

February 29, 2012

Attention: Pediatricians
United States of America

Re: Legal and Ethical Ramifications of Refusing to Treat Unvaccinated Children

Dear Pediatricians:

Physicians who refuse to treat unvaccinated children due to a parent's exercise of a lawful exemption to immunizations may be violating the parent's Constitutional rights and state ethical rules, and risking liability and/or sanctions accordingly.^{1,2}

First, if you refuse to treat a child for the sole reason that a parent is exercising a vaccine religious exemption, you may be violating the parent's Constitutional rights. State vaccine religious exemption laws are backed by the First Amendment's "free exercise" Constitutional protection. Even private practices may be at risk, if they accept Medicaid and Medicare, as private entities with substantial ties to government may be considered "state actors" for purposes of application of the Constitution directly to those private entities.³ State constitutional religious freedom rights may be violated as well.

Religious freedom is not a trivial matter. Federal courts in vaccine religious exemption cases have held that the "loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"⁴ and have awarded money damages for the loss of First Amendment rights.⁵ Thus, pediatricians should tread cautiously where vaccine religious exemptions are concerned.

Ethical concerns apply to the exercise of both religious and philosophical exemptions. For example, refusing to treat exempt children:

- Contradicts medical association recommendations;⁶
- Punishes innocent children for their parents' decision, and potentially puts those innocent children at risk from the resulting loss of medical care; and
- Punishes law-abiding parents for exercising a legal right, and without good cause, as the lawful exercise of a vaccine exemption, by both legislative presumption and CDC statistics and accepted medical theory, does not create a significant health risk—e.g., non-immune vaccinated kids greatly outnumber exempt kids.⁷

Finally, this refusal policy raises serious professionalism concerns. A threat of refusal to treat is a discriminatory coercive act; refusing to treat an act of authoritarian punishment. In short, these behaviors amount to professional bullying. Worse, they are completely misplaced. State legislatures would not have enacted exemption laws if their exercise would cause a significant risk to anyone. If you disagree, the proper target for your concern is the state legislature—not parents exercising a right granted by lawmakers who have already determined that the exercise of exemptions poses no significant risks.

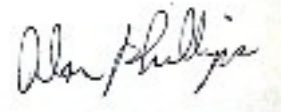
A related misunderstanding concerns the fact that state exemption laws generally allow one parent to exercise the exemption, without requiring the consent of the other

parent. In contrast, vaccinating a child usually requires both parents' consent, since parents generally share decision-making authority over their children equally unless a law or court order says otherwise. Again, those who object may address their concerns with their state representatives, since legislators—not parents—make the laws.

To be clear, an unvaccinated child whose parents are not exercising a lawful exemption may pose a legitimate liability risk, as those parents may not be in compliance with the law. In this case, you may be justified in requiring a waiver from the parents, or in temporarily refusing to treat a child until the parents vaccinate or a parent exercises an exemption. Of course, ethics would require that any child needing immediate medical attention be treated promptly, regardless of the child's vaccination status.

For the above reasons, the policy of refusing to treat legally exempt, unvaccinated children is improper and should cease immediately. But this is also a matter of common sense. Bullying tactics will not change parents' minds, but it will generate resentment that will only add to the ongoing erosion of public confidence in the medical profession. Mature, intelligent discourse on vaccine concerns may create mutual respect and understanding of contrasting concerns. Alternative and complementary medicine has grown steadily for decades now. Medical doctors would serve themselves and others better by tolerating alternative vaccine views, as they are clearly here to stay.⁸

Sincerely Yours,



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¹ This letter is for educational purposes only, and not intended to constitute medical or legal advice.

² As voluminous information exists elsewhere substantiating parents' exemption choices, this letter will focus instead on legal and ethical considerations only.

³ See, e.g., Opinion No. GA-0420, April 6, 2006, Attorney General of Texas, Gregg Abbott, stating that private schools in Texas do not have to accept religious exemptions unless the school accepts state funds, <https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2006/htm/ga0420.htm>.

⁴ *Berg v. Glen Cove City School Dist.*, 853 F. Supp. 651, 654 (E.D.N.Y. 1994) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2689, 49 L.Ed.2d 547 (1976)).

⁵ *Lewis v. Sobel*, 710 F. Supp. 506, 517 (S.D.N.Y. 1989).

⁶ More Doctors 'Fire' Vaccine Refusers, *The Wall Street Journal*, February 15, 2012.

⁷ E.g., 5 - 15% of vaccinated children are not immune, while exemption rates typically run from 1 - 2.5%. See "Vaccine Exemptions: Do They Really Put Others at Risk?", *Natural News*, February 21, 2012, at http://www.naturalnews.com/035024_vaccine_exemptions_children_infectious_disease.html.

⁸ See, e.g., Thomson Reuters-NPR Health Poll Finds One in Four Americans Believe Vaccines are Unsafe, September 30, 2011, <http://www.prnewswire.com/news-releases/thomson-reuters-npr-health-poll-finds-one-in-four-americans-believe-vaccines-are-unsafe-130837193.html>, Majority Support Parental Vaccination Choice According To New Harris Poll, PR Newswire, May 24, 2010, <http://www.prnewswire.com/news-releases/majority-support-parental-vaccination-choice-according-to-new-harris-poll-94723629.html>, and 52% Concerned About Safety of Vaccines, Rasmussen Reports, August 20, 2010, http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/august_2010/52_concerned_about_safety_of_vaccines.