Know Your Vaccination Exemption Rights

Presented by
Mary Holland, Esq.
Kim Mack Rosenberg, Esq.
Kevin Barry, Esq.

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VACCINATION CHOICE IS A HUMAN RIGHT

- Nuremberg and birth of the modern human rights movement just after WW2
- United Nations declaration on bioethics and human rights in 2005
- Legal basis for vaccine mandates raises many critical questions
  - 1905 Jacobson v Massachusetts
  - 1923 Zucht v King
  - 1986 National Childhood Vaccine Injury Act
  - 2011 Bruesewitz v Wyeth

LEGAL BASIS FOR VACCINE MANDATES IN THE U.S.

1905 - Jacobson v. MA
- One vaccine
- Vaccine mandate upheld
- Smallpox epidemic
- Widespread disease
- Contagious and airborne
- Adults only
- $5 fine for non-compliance ($114 today)

2013 - Present Day
- 70 doses of 16 vaccines
- Mandates for school and work
- Public emergency?
- Spreads contained outbreaks
- Who mandates for STDs?
- Universal, one size fits all policy
- Right to work or schooling
- Medical, religious exemptions subject to state review

Basis for vaccine mandates: Freedom of the individual must sometimes be subordinated to common welfare

U.S. LAW UPHOLDS STATE VACCINATION MANDATES

1905 - Jacobson v Massachusetts
- Decision arose out of a smallpox epidemic
- Cambridge's vaccination mandate for adults was upheld because the statute met these factors:
  - Necessity;
  - Reasonable means;
  - Proportionality;
  - Harm avoidance provision; and
  - Non-discrimination.

1920s TO 1980s MORE VACCINATION MANDATES

1923 – Zucht v King
- Upheld the smallpox school mandate

For school admission, states began mandating vaccines for polio, measles, mumps, rubella, diphtheria, tetanus, pertussis

STATE VACCINE LAWS

- All 50 states require certain vaccinations for children entering schools.
- Allowable exemptions and required documentation vary by state.
- Some states allow partial exemption.
### STATE VACCINE MANDATES

**Child Care and School Admission**

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*PBE: Total number of doses. DTaP includes booster

Source: State Dept. of Health websites

### STATE EXEMPTIONS TO VACCINE MANDATES

- **Medical**: Offered in all 50 states, with proof in the form of a signed statement by an MD or DO that one or more vaccines would be detrimental to an individual’s health. Some state health departments are permitted to review and revoke the exemption.

- **Religious**: Permitted in all states except Mississippi and West Virginia. Intended for people who possess a sincere religious belief against vaccination.

- **Philosophical**: Permitted in 17 states and applies to over 50% of the U.S. population. Also called the personal belief or conscientious exemption. People often do not know that this right exists.

- **Proof of Immunity**: Some states permit a Serological Exemption to boosters, if titers are drawn and sufficient antibodies are present.

### MEDICAL EXEMPTION

- Offered in all 50 states with written statement by a physician that one or more vaccines would be detrimental to an individual’s health
- Classified as temporary or permanent, and the definition for each state varies
- Most state health departments are permitted to review and revoke the exemption

### PENNSYLVANIA MEDICAL EXEMPTION

Children need not be immunized if a physician or the physician’s designee provides a written statement that immunization may be detrimental to the health of the child.

When the physician determines that immunization is no longer detrimental to the health of the child, the child shall be immunized according to this subchapter.

28 Pa. Code § 23.84

### RELIGIOUS EXEMPTION

- Permitted in all states except Mississippi and West Virginia
- Intended for people who possess a sincere religious belief against vaccination
- Some states require the parents prove their religion teaches against receiving vaccinations in its tenets or doctrine and is a bona fide or recognized religion

### CONNECTICUT RELIGIOUS EXEMPTION

“Any such child who . . . presents a statement from the parents or guardian of such child that such immunization would be contrary to the religious beliefs of such child . . . shall be exempt from the appropriate provisions of this section.”

CONN. GEN. STAT. § 10-204(a)
NEW YORK RELIGIOUS EXEMPTION

“This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required.”
N.Y. PUB. HEALTH LAW § 2164(9)

IOWA RELIGIOUS EXEMPTION

The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits an affidavit signed by the applicant, or if the applicant is a minor, the applicant's parent or legal guardian, stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member.
IOWA CODE ANN. § 139A.8.4.a.2

PHILOSOPHICAL EXEMPTION

- Permitted in 17 states
- Also called the personal belief or conscientious exemption
- Some states require beliefs to be sincere or good faith

CALIFORNIA PHILOSOPHICAL EXEMPTION

Immunization of a person shall not be required for admission to a school or other institution listed in Section 120335 if the parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, files with the governing authority a letter or affidavit that documents which immunizations required by Section 120335 have been given, and which immunizations have not been given on the basis that they are contrary to his or her beliefs.
CAL. HEALTH & SAFETY CODE § 120365

ARKANSAS PHILOSOPHICAL EXEMPTION

Annual application requires the following:
(i) A notarized statement requesting a religious, philosophical, or medical exemption from the Department of Health by the parents or legal guardian of the child regarding the objection;
(ii) Completion of an educational component developed by the Department of Health that includes information on the risks and benefits of vaccination;
(iii) An informed consent from the parents or guardian that shall include a signed statement of refusal to vaccinate based on the Department of Health's refusal-to-vaccinate form; and
(iv) A signed statement of understanding that:
(a) At the discretion of the Department of Health, the unimmunized child or individual may be removed from day care or school during an outbreak if the child or individual is not fully vaccinated; and
(b) The child or individual shall not return to school until the outbreak has been resolved and the Department of Health approves the return to school.
ARK. CODE ANN. §6-18-702(d)(4)(C)

NY RELIGIOUS EXEMPTION - SINCERITY INTERVIEW

Interview testing sincerity of parents' religious belief with respect to vaccination exemption

- http://www.youtube.com/watch?v=ED7TrmmgAY
- http://www.youtube.com/watch?v=O1wwB2ECmxU
PARENTS’ RIGHTS

• The “interest of parents in the care, custody, and control of their children” is “perhaps the oldest of the fundamental liberty interests recognized by this Court.” U.S. Supreme Court, Stanley v. Illinois, 405 U.S. 645, 651 (1942).

• “A young person’s rights ultimately are inseparable from the duties, responsibilities and … rights of the adults upon whom they rely.” Martin Guggenheim, What’s Wrong with Children’s Rights 18 (2005).

POSSIBLE RESULTS WITH NO EXEMPTIONS

• Medical neglect/child removal
  ○ During a measles epidemic, parent objected to measles vaccination because of religious beliefs and that they were medically and scientifically unnecessary and unsafe. Parent failed to show objection stemmed from a sincerely held religious belief. Court found child medically neglected. In re Christine M., 595 N.Y.S.2d 606 (Fam. Ct., Kings Co. 1992).
  ○ Social services could not vaccinate children in foster care in neglect case because parent’s religious beliefs against vaccination were genuine and sincere. Mother was a member of a congregation whose beliefs were against vaccination. Nassau County Dep’t of Social Services ex rel. A.T. v R.B., 870 N.Y.S.2d 874 (Fam. Ct., Nassau Co. 2008).

• School exclusion

CHALLENGES TO PARENTS’ RIGHTS

• WV public school officials denied parent’s medical exemption for her child and refused to admit her child without vaccinations. WV has neither a religious nor philosophical exemption. Parent filed suit claiming violation of her First Amendment, Equal Protection and Due Process rights.

• Federal appeals court ruled that there is no constitutional right to a religious exemption in WV.

• No violation of First Amendment rights under the Free Exercise and Equal Protection Clauses.

• Parent did not have a fundamental substantive due process right to refuse to have her child immunized before attending public school. Workman v Mingo County Bd. of Educ, 419 Fed.Appx. 348 (4th Cir. 2011).

• AR religious exemption statute only allowed parents who were members of a recognized religion that condemned vaccination to use the exemption.

• Public school official suspended child without Hepatitis B vaccine. Parent objects to Hepatitis B vaccine for religious reasons and brought suit because religious exemption was denied.

• Court ruled that religious exemption was unconstitutional under the First Amendment’s Establishment Clause and Free Exercise Clause.

• Court severed the religious exemption, but left the remainder of the statute in effect. Brock v Boozman, 2002 WL 1972086 (E.D. Ark. 2002), appeal dismissed, McCarthy v Boozman, 359 F.3d 1029 (8th Cir. 2004)
CHALLENGES TO PARENTS’ RIGHTS

- Parent’s objection to vaccinate based on “chiropractic ethics” did not fall under the protection of the Establishment Clause.
- Children were not exempt.


CHALLENGES TO PARENTS’ RIGHTS

- NY school officials deny parent’s religious exemption.
- Although beliefs were sincere and genuine, they were held not religious.
- No philosophical exemption in NY.
- Federal appeals court affirmed ruling that denial did not violate parent’s constitutional rights.

_Caviezel v Great Neck Public Schools_, – Fed.Appx. – (2nd Cir. 2012)

CHALLENGES TO PARENTS’ RIGHTS

- NY school officials denied Catholic parent’s medical and religious exemptions for child.
- Due to a clerical error, medical exemption filed.
- Health officials deny exemptions because the parent is claiming the religious exemption after the medical one failed.

_Clock v New York City Dept. of Ed_, U.S. District Court E.D.N.Y., Brooklyn (pending)

New York City Public Schools

- “This year’s goal of assuring that at least 98.8% of New York City’s school children are appropriately immunized.”
- “At that time principals of those schools failing to demonstrate significant progress toward the 98.8% goal will receive a Second Warning Letter, an indication that they are in violation of New York State Law.
- As a reminder, school principals are accountable for their school’s compliance with PHL §2164.

Source: http://schools.nyc.gov/NR/rdonlyres/1B9F9BF4-34AE-49B9-8C45-B0176A0CA970/0/FirstWarningLetter.pdf

CHALLENGES TO PARENTS’ RIGHTS

- “If the Religious Exemption is granted. The Principal must submit a written statement along with the parent letter to the Department of Education, Office of School Health indicating that he/she approves the request and a ’R’ notation will be made in ATS.”


New York City School Principals

- “Excludable means the student should not be allowed to attend school until the vaccination requirements are satisfied
- Principals who allow ‘excludable’ students to attend school are out of compliance with the laws of the NYSDOE – Public Health Law – Title VI – Section 2164 (7).
- Principals who allow ‘excludable’ students to attend school are subject to fines by the NYSDOH. These fines are levied against the principal, not the school.”


Fining Principals

- Fines may be as much as $2,000 PER VIOLATION and each “excluded” student allowed to attend is a separate violation.
New York City Religious Exemption Appeals Process

EXEMPTION RATES ARE RISING

- Parents were 2.5 times more likely to opt out in states that permit philosophical reasons compared with states that require religious objections.
- OR leads the nation with 5.8% kindergartners opting out
- In 2011 in CT, exemptions rose 127% for children entering kindergarten and 7th grade
- In ID, the number of exemptions has been increasing for the past 5 years
- In AZ, in the 2011-2012 school year 3.4% of kindergarteners had personal beliefs exemptions for at least one required vaccine. For the 2000-2001 school year that figure was 1.4%.

SOURCES:
http://abcnews.go.com/Health/medical-vaccination-opt-outs-rise/story?id=17274376#.UW2fCL9JO0s

ROLLBACK OF EXEMPTIONS SINCE THE 1990s

- States that have eliminated their philosophical exemptions:
  - Delaware
  - Montana
  - Missouri
  - Indiana
  - Nebraska

- Current proposed legislation to end or restrict exemptions:
  - Oregon – end religious exemption and add new requirements for personal exemption
  - New Jersey – restrict religious exemption
  - Vermont – suspend philosophical and religious exemptions if immunization rate falls below 90%

- Organized citizen opposition have helped to save the philosophical exemptions:
  - Utah
  - Pennsylvania
  - Michigan
  - Vermont

- More difficult to obtain and increased scrutiny

SOURCES:

Which exemptions have the strongest legal foundation?

- Medical? MDs licensed by state, state medical boards can overrule child’s personal MD, electronic records (NEW).
- Philosophical? Can be legislated away, no constitutional support. Pharma lobby targeting state capitals.
- Religious? 1st Amendment.

RELIGIOUS EXEMPTIONS

- First freedom listed in the 1st Amendment
- Constitutional support
- Historical support (e.g., Christian Scientists, Jehovah’s Witness)

UNIVERSAL FAMILY CHURCH (EST. 2010)
http://universalfamilychurch.org/

- Multi-faith, all are welcome.
- Four central tenets beliefs:
  - 1) Men/women equal;
  - 2) Parents/individuals health choices should be honored;
  - 3) All sexual orientations eligible for salvation;
  - 4) All faiths eligible for salvation. (Membership is private.)
- Religions can be slow to adapt (e.g., 1992: Galileo apology 350 years after his death)
- Part of UFC mission: bring clean water and improved sanitation to the developing world to protect against infectious disease.
2nd Tenet, 5th Commandment

- 5th Commandment: “Honor your father and your mother, that your days may be long in the land that the LORD your God is giving you.”
- God and Moses addressed all of society.
- Many religions recognize Moses as a Prophet.
- Whose child is it? UFC believes Child of God first, parents second, anything else (country, state, etc.) distant third.
- UFC believes parents should make health choices for children.

Electronic records are already having impact on vaccination exemptions

- School nurse and doctor’s offices are sharing vaccination data online, right now. (NYC fining school principals if school under 98% rate.)
- Exemptions for this and future generations may depend on protecting rights now.
- Money matters. Parents usually at a large financial disadvantage vs. school districts.
- How to allocate scarce advocacy resources? Philosophical, medical, or religious exemptions to best protect current and future generations?