

## KNOW YOUR VACCINE EXEMPTION RIGHTS



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## This Presentation:

- I. Vaccines and Autism: Recent Updates
- II. Vaccine Exemptions: Contexts and Types
- III. Exemptions for Children
- IV. Vaccines in Child Custody Disputes
- V. Healthcare Employees
- VI. Legislative Concerns
- VII. Resources

## I. VACCINES & AUTISM: Recent Updates



NASA Image.

### A. The Official Position



- CDC (Centers for Disease Control and Prevention)
  - Q: Do vaccines cause autism spectrum disorders (ASDs)?
  - A: Many studies that have looked at whether there is a relationship between vaccines and autism spectrum disorders (ASDs). [sic] To date, the studies continue to show that vaccines are **not** associated with ASDs.

<http://www.cdc.gov/ncbddd/autism/topics.html>

### B. Recent Studies (2011)

- A 1% increase in vaccination coverage results in 680 more autism cases.
  - DeLong G. A Positive Association found between Autism Prevalence and Childhood Vaccination uptake across the U.S. Population. J Toxicol Environ Health A. 2011 Jan;74(14):903-16. PMID: 21623535, <http://www.americanchronicle.com/articles/view/241126>
- Documented causes of autism include . . . encephalitis following vaccination.
  - Theoretical aspects of autism: cases—a review. Ratajczak, HV, <http://www.ncbi.nlm.nih.gov/pubmed/21299355>
- The correlation between AI in vaccines and ASD may be causal.
  - Do aluminum vaccine adjuvants contribute to the rising prevalence of autism? Tomljenovic, L., Shaw, C., J Inorg Biochem, <http://omsj.org/reports/tomljenovic%202011.pdf>

### C. Recent Corruption (2011)

- Poul Thorsen, indicted on 13 counts of fraud with the CDC and 9 counts of money-laundering, Apr 2011
  - Indictment: <http://adventuresinautism.com/ThorsenIndictment.pdf>
- Coalition for Mercury Free Drugs (Co-Med), via a Freedom of Information Act (FOIA) request:
  - CDC withheld data showing removal of mercury was followed by decreasing autism rates...
  - The resulting published "Denmark" study "proved" that vaccines don't cause autism.
  - "Scandal Exposed in Major Study of Autism and Mercury" <http://www.prnewswire.com/news-releases/scandal-exposed-in-major-study-of-autism-and-mercury-132519518.html>



### D. Autism Legal News 2011-2012

- *Unanswered Questions from the Vaccine Injury Compensation Program: A Review of Compensated Cases of Vaccine-Induced Brain Injury*, 28 Pace Env'tl. L. Rev. 480 (2011)



"Through this preliminary study, the authors have found eighty-three cases of autism among those compensated for vaccine-induced brain damage. This finding raises fundamental questions about the integrity, transparency, and fairness of the forum," and "strongly suggests the need for further Congressional and scientific investigation" of "the association between vaccine-induced brain injury and autism and the integrity of this federally-administered compensation program."

<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1681&context=pelr>

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### Autism Legal News cont'd

- The American Psychiatric Association (APA) is redefining autism for the fifth edition of *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, to be published in May 2013. Some fear this will exclude current and/or future diagnoses and state services.
  - Third and final round of comments was spring 2012
  - May 2 - June 15: Comment period re-opened



<http://www.dsm5.org>

- Italian Court Holds MMR Vaccine Causes Autism

April 10, 2012

- Rimini District Court: The child's autism was the "fault of the vaccine."
- Ministry of Health was ordered to pay compensation.
- Appeal?
- Experts blame the decision on Wakefield (?)!



<http://childhealthsafety.wordpress.com/2012/05/07/italy-mmr-vaccine-causes-autism/>

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### Autism Legal News (cont'd)

- Jan 2012: Dr. Andrew Wakefield Sues British Medical Journal and BMJ Editor Dr. Fiona Godlee, and Journalist Brian Deer (defamation)
  - Plaintiff's Original Petition: <http://www.courthousenews.com/2012/01/04/BritMedJ.pdf>



V.



BMJ helping doctors make better decisions

- March 2012: Professor John Walker-Smith Exonerated in Autism MMR Case (Mar 2012)

- <http://www.ageofautism.com/2012/03/professor-john-walker-smith-exonerated-in-autism-mmr-case.html>
- The judgment was damning of the General Medical Council (GMC), finding its proceedings "flawed", its reasoning "inadequate and superficial" and in some respects its conclusions "wrong" and "unjustified" and in one case "perverse". Private Eye No. 1310, 5th April 2012



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## II. VACCINE EXEMPTIONS: Contexts and Types



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### A. Exemption Contexts

- Schools and daycares
  - Public, private, military, homeschooling, summer camps, college, college healthcare programs that require clinical work in local hospitals, foreign exchange programs, etc.
- Military
  - Members (different branch regulations), families, civilian contractors
- Immigration
  - Includes foreign adoption (Hague Convention)
- Employees
  - Healthcare, other
- Vaccine Custody Disputes
  - Where parents disagree about vaccinating the children
- International Travel
  - WHO's International Health Regulations



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### B. Exemption Types

- **Medical**
  - Availability: All state and federal contexts
  - Applicability: Contraindications list
  - Procedure: Usually requires M.D. recommendation
  - Duration: May be temporary, for only some vaccines
  - Subject to scrutiny: Depends on wording of applicable law
- **Religious**
  - Availability: 48 states - schools, 2 - healthcare employees, all federal contexts
  - Applicability: Anyone who is not an atheist - but there are pitfalls
  - Procedure: Varies with state or context (e.g., WA, CO, CA, NC)
  - Duration: Annual to indefinite
  - Subject to scrutiny: Depends on wording of applicable law
- **Philosophical**
  - Availability: States: 20 - schools, 1 - healthcare employees, 2 - seniors
  - Applicability: Anyone may cover pick and choose, delayed vaccination
  - Procedure: Varies with state or context (e.g., WA, CO)
  - Duration: Annual to indefinite
  - Subject to Scrutiny: No



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### C. When do you need a lawyer?



- Whenever ...
  - 1) You are exercising a religious exemption,
  - 2) you have to state your religious beliefs, and
  - 3) authorities have discretion to scrutinize those beliefs; (military, immigration, employment, some state laws)
  - You have a current or impending conflict (e.g., vaccine custody disputes); or
  - You want to put someone between you and authorities.
- How do you write a statement of beliefs?
  - The same for virtually all religious exemption contexts
  - Doesn't reduce to a formula
  - Know what qualifies: Review state and federal precedent
  - Avoid legal and practical pitfalls

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## III. EXEMPTIONS FOR CHILDREN



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### A. Schools and Daycares



- Read your state's laws:
  - Statutes and regulations
  - May be separate statutory and regulatory procedures
  - Membership in an organized religion—what to do?
  - Where: <http://www.vaccinerights.com/stateexemptionlaws.html>
- Do exemptions apply to private schools?
  - May depend on:
    - Wording of applicable law, and/or
    - Location of law: Title, chapter, etc.
    - Does private school have ties to government?
  - Examples:
    - Texas State Attorney General (2006): No, unless school accepts state tax funds, <https://www.oag.state.tx.us/opinions/opinions/50abott/op/2006/pdf/gao420.pdf>
    - NC: Yes.

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### B. Dealing with Pediatricians



- Can doctors refuse to treat exempt children?
  - "Pediatricians' refusal to treat unvaccinated kids: Legal and ethical ramifications" [http://www.naturalnews.com/035090\\_Pediatricians\\_vaccines\\_ethics.html](http://www.naturalnews.com/035090_Pediatricians_vaccines_ethics.html)
- Vaccine Refusal Forms
  - AAP recommends usage for each unvaccinated child's visit <http://www2.aap.org/immunization/pediatricians/pdf/refusaltovaccinate.pdf>
  - "Refusal to Vaccinate Forms Raise Ethical Questions," Townsend Letter, May 2008 <http://www.vaccinerights.com/pdf/RefusaltovaccinateForms.pdf>
- Are there exemptions for newborns?
  - No, but yes...



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### C. Does My Exempt Child Put Others at Risk?

- Legal presumption: "No."
  - Religious exemptions: 48 states, all federal contexts
  - Philosophical exemptions: ~20 states
- Scientific Presumption: "No."
  - Herd Immunity: If most are immune, all are protected
  - CDC: 5% - 15% of vaccinated kids aren't immune
  - JAMA: 1% - 2.5% of kids are exempt
- No future risk, either
  - Laws require staying at home, vaccination and/or quarantine during outbreaks and emergencies



"Vaccine exemptions: Do they really put others at risk?" Natural News, 2-18-12, [http://www.naturalnews.com/035024\\_vaccine\\_exemptions\\_children\\_infectious\\_disease.html](http://www.naturalnews.com/035024_vaccine_exemptions_children_infectious_disease.html)

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## V. VACCINE CUSTODY DISPUTES



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## Vaccine Custody Disputes

- "Best interest" analysis doesn't apply.
  - Dealing with a statutory right (if exemption involved)
  - First Amendment Constitutional rights (religious exemptions)
- Legal Presumption that the exercise of an exemption:
  - Does not create a significant health risk, and
  - Is not inconsistent with a child's best interests, or else
  - *The legislature would not have enacted the law in the first place.*
- Vaccines custody disputes are not a health issue!
  - Herd immunity theory...
  - Don't hire an alt doc as expert witness!!



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## Vaccine Custody Disputes cont'd

- Parents do not have equal right to make vaccine decisions
  - If statute clearly allows one parent to exercise the exemption
- Statutory construction rules:
  - unambiguous statute = legislature's intent
  - Specific statute supersedes general statute (exemption vs. equal say)
- Religious exemptions:
  - First Amendment "free exercise" of religion supersedes state law "best interests" custody standard
  - Balancing test: imminent harm (religious disputes, generally)
- Other Considerations:
  - Can court scrutinize beliefs? (varies with wording of law)
  - What qualifies for a religious exemption? (broad, pitfalls)
  - Critical to be prepared before getting into court!



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## V. HEALTHCARE WORKERS



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### A. New Healthcare Worker Mandates

- National trend since "pandemic": Flu shots increasingly a condition of employment. More vaccines coming: MMR, Tdap...
- ~10 states have statutory requirements
- Most employee vaccine mandates are employer policy, but states are adding statutory requirements
- For your state, see "Immunization Administration Requirements For Hospital Employees" on CDC site
- Flu Vaccines
  - 2010 Cochrane Collaboration Review: Issued WARNING that "reliable evidence on influenza vaccines is thin but there is evidence of widespread manipulation of conclusions..."
  - Said that "vaccine did not affect . . . working days lost" and "had no effect on hospital admissions or complication rates."



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### B. Healthcare Worker Exemptions

- State Exemption Laws
  - Medical: 6 states
    - Absent state law, hospital policy prevails
    - Some hospitals reject doctor recommendations
  - Religious: 2 states
  - Philosophical: 1 state
  - *But:* Do statutory exemptions apply to Employer-required vaccines?
- Other Applicable State Laws
  - Religious Freedom Restoration Acts (equiv. lang.) Prevents "government" from burdening religion unless:
    - 1) Compelling gov't interest, 2) least restrictive manner



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### C. 1964 Civil Rights Act

- Title VII
  - Employers must accommodate employees' religious beliefs & practices
    - 42 U.S.C. § 2000e et seq.
  - Equal Employment Opportunity Commission (EEOC)
    - 29 C.F.R. 166 et seq.
    - Agency: <http://www.eeoc.gov/>
    - Must file a charge with the EEOC before you can sue
  - Hospitals inconsistent in application of Title VII. Issues:
    - Some hospitals refuse all religious exemption requests
    - Most that allow exemptions require support of religious official
    - Hospitals reject most exemption requests
    - Mask policies: Often punitive and coercive
    - Most of my clients have been successful, but...



APA



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## VI. LEGISLATIVE CONCERNS



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### A. Exemption Restrictions



#### A. Unconstitutional Exemption Restrictions

- WA State § 28A.210.090 (2011): Doctors are now gatekeepers for non-medical exemptions unless the applicant is a member of an organized religion
  - Doctors charge high prices to sign required forms, or
  - Don't cooperate with exemptions at all
- CA's AB 2109: Would make doctors gatekeepers for non-medical exemptions. Legal Memorandum here: <http://www.vaccinerights.com/legislativeprojects.html>
- NY's A343 & S384: Would allow minors to consent to HPV vaccines

#### B. Unethical Exemption Restrictions

- WA, CA with regard to philosophical exemptions
- VT: Attempting to remove philosophical exemptions
  - Letters to VT Legislature: <http://www.vaccinerights.com/legislativeprojects.html>
- "Moral and Ethical Imperative for Vaccine Philosophical Exemptions": <http://www.vaccinerights.com/articles.html>

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### B. Unconstitutional Child Consent Laws



- California Family Code 6926:  
A minor who is 12 years of age or older may consent to medical care related to the prevention of a sexually transmitted disease.



- North Carolina N.C. Gen. Stat. § 90-21.5:  
Any minor may give effective consent to a physician . . . for medical health services for the prevention . . . of venereal disease and other [reportable] diseases . . .



- Supreme Court in *Parham v. J.R.*, 442 U.S. 584, 603 (1979):  
"Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment."  
*Parents can and must speak to their children's future.*

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### C. Legislative Concerns – What can we do?



#### NVIC ADVOCACY PORTAL

- Keep track of vaccine legislation in your state
  - <http://nvicadvocacy.org>



- Pandemic Response Project (PRoP)
  - Emergency health laws
  - Other vaccine rights/choice legislation
  - <http://www.pandemicresponseproject.com>
  - Join our Professional Panel!

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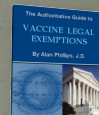
## VII. RESOURCES



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### Vaccine Rights Resources

- Caution:
  - Anti-vaccine websites
  - Internet vaccine groups, Facebook pages
  - They "may" help, but some have lost rights relying on them
- Exemption and Waiver Rights:
  - Vaccine Rights – [www.vaccinerights.com](http://www.vaccinerights.com)
  - The Authoritative Guide to Vaccine Legal Exemptions*
  - State or local health department, phone or website
  - Experienced attorney ([attorney@vaccinerights.com](mailto:attorney@vaccinerights.com))
- Legislative Initiatives:
  - Legislative Projects: Legal and Persuasive Arguments: <http://www.vaccinerights.com/legislativeprojects.html>



- Please help:
- Public speaking: Conferences, etc.
  - Financial support

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## Destiny: Freedom!

The Buddha stated: "Three things cannot be long hidden: The sun, the moon, and the truth." We go forward not dissuaded by the odds against us, but rather, confident in the knowledge that complete transparency is, necessarily, the eventual outcome.

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