

Parental Refusal of Childhood Vaccines and Medical Neglect Laws

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Objectives. To examine the relation of vaccine refusal and medical neglect under child welfare laws.

Methods. We used the Westlaw legal database to search court opinions from 1905 to 2016 and identified cases in which vaccine refusal was the sole or a primary reason in a neglect proceeding. We also delineated if religious or philosophical exemptions from required school immunizations were available at the time of adjudication.

Results. Our search yielded 9 cases from 5 states. Most courts (7 of 9) considered vaccine refusal to constitute neglect. In the 4 cases decided in jurisdictions that permitted religious exemptions, courts either found that vaccine refusal did not constitute neglect or considered it neglect only in the absence of a sincere religious objection to vaccination.

Conclusions. Some states have a legal precedent for considering parental vaccine refusal as medical neglect, but this is based on a small number of cases. Each state should clarify whether, under its laws, vaccine refusal constitutes medical neglect. (*Am J Public Health*. 2017;107:68–71. doi:10.2105/AJPH.2016.303500)

Parental refusal of childhood vaccines is a contentious issue in pediatrics and public health. With increasing numbers of parents exempting their child from required school-entry vaccines¹ and few evidence-based interventions to address vaccine hesitancy,² pediatric providers are struggling with how to respond to parental vaccine refusal.³ One strategy recently promoted is to treat vaccine refusal as neglect and report parents to child protective services (CPS) or another comparable agency.⁴

Although child welfare laws vary by state, the legal concept of medical neglect has a common denominator. New York's law is paradigmatic: a neglected child is one whose "condition has been impaired or is in imminent danger of becoming impaired" because the parent has failed "to exercise a minimum degree of care in supplying the child with adequate" health care.⁵ Medical neglect is a subset of child neglect, which refers to parental acts of omission in the care of their child not exclusive to health care. Both child neglect and child abuse (parental acts of commission that

result in harm to the child) constitute child maltreatment.

Pediatric providers (and other mandatory reporters) have an obligation to report suspected child abuse or neglect to CPS. CPS must determine whether a report requires an investigation and, if so, whether investigation findings meet the relevant legal standards. A finding of medical neglect can trigger court action that may result in the temporary or permanent loss of custody or parental decision-making authority.

Although the application of medical neglect to parental vaccine refusal has some salience—a child is exposed to some potential risk of harm by a parental act of omission—it is not clear whether it is salient to CPS or meets the legal threshold for neglect. For instance, some maintain that CPS screens out

reports solely based on failure to vaccinate,⁶ and Michigan has an explicit policy to this effect.⁷ A few states codify that vaccine refusal regardless of reason,⁸ or solely for sincere religious beliefs,⁹ does not constitute medical neglect. Furthermore, even if vaccine refusal amounts to medical neglect, it is not clear that this finding requires state intervention. Ross and Aspinwall¹⁰ contend that there should be a distinction between medical neglect and state intervention, arguing that vaccine refusal constitutes the former but does not warrant the latter. Chervenak et al.⁴ argue that the purpose of reporting parents who refuse childhood vaccines to CPS for neglect is not to provoke "highly intrusive measures," such as loss of custody, but to "engage [CPS] in further efforts to persuade the parents."^{11(p308)} Simply invoking CPS, however, may undermine parents' views of providers as a trusted vaccine resource and important influence on their vaccine decision-making. Indeed, the American Academy of Pediatrics states that it "does not support the stringent application of medical neglect laws when children do not receive recommended immunizations."^{11(p279)}

A key gap in our understanding of the applicability of medical neglect to vaccine refusal is an analysis of court opinions. This is especially important because most states do not define medical neglect in their statutes.¹² We quantified and categorized adjudicated neglect proceedings for vaccine refusal and describe their features and outcomes.

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TABLE 1—Court Cases Involving Vaccine Refusal and Medical Neglect: Westlaw Legal Database, United States, 1905–2016

State and Case (Year)	Allegations of Neglect and Issue of Immunization	Availability of Nonmedical Exemptions at Time of Adjudication	Holding and Rationale
Arkansas ^a <i>Cude v State</i> , Supreme Court of Arkansas (1964)	Parents refused smallpox vaccine for religious reasons. School refused to allow child to attend because child was not vaccinated.	None	Child deemed neglected. State law requires immunization and attendance at an accredited school. Law does not allow for a religious exemption. Parental refusal to vaccinate, when it prevents child from attending school, constitutes neglect.
<i>Mannis v State</i> , Supreme Court of Arkansas (1966)	Parents refused smallpox vaccine for religious reasons. Child was enrolled in parochial school at their church, which did not require immunization.	None	Child deemed neglected. State law requires immunization and attendance at an accredited school (public or private). The parochial school is analogous to a private school. Parental refusal to vaccinate constitutes neglect.
District of Columbia ^{b,c} <i>In re Ang.P.</i> , District of Columbia Court of Appeals (2013)	Mother heavily medicated because of severe back pain, had home health aide (7:00 AM to 5:00 PM, 7 d/wk); had difficulty meeting needs of her children, ages 5 and 13 y; often failed to get 5-year-old child to school on time; occasionally left children at home without adult supervision. Mother failed to keep 5-year-old up-to-date with immunizations. Failure to immunize was not based on any specified objection to vaccinations.	Religious exemptions	Child not deemed to be neglected. Issues are concerning, as a whole, but they are insufficient to support a finding of neglect. Court notes that the prosecutor did not cite 1 case, nor could the court find 1 case, in which a child was deemed neglected because of failure to keep immunizations up-to-date.
Pennsylvania ^b <i>In re Marsh</i> , Pennsylvania Superior Court (1940)	Public school refused to allow child to attend school because child had not received the smallpox vaccine. Parents refused smallpox vaccine, although the basis of the refusal is not explained in the court opinion.	None	Child deemed neglected. Failure to attend school constitutes neglect. Must vaccinate child so that he or she can attend public, private, or parochial school or provide “other adequate and systematic instruction” such as a home tutor.
New York ^b <i>In re Whitmore</i> , Domestic Relations Court (1944)	Child refused entry into public school because parents refused to vaccinate child for religious reasons.	None	Child deemed neglected.

Continued

TABLE 1—Continued

State and Case (Year)	Allegations of Neglect and Issue of Immunization	Availability of Nonmedical Exemptions at Time of Adjudication	Holding and Rationale
<i>In re Elwell</i> , Family Court, Dutchess County (1967)	Children barred entry to school because not immunized with polio vaccine. Parents claimed a religious exemption.	Religious exemptions	Children deemed neglected. Insufficient evidence that the parents' religion precluded vaccination; rather, refusal to vaccinate appeared to be based on "personal opinions." Religious exemption to vaccination does not apply. Failure to vaccinate, which precludes children from attending school, constitutes neglect.
<i>In re Maria R.</i> , New York Family Court (1975)	Parents failed to vaccinate child. Parents claimed vaccination violates their religious beliefs.	Religious exemptions	Child not deemed to be neglected. Religious exemption to vaccination permitted because parents maintain sincere religious belief. Formal church membership is not required.
<i>Matter of Christine M.</i> , Family Court, Kings County (1992)	Parents failed to vaccinate child with measles vaccine during a measles outbreak in New York City. Child admitted to hospital after she accidentally ingested rat poison, at which point doctors recommended that child be given measles vaccine. Father opposed vaccine on religious grounds.	Religious exemptions	Child deemed neglected. In the midst of confirmed outbreak or epidemic, failure to vaccinate constitutes neglect unless there is a sincere religious objection to vaccination. Court does not find father's religious objections to be sincere. Because outbreak subsided at the time of the court's decision, however, court declines to use its discretionary power to order inoculation. Child remains with parents.
West Virginia ^d <i>Underwood v West Virginia Department of Health and Human Services et al</i> , US District Court for the Southern District of West Virginia (2013)	The mother indicated that she did not keep her child's immunizations current because she had an outstanding bill with the pediatrician, and the office refused to see her child until the bill was paid. During a hearing before a state court judge, the mother admitted that failure to vaccinate constitutes medical neglect. The state used that admission as the sole basis for a charge of neglect. Mother now alleges that the state did not prove that failure to vaccinate constitutes medical neglect.	None	Child deemed neglected. The mother's admission is sufficient, and the state did not have to independently prove that failure to vaccinate constitutes medical neglect. The court did not evaluate whether failure to vaccinate constitutes medical neglect under West Virginia law.

^aArkansas now permits religious and philosophical exemptions.

^bCurrently, District of Columbia, Pennsylvania, and New York permit religious exemptions.

^cBecause the District of Columbia maintains its own judicial district and has its own legal code, we considered it a state for purposes of this analysis.

^dCurrently, West Virginia does not permit religious or philosophical exemptions.

METHODS

We searched the Westlaw legal database for the terms *immuniz**, *inoculat**, or *vaccin** and *abuse**, *neglect**, or *medical neglect* to identify

state or federal court opinions from 1905 to 2016 where vaccine refusal was the sole or a primary reason for a neglect proceeding. We chose this time frame because 1905 was the

year that the Supreme Court held in *Jacobson v Massachusetts* (197 U.S. 11 [1905]) that a state's police power includes the ability to issue vaccine mandates.

We defined *primary reason* to include any case (involving more than 1 alleged reason for child neglect or abuse) in which the court provided a legal analysis of vaccine refusal in the context of medical neglect. We also delineated if non-medical (religious or philosophical) exemptions from required school immunizations were available at the time of adjudication.

RESULTS

Our search yielded 9 cases adjudicated in 5 states from 1940 to 2013 (Table 1). Of these, 5 cases were decided in states that, at the time, did not permit nonmedical exemptions. All 5 found that failure to vaccinate constituted neglect, but 1 case (West Virginia) was based solely on a parent's concession that vaccine refusal constituted neglect.

The 4 remaining cases were adjudicated in 2 jurisdictions (New York and the District of Columbia) that permitted religious exemptions. A 2013 District of Columbia court held that failure to vaccinate did not constitute neglect, regardless of whether the refusal was based on a sincere religious belief. In the 3 New York cases, parents opposed vaccination on religious grounds, and the sincerity of their beliefs was determinative. The courts did not find the parents' religious beliefs to be sincere in the 1967 and 1992 cases and, therefore, determined that the children were neglected; in the 1975 case, the court found the parents' beliefs sincere and the child not neglected. In addition, the 1992 case involved a parent's refusal of the measles vaccine during a measles epidemic. Although the court determined that this refusal constituted neglect, it ruled that it would not force vaccination because the epidemic had subsided at the time of adjudication.

DISCUSSION

In our analysis, we found that most courts (7 of 9) considered vaccine refusal to constitute neglect. However, a few caveats deserve mention. First, of the 7 cases in which vaccine refusal was considered neglect, 5 were adjudicated in jurisdictions at a time when nonmedical exemptions were not permitted. Today, nonmedical exemptions are allowed in all but 1 of the jurisdictions in our sample (West Virginia). Nationally, 47 states and the

District of Columbia allow religious exemptions, and 18 also allow philosophical exemptions (California and Mississippi also do not allow nonmedical exemptions). Therefore, the 4 cases that were adjudicated in jurisdictions that allowed religious exemptions are perhaps more germane. The courts in these 4 cases either found that vaccine refusal did not constitute neglect or considered vaccine refusal to be neglect only in the absence of a sincere religious belief.

Second, only 1 of the cases was adjudicated in the last 20 years (District of Columbia, 2013). The reasons for this paucity amid a rise in vaccine hesitancy are unclear. Some states limit public access to court records or proceedings regarding child abuse or neglect, and additional vaccine refusal cases may be unpublished, unreported, or not captured by the Westlaw database or our searches. Pediatric providers (or other mandatory reporters) also may not report vaccine refusal to CPS because they do not—or do not think CPS will—consider it neglect. Similarly, CPS may not be investigating the reports. Although these factors are more likely to explain the situation in states that have explicitly indicated that vaccine refusal does not constitute neglect,^{7–9} most states have not provided such guidance. Additional studies on the practices and rationales of pediatric providers, other mandatory reporters, and CPS caseworkers regarding this issue would be elucidatory.

PUBLIC HEALTH IMPLICATIONS

This study has several public health implications. First, because so few courts have addressed whether vaccine refusal constitutes medical neglect, invoking child welfare laws to improve compliance with vaccine recommendations deserves caution. Second, in the absence of a clear statutory mandate, state public health officials should issue guidance for providers and CPS as to whether vaccine refusal constitutes medical neglect. Finally, state lawmakers should debate whether vaccine refusal constitutes medical neglect and incorporate their conclusions into state statutes. **AJPH**

CONTRIBUTORS

Both authors contributed substantially to the conceptualization, design, and analysis of the study; made all final decisions regarding case categorization and case analysis; drafted and revised the article; and approved the final

version. E. Parasidis and 5 research assistants conducted the searches.

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HUMAN PARTICIPANT PROTECTION

This project did not require institutional review board approval because the study did not involve human participants.

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