

ATTORNEY GENERAL OPINION NO. 93-9

To: Mr. Ken Patterson, Administrator
Division of Family and Children's Services
Idaho Department of Health and Welfare
450 W. State Street, Third Floor
STATEHOUSE MAIL
Boise, ID 83720

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Does Idaho's religious exemption provision, which allows parents to treat their sick children through "spiritual means," limit administrative or judicial authority to provide medical services to children?
2. What is the standard for state intervention for children who are in need of medical treatment?
3. Does the religious exemption provision affect the normal reporting and investigation provisions for suspected child abuse, neglect and abandonment?

CONCLUSION

1. Idaho's religious exemption provision does not limit administrative or judicial authority to provide medical services to children.
2. The standard for state intervention for the medical treatment of children is that intervention is authorized when children are threatened by, or are in, actual harm.
3. The religious exemption provision does not affect the normal reporting and investigation provision for suspected child abuse, neglect and abandonment.

ANALYSIS

Question No. 1:

You have asked whether Idaho's religious exemption provision, which allows parents to treat their sick children through "spiritual means," limits administrative or judicial authority to provide medical services to children. Idaho's Child Protective Act

does contain a provision allowing parents to treat their sick child through "spiritual means." On its face, this appears to conflict with other provisions of the Act which define "neglect" as the lack of medical care for ill children and require such "neglect" before the state is authorized to act in protecting the health of children. Our opinion is that the statutes do not conflict, and the state has authority to act on behalf of ill children.

The Idaho Legislature has authorized state agencies to intervene through the Child Protective Act in instances where children are in need of medical attention, provided that the religious preference of the parent is considered.

Idaho Code § 16-1602 defines "neglected" as follows:

(s) "Neglected" means a child:

(1) Who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; **provided, however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment, shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being**, but further provided this subsection shall not prevent the court from acting pursuant to section 16-1616, Idaho Code.

(Emphasis added.)

Furthermore, the Idaho Legislature has granted state courts authority to act as follows:

(a) **At any time** whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

(1) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(2) A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and **the parent, guardian or other custodian refuses or fails to consent**.

(b) If time allows in a situation under subsection (a)(2) of this section, the court shall cause every effort to be made to grant the parents or legal guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(c) In making its order under subsection (a) of this section, the court shall take into consideration any treatment being given the child by prayer **through spiritual means alone**, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment.

Idaho Code § 16-1616 (emphasis added).

Neither the administrative nor judicial provisions falling within the purview of these statutes have been challenged in Idaho on general religious freedom grounds. Other states with similar provisions, however, have addressed this issue. Colorado's religious exemption references also contain the language "through spiritual means alone." In analyzing the legislative intent, the Colorado Supreme Court concluded that:

It allows a finding of dependency and neglect for other "reasons," such as where the child's life is in imminent danger, despite any treatment by spiritual means. In other words, a child who is treated solely by spiritual means is not, for that reason alone, dependent or neglected, but if there is an additional reason, such as where the child is deprived of medical care necessary to prevent a life-endangering condition, the child may be adjudicated dependent and neglected under the statutory scheme.

People in Interest of D.L.E., 645 P.2d 271, 274-275 (Colo. 1982). Thus, the Colorado court holds that a child who is treated "through spiritual means alone" is not deemed for that reason only to be neglected. Neither is such a child, for that reason alone, shielded from a finding of neglect if the child is deprived of medical care necessary to prevent a life-endangering condition.

In Walker v. Superior Court, 763 P.2d 852 (Cal. 1988), the parent of a deceased child challenged the state's ability to proceed with involuntary manslaughter and felony child-endangerment charges arising from the death of her four-year-old daughter. Her daughter was treated through prayer in lieu of medical care and subsequently died as a result of acute meningitis. The challenge was based upon a "spiritual exemption" clause found within that state's child protective statutes, which are similar to those of Idaho.

In analyzing the legislative intent of California's child protection laws, the California Superior Court concluded: "The legislative design appears consistent: prayer treatment will be accommodated as an acceptable means of attending to the needs of a child only insofar as serious physical harm or illness is not at risk." Walker, 763 P.2d at 866.

This balancing analysis is consistent with Idaho's Child Protective Act. Just as Idaho Code § 16-1602 defines child "neglect" to include lack of medical treatment, Idaho Code § 16-1616 provides the court with the option of providing a child with medical treatment whether or not the child's parent consents. In other words, nowhere in Idaho law does the religious exemption provide that a child cannot be medically treated if prayer is not effective and the child's life is endangered. Idaho's religious exemption references do not limit either administrative or judicial action when medical treatment for children is deemed necessary.

This analysis of the Child Protective Act is consistent with Idaho's constitutional provisions protecting religious freedom. The Declaration of Rights provision of the Constitution of the State of Idaho provides in article 1, § 4:

Guaranty of religious liberty.--The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practice, inconsistent with morality or the peace or safety of the state; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

The drafters of the Idaho Constitution recognized the importance of assuring that although there should be no limit to an individual's rights to a religious belief, there were boundaries on an individual's right to religious practices. Polygamy, for example, could be part of a religion so long as the followers did not participate in this illegal practice. Constitutional Convention Proceedings, vol. 1, pp. 129-135.

Case law supports this contention. The right to hold a religious belief is guaranteed and the freedom to practice a religion is constitutionally protected. Bissett v.

State, 111 Idaho 865, 867, 727 P.2d 1293 (1986); Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1939). However, the practice of those religious beliefs is subject to some regulation. United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982).

States may clearly regulate "circumstances where the exercise of religious freedom by parents would expose their children to ill health or death." 52 A.L.R.3d 1120.

The right to practice religion freely does not include 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 before they have reached the age of full and legal discretion when they can make that choice for themselves.

Prince v. Massachusetts, 321 U.S. 158, 166-67, 64 S. Ct. 438, 88 L. Ed. 645, *reh'g denied*, 321 U.S. 804, 64 S. Ct. 784, 88 L. Ed. 1090 (1944).

Therefore, a "state may regulate the health, safety, and general welfare of society in a manner which may infringe upon religion without unconstitutionally invading liberties protected by the Constitution." State v. Heritage Baptist Temple, Inc., 693 P.2d 1163, 1165 (Kan. 1985).

Neither the express language of Idaho's religious exemption, nor traditional constitutional principles of religious freedom limit administrative or judicial authority to provide medical services to children.

Question No. 2:

You next ask what the standard is for state intervention for children who are in need of medical treatment. Intervention under the Child Protective Act is justified when a child is threatened by, or in, actual harm.

Idaho Code § 16-1601(2) authorizes the Department of Health and Welfare to "take such actions as may be necessary and feasible to prevent the . . . neglect . . . of children." Furthermore, the Department shall maintain: "(a) Protective services on behalf of children whose opportunities for normal physical, social and emotional growth and development are endangered for **any reason**." Idaho Code § 56-204A (emphasis added).

The Department of Health and Welfare's rules regarding the handling of child abuse, neglect and abandonment are found in IDAPA 16.06.01300, *et seq.* All cases of children threatened with or in actual danger of serious physical harm or illness by reason of neglect, due to any act or inaction, are therefore subject to the provisions of the Child Protective Act. These rules are neutral toward religious beliefs. The investigation will proceed and the determination of neglect will be made based upon the threat of harm to the child, not upon the religious beliefs of the parents.

Question 3:

Your final question asks whether the religious exemption provision affects the normal reporting and investigation provision for suspected child abuse, neglect and abandonment. Clearly, it does not.

In a previous Attorney General's Opinion, Idaho's child abuse reporting statute was discussed. The opinion of this office has not changed in that Idaho is one of many states which has mandatory reporting requirements when child abuse, abandonment or neglect is suspected.

Case law clearly upholds the validity of these statutes in that they are neither far reaching nor unconstitutional. Jett v. State, 605 So. 2d 926 (Fla. App. 1992); People v. Hedges, 13 Cal. Rprt. 2d 412 (Cal. Super. Ct. 1992); Morris v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (Mich. App. 1992).

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The premise that parents have a duty to supply their children with food, clothing, education and medical needs is firmly rooted in history. People v. Pierson, 68 N.E. 243, 245 (N.Y. 1903). This duty is "a basic tenet of our society and law." State v. Williams, 484 P.2d 1167 (Wash. App. 1971); In re Hudson, 126 P.2d 765 (Wash. 1942); Lizotte v. Lizotte, 551 P.2d 137 (Wash. App. 1976).

Idaho Code § 16-1619 provides:

Reporting of abuse, abandonment or neglect.--(a) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment or

neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department [of Health and Welfare]. The department shall be informed by law enforcement of any report made directly to it.

The statute clearly requires anyone to report any suspected child neglect, which includes a child lacking necessary medical care or treatment, to the Department of Health and Welfare or law enforcement. The reporting party is immune from criminal and civil liability so long as he or she has reason to believe that a child has been medically neglected and, acting upon that belief, makes a report of neglect as required in section 16-1619, Idaho Code. Any person reporting in bad faith or with malice is not immune from liability.

AUTHORITIES CONSIDERED

1. Idaho Constitution:

Art. 1, § 4.

2. Idaho Code:

§ 16-1601(2).

§ 16-1602.

§ 16-1616.

§ 16-1619.

§ 56-204A.

3. Idaho Cases:

Bissett v. State, 111 Idaho 865, 727 P.2d 1293 (1986).

4. Federal Cases:

Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1939).

Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645, *reh'g denied*, 321 U.S. 804, 64 S. Ct. 784, 88 L. Ed. 1090 (1944).

United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982).

5. Other Cases

In re Hudson, 126 P.2d 765 (Wash. 1942).

Jett v. State, 605 So. 2d 926 (Fla. App. 1992).

Lizotte v. Lizotte, 551 P.2d 137 (Wash. App. 1976).

Morris v. Coleman, 488 N.W.2d 464 (Mich. App. 1992).

People in Interest of D.L.E., 656 P.2d 271 (Colo. 1982).

People v. Hedges, 13 Cal. Rprt. 2d 412 (Cal. Super. Ct. 1992).

People v. Pierson, 68 N.E. 243 (N.Y. 1903).

State v. Heritage Baptist Temple, Inc., 693 P.2d 1163 (Kan. 1985).

State v. Williams, 484 P.2d 1167 (Wash. App. 1971).

Walker v. Superior Court, 763 P.2d 852 (Cal. 1988).

6. Other Authorities

IDAPA 16.06.01300 *et seq.*

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DATED this 6th day of September, 1993.

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Analysis by:

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