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The State of South Carolina



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December 6, 1993

The Honorable J. Samuel Griswold, Ph.D.
Interim Commissioner
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Dear Dr. Griswold:

You have requested the opinion of this Office as to whether, as a matter of South Carolina law, "adequate health care," defined in S.C. Code Ann. § 20-7-490 as including "any medical or nonmedical remedial health care permitted or authorized under state law," would include solely spiritual or solely other religious means of health care. The issue arises as a result of a federal requirement that South Carolina law be the same in substance, as to the definition of child abuse and neglect contained in federal regulations, for the State of South Carolina to participate in the federal Child Abuse and Neglect Basic State Grant Program.

Federal Law

To receive a Basic State Grant under the Child Abuse Prevention and Treatment Act (P.L. 100-294), as amended, a State must enact child abuse/neglect laws which provide for reporting, investigation, and intervention related to known or suspected cases of child abuse and neglect, as stated in the federal law and regulations. According to 45 C.F.R. § 1340.14(b), a state's definition of child abuse and neglect must be the same in substance as the federal definition, though identical language need not be used.

The phrase "child abuse and neglect" is defined in 45 C.F.R. § 1340.2(d); relevant here is the sub-definition of "negligent treatment or maltreatment" which is defined in § 1340.2(d)(2)(i) to include "failure to provide adequate food, clothing, shelter, or medical care." Subpart (ii) continues:

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Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

As noted in a letter to you from the Regional Administrator, Administration for Children and Families, of the U.S. Department of Health and Human Services dated December 9, 1992, "the Federal regulations do permit a State to exempt from a finding of 'neglect' those parents who, for religious reasons alone, do not provide their children with adequate medical treatment." The letter continued:

The Department interprets the Federal requirements to mean that: (1) a State need not (but may) declare a parent who withholds adequate medical treatment from a child for religious reasons alone to be neglectful; but (2) any such exemption from the definition of "neglect" may not interfere with the mandatory reporting, investigation and treatment provisions which are intended to provide all children with adequate medical care including the children of those who withhold medical treatment on the basis of religious belief. Furthermore, the use of the term "medical" in the Federal regulations refers to conventional medical treatment, and cannot be interpreted to include treatment or "health care" solely by prayer or other spiritual methods. The Federal law requires the resolution of any ambiguity that may exist in State law or administrative policy so that the requirement to report, investigate and provide necessary medical care clearly applies in all instances of suspected or actual withholding of appropriate medical treatment.

State Law

An "abused or neglected child" is defined by South Carolina law to mean "a child whose death results from or whose physical or mental health or welfare is harmed or threatened with harm, as defined by items (C) or (D) of this section, by the acts or omissions of his parent, guardian, or other person responsible for his welfare." § 20-7-490(B), as amended by Act No. 158 of 1993. According to § 20-7-490(C), harm to a

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child's health or welfare can occur in several different ways; specifically, (C)(3) includes the failure to provide "adequate ... health care though financially able to do so or offered financial or other reasonable means to do so. For the purposes of this chapter 'adequate health care' includes any medical or nonmedical remedial health care permitted or authorized under state law." Unfortunately, state law does not further define the phrase "any medical or nonmedical remedial health care" It is thus necessary to determine and effectuate legislative intent if at all possible, Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980); by examining child protection statutes as a whole and various judicial decisions concerning medical neglect, we believe South Carolina law does not preclude a finding of medical neglect where spiritual or other religious means of health care has been sought on behalf of a child.

The persons required to report suspected cases of child abuse or neglect are listed in § 20-7-510; no exemption appears therein for a report not to be filed because a person listed therein has determined that religious beliefs formed the basis for the alleged abuse or neglect. Sections 20-7-600 and 20-7-610, which provide for taking an allegedly abused or neglected child into custody, do not contain an exemption which would involve religious beliefs. The duties to be performed by the Department of Social Services, at both the state and local levels, including investigating suspected cases of child abuse or neglect and providing appropriate intervention, are not prohibited if a religious belief is offered as an explanation of alleged abuse or neglect. In short, while religious beliefs may be taken into account, consistent with § 20-7-490(C), such beliefs do not prevent mandatory reporting, investigation, or intervention as may be appropriate.

The notion of "adequate" health care must also be considered. Black's Law Dictionary defines "adequate" as sufficient, equally efficient, satisfactory (5th Ed. 1979, p. 36). The American Heritage Dictionary defines "adequate" as suitable, barely satisfactory, sufficient (2d Ed. 1976, p. 79). "Adequate" health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then a finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws do not prevent appropriate intervention to have needed medical care provided.

The effect of parents' religious beliefs vis a vis physical abuse of their child was examined in South Carolina Department of Social Services v. Father and Mother, 294 S.C. 518, 366 S.E. 2d 40 (Ct.App. 1988). Therein Chief Judge Sanders acknowledged the coextensive guarantees of religious liberty in both the United States Constitution's First Amendment and the State Constitution; he observed that

the First Amendment embraces two concepts: the freedom to believe and the freedom to act. The first is absolute, but the

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second is not. The law cannot regulate what people believe, but the law can regulate how people act, even if how they act is based on what they believe.

Id., 294 S.C. at 523. The court concluded that, as to physical abuse, the child protection laws did not purport to regulate the father's beliefs, but merely his actions. Following this reasoning, we believe that, at the point spiritual or other religious means of health care are not adequate to meet the needs of a particular child, seeking or providing necessary medical care would not be prohibited or prevented by our statutes. Such seeking of medical care would not be an attempt to regulate a parent's religious beliefs but instead would be a regulation of his actions.

Courts in other jurisdictions concur that treatment of a child's health problems through spiritual means alone would not preclude necessary medical care being sought by appropriate means, or prosecution of the parent or guardian for involuntary manslaughter, endangerment of a child, or other appropriate crimes. In People v. D.L.E., 645 P.2d 271 (Colo. 1982), a minor suffered from life-threatening medical conditions; the parent refused to comply with a course of medical treatment on religious grounds. The statute in question precluded a finding of neglect, for a child treated solely by spiritual means, for that reason alone. The court construed the statute to enable a finding of neglect for other reasons, as when the child's life is in imminent danger, or medical care is necessary to prevent a life-endangering situation. Reviewing various United States Supreme Court decisions, the Court stated: "The right to practice religion freely does not include the right or liberty to expose the community or the child to ill health or death." Id., 645 P.2d at 276.

In Walker v. Superior Court, 47 Cal. 3d 112, 763 P.2d 852 (1988), a mother was prosecuted for involuntary manslaughter and felony child-endangerment charges arising from the death of her four-year-old child, who died from acute meningitis after being treated with prayer rather than medical treatment. The court held that the child abuse statutes which provided certain religious exemptions to medical care did not constitute a defense to criminal offenses such as involuntary manslaughter or felony child-endangerment and further that the legislature did not sanction treatment by prayer or spiritual means alone for treatment of children under life-threatening circumstances. We believe the courts of this State would follow the reasoning of these decisions from other jurisdictions if faced with the same issues; to do otherwise would permit parents to take the lives of their children or make martyrs of them.

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Conclusion

Considering this State's child protection laws as a whole, our statutes are not out of compliance with federal law. The Department of Social Services must investigate allegations of child abuse and neglect without regard to religious beliefs; persons required to report suspected cases of child abuse or neglect are not precluded from doing so by virtue of religious beliefs. There is no absolute exemption from a finding of medical neglect solely on the basis of religious belief. In appropriate circumstances, there is no prohibition against seeking medical care when necessary to remedy a life-threatening situation, where other care has proved to be inadequate. The State of South Carolina must extend its protection to all children in the State and has the right to intervene in an appropriate instance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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