph's condition did not deteriorate after receiving the therapy gave the court grounds to uphold Joseph's parents' decision to use alternative treatment for their son.

State of Wisconsin v. Dale and Leilani Neumann

In what is believed to be the first case in Wisconsin involving faith healing in which one person died and another was charged with homicide, Dale and Leilani Neumann were convicted of homicide after their 11-year old daughter died from untreated diabetes.

Wisconsin has a religious exemption to child abuse and neglect laws that allows parents to use religion or faith-based rituals as an effective defense for not choosing conventional medical treatments for their children. In this case, however, the Neumanns were charged with homicide, not child abuse and neglect, so the religious exemption was not applicable [14].

News reports state that Kara Neumann, 11, had not seen a medical doctor since she was 3 years of age and died of untreated diabetes. Kara was reportedly in a coma, surrounded by family and friends praying for her, when her aunt called 911 to report Kara's state and express her concern. When authorities arrived at the Neumann residence, Kara was unresponsive and efforts to revive her were unsuccessful [15].

The Neumanns belong to the Unleavened Bread Ministries, a small church that favors prayer over medicine. At their trial, reporters wrote that the Neumanns stated they did not regret their course of action and believed in prayer as the best healing method for themselves and their children [15].

Experts say inconsistencies in Wisconsin law that allow the defense of religion in some cases e.g., child abuse or neglect, but not in other cases, e.g., homicide, are grounds for Kara's parents to appeal their conviction to the Supreme Court of Wisconsin [14]. Time will tell how far the appeal goes and how the court will rule on the religious exemption in state law. Meanwhile, the case has stirred controversy for Wisconsin lawmakers, who are proposing legislation to address it.

Conclusion

Balancing parents' rights to raise their children and a state's right to protect the children in their communities is no easy task, even when most states have religious exemptions to their child abuse or neglect laws. Courts straddle the line when it comes to analyzing cases involving alternative forms of medicine chosen for minors. Courts have ruled in favor of both parents and states, depending on the circumstances. The Neumann case brings to light a different question about child abuse and neglect laws to protect medically untreated children—do state laws with religious exemptions for child abuse and neglect apply to homicide or manslaughter, and what is the intent of the laws that are in place? Wisconsin legislators may tackle this very issue soon and, if they do, could spur other states to review inconsistencies in their own laws.

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