

Religious Exemptions to North Carolina's Childhood Immunization Requirements

What Constitutes a Bona Fide Religious Belief?

By Anne L. Knight

The mother of a child about to enter kindergarten in a North Carolina public school asks her pediatrician to certify that her child should receive a medical exemption from North Carolina's childhood immunization requirement. He refuses because he determines that immunization is not medically contraindicated. She asks another doctor to certify her exemption request. He also refuses. Two days later, she walks into the school office and requests a religious exemption from the immunization requirement.

The mother of another new kindergartner requests a religious exemption from the immunization requirement. The school nurse knows that the child's older sibling has been immunized.

In all fifty states and the District of Columbia, school-aged children must be immunized against certain diseases as a condition of admission to public or private school.¹ Forty-eight states, however, permit religious exemptions to vaccination, and eighteen allow exemptions based on parents' philosophical beliefs.² Three states have "informed refusal" requirements for parents who seek exemptions on the basis of philosophical or religious beliefs.³ All states permit or require schools to either exclude unvaccinated children during outbreaks or compel them to be vaccinated.

Religious exemptions to legislative immunization mandates are intended to balance the often-conflicting goals of ensuring the public health and protecting individuals' religious freedom. All statutes that provide for such exemptions aim to limit them to children whose parents have sincere religious

beliefs opposing immunization. Yet in states like North Carolina—where a religious objection is the *only* nonmedical basis for an exemption—public health officials are concerned that parents may be invoking religious objections when their opposition to immunization is based on nonreligious reasons.⁴ Nonreligious reasons for such opposition are myriad and diverse: some parents object to immunization on the basis of chiropractic or vegetarian beliefs; others view government enforcement of immunization as an intrusion on their privacy or parental autonomy; still others are simply worried about the large number of vaccines a child must receive—about twenty by the age of two.⁵

However, most parents who seek exemptions from vaccinations for nonreligious reasons are primarily concerned about what they perceive as the health risks of vaccines, although medical authorities say the risks associated with childhood immunization are relatively remote. According to the Centers for Disease Control, most vaccine-related side effects "occur

The author is a 2005 graduate of Brooklyn Law School. She served as a summer law clerk of the Institute of Government in 2004. She wishes to extend special thanks to Jill D. Moore and Roberta Clark of the School of Government for their invaluable assistance in preparing this article.

1. State immunization mandates generally require children to be vaccinated against polio, diphtheria, tetanus, pertussis (whooping cough) measles, mumps, rubella, hepatitis B, and haemophilus influenzae (Hib disease).

2. Only Mississippi and West Virginia do not grant religious exemptions to childhood vaccination requirements (for Mississippi, see text at n.21 below). Philosophical exemptions (in, e.g., Colorado, Maine, and Ohio) allow parents to exempt their children from immunization based on their "personal," "moral," or "other" beliefs.

3. ARIZ. REV. STAT. ANN. § 15-873(A)(1) (WEST 1998); ARK. CODE ANN. § 6-18-702(D)(4) (MICHIE 2002); UTAH CODE ANN. § 53A-11-302.5 (2004) An "informed refusal" provision requires the parent to sign a form stating that he or she has received information from the state about the benefits and risks of vaccines, understands them, and recognizes the risks—to both the child and to the larger community—of not immunizing the child. Informed refusal requirements attempt to ensure that the parents are not seeking an exemption based on misinformation about the risks or possible side effects of vaccination.

4. For discussion of nationwide increases in requests for exemptions based on nonreligious objections to immunization, see Ross D. Silverman, "No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection," *Annals of Health Law* 12 (2003) 277, 279; Donald McNeil, "Worship Optional: Joining a Church to Avoid Vaccines," *New York Times*, January 14, 2003, p. F1; Arthur Allen, "Bucking the Herd," *Atlantic Monthly*, September 2002, p. 40; Daniel A. Salmon & Andrew W. Siegel, "Religious and Philosophical Exemptions from Vaccination Requirements and Lessons Learned from Conscientious Objectors from Conscripted," *Public Health Reports* 116 (2001) 289.

5. Chiropractic objection to immunization is based on the belief that disease is caused by an abnormally functioning nervous system and therefore cannot be prevented through vaccination. Vegetarians object to immunization because some vaccinations are cultured using human and animal tissue. See Caroline Kraus, "Religious Exemptions—Applicability to Vegetarian Beliefs," *Hofstra Law Review* 30 (Fall 2001): 197.

rarely (on the order of one per thousands to one per millions of doses) and some are so rare that risk cannot be accurately assessed.”⁶ However, for parents who have never witnessed or experienced the severe health consequences of vaccine-preventable diseases, even small risks of side effects loom large. They view those risks as outweighing the benefits of immunizing against diseases that—because of the enormous success of vaccination laws—have for the most part been reduced to very low levels in the United States.⁷

Although less than 1 percent of children in most states are not vaccinated because of medical, religious, or philosophical exemptions, “hot spots” where the percentage of exempted children is markedly higher (in some communities as high as 5 percent) have developed.⁸ This phenomenon threatens “herd immunity” and has already resulted in recent outbreaks of measles and pertussis (whooping cough) in several communities across the country.⁹ For example, Boulder, Colorado, “which has the lowest schoolwide vaccination rate in Colorado, has one of the highest per capita rates of whooping cough in the United States.”¹⁰ Pertussis is so pervasive in Boulder that local epidemiologists consider it endemic.

Current state laws exempting children from school immunization requirements on nonmedical (i.e., religious or philosophical) grounds fall into four categories:

1. Statutes that contain only a religious exemption and limit exemptions to members of “recognized,” “organized” or “established” religions;¹¹
2. Statutes that require parents objecting on religious grounds to have a “sincere,” “genuine,” or “bona fide” religious belief opposing immunization;
3. Statutes that require parents objecting on religious grounds to have a religious belief opposed to immu-

nization but contain no specific requirement of sincerity; and

4. Statutes that contain an exemption based on a “personal,” “moral,” or “philosophical” belief or that allow an exemption for “good cause.”

The religious exemption statutes in ten states, including North Carolina, specifically require parents’ religious objection to vaccination to be “bona fide,” “sincere” or “held in good faith.” However, to date, no published North Carolina case has construed the meaning of *bona fide* in the context of the religious exemption or has established what inquiry, if any, a school or health official may make into the sincerity of parents’ religious objection to immunization.

This article explores the history and law of religious exemptions to childhood immunization mandates as the context for understanding North Carolina’s statutory requirement of a “bona fide religious belief” as grounds for exempting a child from immunization. In particular, it examines: (1) how courts have interpreted the terms “sincere” or “bona fide”; (2) how broadly or narrowly courts construe the term “religious belief”; and (3) what criteria, if any, courts employ to evaluate the sincerity of parents’ religious beliefs or determine whether those beliefs truly prohibit or are contrary to immunization.

Historical Overview

Immunization and Police Power

In 1904 the landmark Supreme Court case *Jacobson v. Massachusetts* established the constitutionality of mandatory immunization as a proper exercise of a state’s traditional police powers.¹² In 1922, in *Zucht v. King*, the Court specifically addressed the issue of school vaccination and recognized the states’ power to require vaccination as a prerequisite to school enrollment.¹³

Constitutionality of Religious Exemptions

The Establishment and Free Exercises Clauses of the First Amendment to the U.S. Constitution require the government to “make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The debate over the constitutionality of religious exemptions to immunization mandates reflects the tension between these clauses: “If the

6. Centers for Disease Control National Immunization Program, “Six Common Misconceptions about Vaccination and How to Respond to Them,” at www.cdc.gov/nip/publications/6mishome.htm.

7. See, e.g., Steve Calandrillo, “Vanishing Vaccinations: Why Are So Many Americans Opting Out of Vaccinating Their Children?,” *University of Michigan Journal of Law Reform* 37 (2004) 353, 389–92; Allen, “Bucking the Herd,” p. 40 (noting that “vaccination is a victim of its own success”).

8. Donald McNeil, “When Parents Say No to Child Vaccinations,” *New York Times*, November 30, 2002, p. A1 (noting that in one Washington state community, 18 percent of primary school students have legally opted out of state immunization requirements); Richard Perez-Pena, “Vaccine Refusal is Cited in Whooping Cough Cases,” *New York Times*, October 7, 2003, p. B1.

9. James Hodge and Lawrence Gostin, “School Vaccination Requirements: Historical, Social, and Legal Perspectives,” *Kentucky Law Journal* 90 (2001–2002): 831, 877 n.250 (“Under the principle of herd immunity, a population becomes resistant to attack by a disease if a large proportion of its members are immune. This concept explains why some members of a group can remain unvaccinated and the group can still remain protected against the disease”).

10. Allen, “Bucking the Herd,” pp. 40.

11. In Iowa, for example, the parent must submit a signed affidavit 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 § 139A.8(4)(B) (2002).

12. *Jacobson*, 197 U.S. 11 (1905). Police power is “the ability of a state or locality to enact and enforce public laws regulating or even destroying private right, interest, liberty or property for the common good” (LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, AND RESTRAINT (2000), 190–91) and includes “such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety” (*Jacobson*, 197 U.S. at 25).

13. *Zucht*, 260 U.S. 174 (1922).

government creates an exemption to a law solely for religion, it arguably violates the Establishment Clause; if the government fails to create such an exemption for religion, it arguably infringes free exercise.”¹⁴

Although forty-eight states authorize some type of religious exemption to school immunization, public health scholars assert that there is no constitutional right to such an exemption.¹⁵ Such a right would be grounded in the Free Exercise Clause, which grants the absolute right to religious belief. However, in *Employment Division, Department of Human Resources of Oregon v. Smith*, a 1990 case involving religious use of the illegal drug peyote, the Supreme Court established the principle that the “right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law [requires] conduct that his religion proscribes.”¹⁶ Because immunization mandates are neutral laws that apply to all children, the Court, using the reasoning of *Smith*, would likely conclude that there is no free exercise right to a vaccination exemption. Additionally, as the Court noted in *Prince v. Massachusetts*, “the right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death.”¹⁷ Thus, school immunization mandates that lack religious exemptions, like those of Mississippi and West Virginia, would likely survive scrutiny under the Free Exercise Clause.

Although the Supreme Court has not addressed the question of whether the Constitution allows states discretion to provide religious exemptions to school immunization requirements, lower courts have found such legislative discretion to be constitutional.¹⁸ Lower courts have also found a state’s inquiry into the sincerity of parents’ religious beliefs opposing immunization to be constitutional, as long as the state does not, in the course of the inquiry, assess the validity

or convey disapproval of the parents’ beliefs.¹⁹ Several courts, however, have struck down religious exemptions limited solely to members of “recognized,” “organized,” or “established” religious organizations, finding that such exemptions violated both the Free Exercise and Establishment Clauses.²⁰ And in 1979 the Mississippi Supreme Court invalidated Mississippi’s religious exemption statute on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment—by exposing vaccinated students who may still be unimmunized (because vaccines are not 100-percent effective) to unvaccinated children whose parents had invoked the religious exemption.²¹

North Carolina’s Religious Exemption

Exemption Based on “Bona Fide Religious Belief”

Section 130A-152 of the North Carolina Statutes (hereinafter G.S.) requires that children in North Carolina be immunized from certain diseases—diphtheria, tetanus, pertussis (whooping cough), measles, rubella, haemophilus influenzae, and hepatitis B—before enrolling in school. A student may be exempted from this requirement only if (1) immunization is medically contraindicated²² or (2) the child’s parents or guardian (or the adult student) oppose immunization on the basis of religious belief.

If the bona fide religious beliefs of an adult or the parent, guardian or person *in loco parentis* of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization.²³

14. ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 1238 (2d ed. 2001).

15. See, e.g., Gostin, “School Vaccination Requirements,” p. 859; Kevin Malone and Alan Hinman, *Vaccination Mandates: The Public Health Imperative and Individual Rights*, in LAW IN PUBLIC HEALTH PRACTICE 274–76 (Richard A. Goodman et al. eds., 2002) (“[I]t is reasonable to conclude that there is no free exercise right to an exemption from mandatory vaccination requirements.”).

16. *Smith*, 494 U.S. 872, 879 (1990).

17. 321 U.S. 158 (1944), 166–67. *Prince* dealt with the issue of whether a parent who forced her children to sell religious pamphlets could be prosecuted under child labor laws; the case established the principle that “the state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare. . . . [T]his includes, to some extent, matters of conscience and religious conviction.” *Id.* at 167.

18. See, e.g., *Turner v. Liverpool Cent. Sch.*, 186 F. Supp. 2d 187 (N.D.N.Y. 2002) (New York’s religious exemption did not violate Establishment Clause); *Syska v. Montgomery Bd. of Educ.*, 415 A.2d 301 (Md. Ct. Spec. App. 1980) (Maryland’s religious exemption did not run afoul of Establishment Clause, Free Exercise Clause, or Equal Protection Clause, even though it applied only to members of a “recognized” church; the statute was later expanded to include parents with “bona fide religious beliefs” opposing immunization); *Kleid v. Bd. of Ed. of Fulton, Ky. Indep. Sch. Dist.*, 406 F. Supp. 902 (W.D. Ky. 1976).

19. See, e.g., *Kleid*, 404 F. Supp. at 906; *Turner*, 186 F. Supp. 2d at 193 (inquiry into sincerity of parent’s belief did not violate Establishment Clause because it did not require school officials to assess the validity of the parent’s belief). In *Lemon v. Kurtzman*, the Supreme Court established the principle (known as the *Lemon* test) that to comply with the Establishment Clause, a statute (and its administration) must have (1) a secular purpose, (2) a primary effect that neither advances nor inhibits religion, and (3) must not produce excessive government entanglement with religion. *Lemon*, 403 U.S. 602 (1971). A state’s inquiry into the validity or reasonableness of a religious belief or conveyed disapproval of the belief would likely violate the second and third prongs of the *Lemon* test by inhibiting and excessively interfering with religion.

20. *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002); *Sherr v. Northport–East Northport Union Free Sch. Dist.*, 672 F. Supp. 81 (E.D.N.Y. 1987); *Dalli v. Bd. of Educ.*, 267 N.E.2d 219 (Mass. 1971) (Massachusetts exemption violated Free Exercise and Equal Protection clauses by preferring some religious beliefs over others.). *But see Kleid*, 406 F. Supp. at 907 (Kentucky statute that provided exemptions only for “members of a nationally recognized and established church” did not violate Establishment Clause.).

21. *Brown v. Stone*, 378 So. 2d 218 (Miss. 1979).

22. N.C. GEN. STAT. § 130A-156 (2003) (hereinafter G.S.).

23. G.S. 130A-157 (2003).

North Carolina's Administrative Code states explicitly that the religious exemption cannot be interpreted to include philosophical or personal objections to immunization "not founded upon a religious belief."²⁴

The language of the North Carolina religious exemption—specifically the phrase "shall be exempt from the requirements"—makes it clear that school and public health officials *do not* have the discretion to deny an application *if* parents' objection to immunization is based on sincere religious beliefs contrary to immunization. However, the statute does not answer the question of whether school or public health officials may deny a request for an exemption if they believe that the parents' objection is not grounded in a sincere religious belief.

Approximately .025 percent of children in North Carolina are exempt from immunization requirements on religious grounds. Parents who wish to exempt their children for religious reasons must provide the school a written statement of religious belief. The statement does not have to state the specific religious belief that is contrary to immunization. It can be as short and simple as "I am opposed to immunization due to a bona fide religious belief" and must contain the child's name and date of birth.²⁵ School officials do not inquire into the substance of parents' religious beliefs or ask for any further details. However, if they become aware of other information contradicting the statement or suggesting that the religious exemption is being invoked for nonreligious reasons, they may refer the issue to the North Carolina Division of Public Health (DPH).²⁶

Some parents petition for a contested case hearing after an immunization exemption has been denied. Each year, the state receives from two to four such petitions.²⁷ A typical case involves denial of a request for a *medical* exemption rather than a denial of a religious exemption.²⁸ When a request for medical exemption is denied, DPH sends a letter to the child's physician and family giving the reason for the denial and explaining that the parent may appeal the denial by filing a petition for a contested case hearing with the North Carolina Office of Administrative Hearings. If a petition is filed, the case is referred to an attorney in the Office of the Attorney

General (AG). At this point, some petitioners assert a religious objection to immunization. If there is reason to suspect that the religious objection is being asserted only because the medical exemption was denied, the attorney assigned to the case may inquire further. The cases are typically resolved without a hearing, when either the parent decides to accept the immunizations or DPH, in consultation with the AG's office, decides to accept the objection. No case has ever resulted in a written decision by a court of record. As a result, there is no guidance in North Carolina law regarding the extent to which DPH may inquire into the bona fides of a religious objection.

Other States' Approaches

Officials in several states have examined the issue of whether school or public health officials may inquire into the bona fides of parents' religious opposition to immunization. Some have concluded that no such inquiry is permitted, because the statutory language does not mention an inquiry. Other states have interpreted their immunization statutes as permitting such an inquiry. The only substantive difference between the statutory language of states that authorize an inquiry into religious beliefs and those that do not is the presence or absence of the words "sincere," "genuine" or "bona fide" modifying the term "religious belief."²⁹

Inquiry into Sincerity Not Permitted

Although the purpose of any religious exemption is to excuse from immunization only those children whose parents have a sincere religious objection to it, Wyoming and Florida courts have held that school and public health officials may not, under any circumstances, inquire into the bona fides of parents' religious objection.³⁰ In both states, courts concluded that public health officials had exceeded their legislative authority by initiating such an inquiry. The Florida court noted that if the legislature had intended to vest public officials with the discretion to determine the bona fides of a religious objection, it would have included language indicating such an intent: "[T]he legislature might, for instance, have added . . . the words 'and the Department [of Health] determines that immunization would conflict with a religious tenet or practice . . . ' or at a

24. N.C. ADMIN. CODE tit. 10A, r. 41A.0403 (1979).

25. Personal Communication, Sheree Smith, Field Service Unit Manager, Immunization Program, North Carolina Division of Public Health, June 18, 2004.

26. For example, if, as in the cases mentioned at the beginning of the article, a parent had first requested and was denied a medical exemption, or an older sibling had been vaccinated.

27. Personal communication, Judith Tillman, Assistant Attorney General, North Carolina Department of Justice, April 6, 2005.

28. This may be because the criteria for determining whether a medical exemption will be allowed are clear. North Carolina uses the current guidelines of the U.S. Public Health Service's Advisory Committee on Immunization Practices to determine whether a medical contraindication exists. 10A NCAC 41A.0404(b). By contrast, there are no clear standards in state law for public health officials to apply when deciding whether to allow a religious exemption. In the absence of such standards, public health officials may be more reluctant to deny requests for religious exemptions.

29. For example, New York's religious exemption statute provides that the statutory immunization requirement "shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required," while Florida's statute states that its immunization requirement "shall not apply if the parent of the child objects in writing that the administration of immunizing agents conflicts with his or her religious practices." NY. PUB. HEALTH LAW § 2164 (9) (McKinney 2003); FLA. STAT. ch. 1003.22(5)(a) (2004).

30. *LePage v. Wyoming*, 18 P.3d 1177, 1181 (Wyo. 2001) (Wyoming legislature did not "anticipate or authorize . . . broad investigation into an individual's belief system in an effort to discern the merit of a request for exemption"); *Dep't of Health v. Curry*, 722 So. 2d 874 (Fla. Dist. Ct. App. 1998).

minimum . . . [have] required a parent or guardian to swear or affirm that the objection was bona fide.”³¹ This language and similar language in the Wyoming opinion suggests that a court’s or public agency’s authority to inquire into the bona fides of parents’ objections could only come from statutory language specifically vesting such discretion in them or, at a minimum, specifying that parents’ beliefs must be “sincere” or “bona fide.”

Attorneys general in Montana and New Jersey, in interpreting religious exemption laws that have no specific sincerity requirement, have also determined that school or public health officials may not inquire into the sincerity of parents’ beliefs.³² And, according to a recent survey of all fifty states’ exemption policies and practices, thirteen states that allow only religious exemptions and ten states that also offer philosophical exemptions give state officials no authority to deny an exemption; if all of the requested “forms, statements or letters [are] completed according to state requirements, no additional judgment of eligibility based on religious tenets” may be made.³³

However, a Massachusetts court recently ruled that a religious exemption statute lacking a specific requirement of sincerity does nonetheless permit health officials to inquire into the bona fides of an adherent’s beliefs.³⁴ And Delaware’s religious exemption statute, which also contains no specific sincerity requirement, nevertheless makes clear, in the language of its required “affidavit of religious belief,” that the belief must be “sincere and meaningful.”³⁵

Inquiry into Sincerity Permitted

Of the ten states whose religious exemptions from school immunization specifically require a parent’s belief to be “genuine,” “sincere” or “bona fide,” only New York has established criteria for courts or school and health officials to employ in examining the sincerity of the belief.³⁶ The language of New

York’s exemption statute is substantially similar to North Carolina’s; it simply substitutes for North Carolina’s requirement of “bona fide religious beliefs” a statement that religious beliefs must be “genuine” and “sincere.”³⁷

New York courts have developed a two-prong test to determine eligibility for a religious exemption: (1) Is the opposition to immunization based on “religious” beliefs, as opposed to “views founded upon, for instance, medical or purely moral considerations,” “scientific and secular theories,” or “philosophical and personal beliefs”? and (2) Is the religious belief genuinely and sincerely held?³⁸

Defining Religious

The threshold question in determining eligibility for a religious exemption in New York is whether the parents’ belief is in fact “religious.” New York courts, following the Supreme Court’s lead, define a religious belief as one that “occupies a place in the life of the possessor parallel to that filled by the orthodox belief in God.”³⁹ A personal religious belief is sufficient: “beliefs need not be consistent with the dogma of any organized religion, whether or not the [parents] belong to any recognized religious organization.”⁴⁰ For example, a court found that although nothing in the Jewish religion proscribes immunization, parents’ personal interpretation of Hebrew scripture was sufficient to qualify as “religious.”⁴¹

A belief cannot be rooted in scientific, medical, philosophical, or moral opposition to vaccination. In a 1989 case, parents’ belief that all human beings “exist in spiritual perfection” and that immunization and other “routine preventative medical procedures” are therefore unnecessary and contrary to their child’s spiritual perfection was held to be religious because it was rooted solely in “ultimate concerns that are clearly more than intellectual in nature.”⁴² In another case,

cials to use in evaluating a parents’ religious objections, its statute appears to authorize a sincerity inquiry. It requires a parent to demonstrate “satisfactory evidence” of a “bona fide” religious belief that conflicts with immunization, implying that if such a showing is not made, school or public health officials have discretion to deny the religious exemption. HAW. REV. STAT. ANN. § 302A-1156 (2004).

37. N.Y. PUBLIC HEALTH LAW § 2164 (9): “[The statutory immunization requirement] shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.”

38. See, e.g., *Sherr*, 672 F. Supp. at 92; *Turner v. Liverpool* (N.Y.) Cent. Sch. Dist. (unpublished federal district court case, 2001), *New York Law Journal* (March 20, 2001): 29; *In re Christine M.*, 595 N.Y.S.2d 606, 615 (N.Y. Fam. Ct. 1992); *Mason v. General Brown Cent. Sch. Dist.*, 851 F.2d 47, 51–52 (2d Cir. 1988).

39. *Sherr*, 672 F. Supp. at 92 (quoting *U.S. v. Seeger*, 380 U.S. 163, 166 (1965)). In *Seeger*, the Supreme Court addressed a statute relating to the exemption of conscientious objectors from combatant training and service in the armed forces.

40. *Farina v. Bd. of Educ. of the City of New York*, 116 F. Supp. 2d 503, 507 (S.D.N.Y. 2000); see also *Sherr*, 672 F. Supp. at 91.

41. *Berg v. Glen Cove City Sch. Dist.*, 853 F. Supp. 651, 653 (E.D.N.Y. 1994).

42. *Lewis v. Lewis*, 710 F. Supp. 506, 515 (S.D.N.Y. 1989).

31. *Curry*, 722 So. 2d at 877–78.

32. 44 Mont. Op. Atty. Gen. No. 7 (1991); McNeil, “Worship Optional” (citing unpublished 1995 ruling by New Jersey’s attorney general that school officials may not question a religious exemption request).

33. Jennifer S. Rota et al., “Processes for Obtaining Nonmedical Exemptions to State Immunization Laws,” *American Journal of Public Health* 91 (2001): 647.

34. *Morin v. MGH Inst. of Health Professions*, 2002 WL 31441509, at *1 (Mass. Super. Nov. 1, 2002). This case dealt not with the religious exemption to Massachusetts’s childhood immunization statute (which has a specific sincerity requirement), but with a religious exemption to a Massachusetts statute requiring the immunization of students in a health science program who come into contact with patients. The court found that the student requesting an exemption had not shown her beliefs to be “religious.”

35. Delaware’s statutory affidavit of religious belief requires the objecting parent to affirm that he or she “subscribe[s] to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation,” that “this belief is not a political, sociological or philosophical view of a merely personal code,” and that the belief “is sincere and meaningful and occupies a place in [the parent’s] life parallel to that filled by the orthodox belief in God.” DEL. CODE ANN. tit. 14, § 131(a)(6) (2005).

36. Although Hawaii’s courts have no established criteria for courts or offi-

the Second Circuit found that a parent's belief that immunizations were unnecessary because they were contrary to human beings' "genetic blueprint" was *not* religious because it was based on "scientific and secular theories."⁴³ Recently, however, a federal district court found a parent's arguably secular beliefs to be religious because—though based on the secular, philosophical, and scientific teachings of a chiropractic organization she belonged to—they were "unique to the parent and merely evolve[d] from those teachings" into a personal spiritual belief that "occup[ied] the same place" in her life "as an orthodox belief in God holds in the life of one clearly qualified for exemption."⁴⁴

Defining Sincerity

Once a court determines that the espoused belief is religious, it must ascertain whether the belief is sincere. A court's finding that the beliefs espoused are sincerely held would entitle the parents to a religious exemption from the mandatory immunization program.

New York courts have repeatedly acknowledged that "attempts to ascertain the sincerity of religious belief must be undertaken with extreme caution."⁴⁵ The purpose of sincerity analysis is not to determine whether the parents' underlying beliefs are objectively true, but rather if they are held in good faith:

Sincerity analysis seeks to determine the subjective good faith of an adherent. . . . The goal, of course, is to protect only those beliefs that are held as a matter of conscience. . . . [I]t is frequently difficult to separate this inquiry from a forbidden one involving the verity of the underlying belief. . . . Therefore, this analysis is most useful where extrinsic evidence is evaluated. For example, an adherent's belief would not be "sincere" if he acts in a manner inconsistent with that belief, or if there is evidence that the adherent materially gains by fraudulently hiding secular interests behind a veil of religious doctrine.⁴⁶

Courts look to several factors in assessing the sincerity of parents' belief:

Religious convictions are inherently subjective, and the court cannot look directly into the minds of the [parents]. But the court may, as in any state of mind inquiry, draw inferences from the [parents'] *words* and *actions*, in determining whether they hold genuine and sincere religious beliefs against inoculations.⁴⁷

The first factor considered is whether the parents act in a manner consistent with the belief. The second factor is whether the "requisite nexus between the objection to immunization" and the parents' religious beliefs has been shown.⁴⁸ The final factor is the parents' demeanor and credibility.

Pervasiveness and consistency. To establish that a religious belief is sincere, parents must first demonstrate to the court that they act in a manner consistent with the belief, applying it consistently to their own health and lifestyle decisions and to the family's "whole way of life."⁴⁹ Parents must show that they live their daily lives according to their professed religious beliefs and that they have seriously contemplated both their decision to abide by the principles of their religion and their decision not to have their child immunized because of these principles.

Parents whose religious beliefs "pervade their life, especially their diet and methods for treating illness," have been found to be sincere.⁵⁰ For example, a federal district court held that a couple's assertion that "injecting substances unnaturally into [the] bloodstream" was a violation of their religious beliefs was sincere. The court's examination of the family's medical and dental records revealed that for at least six years prior to the parents' application for an exemption, they had practiced "those beliefs . . . in contexts other than immunization, for instance, in the receipt of prenatal, pediatric and dental care."⁵¹ Conversely, the courts have found insincere the religious beliefs of parents who permit one of their children to be vaccinated but not another, or allow a child to be X-rayed or have cavities filled while claiming that their religious beliefs prohibit any intrusion into the body. When parents join religious organizations solely for the purpose of obtaining religious exemptions or seek exemptions for nonreligious reasons before applying for religious exemptions, courts doubt the sincerity of their beliefs. The longer and more consistently the belief is practiced, the more likely the court is to find that it is sincerely held.

However, courts also acknowledge that "occasional deviation from one's religious practice does not necessarily negate the sincerity of one's religious beliefs."⁵² Thus, the court in one case did not question the sincerity of the parents' religious objection to immunization, even though their daughter had earlier been inoculated against polio. Because the mother had vaccinated the child only after receiving considerable family pressure and without her husband's knowledge, the court considered it an isolated event. In the same case, the parents had also applied for a medical exemption from immunization; the

43. *Mason*, 851 F.2d at 51–52. The objecting parent in this case was a chiropractor who admitted at trial that his opposition to immunization was based on "scientific evidence and medical theory" and that his main objection to immunization was his fear of possible side effects.

44. *Turner*, N.Y.L.J., March 20, 2001, at 29 (quoting *Seeger* 380 U.S. at 166).

45. *Sherr*, 672 F. Supp. at 94; see also *Berg*, 853 F. Supp. at 655.

46. *Lewis*, 710 F. Supp. at 515, quoting Int'l Soc'y for Krishna Consciousness, Inc. v. Barber, 650 F.2d 430, 441 (2d Cir. 1981).

47. *Farina*, 116 F. Supp. 2d at 508 (emphasis added).

48. *Friedman v. Clarkstown Cent. Sch. Dist.*, 75 Fed. Appx. 815, 818, 2003 WL 22134539, at *2 (2d Cir. Sept. 16, 2003).

49. *Sherr*, 672 F. Supp. at 96.

50. *Lewis*, 710 F. Supp. at 515.

51. *Berg*, 853 F. Supp. at 655.

52. *Lewis*, 710 F. Supp. at 516.

court found, however, that as they did so *after* applying for a religious exemption, they were most likely seeking the medical exemption only as “a last minute alternative” to a religious exemption.⁵³

Nexus between religious belief and objection. When courts interpreting the New York exemption statute granted an exemption, they were convinced that the parents had “seriously contemplated the foundations of [their] religious beliefs as they relate to [their] opposition to inoculation.”⁵⁴ Parents who are unable to articulate the relationship between their espoused religious beliefs and their opposition to immunization have generally failed to convince the courts that those beliefs are the true basis of their objection to immunization—even though the beliefs may be religious and may be sincerely held. It is not sufficient for a parent to say: “I have a religious belief” and “I oppose vaccination.” Parents must demonstrate to the court that their religious objection is the primary reason for opposing vaccination. For example, the Second Circuit concluded that a mother who never mentioned her religious beliefs to her son’s pediatrician when refusing to immunize him and who changed the nature of her objections to immunization over the course of her lawsuit against the school district was not eligible for a religious exemption: “[W]hile the [parent] might be a religious person, and was clearly opposed to immunization, the requisite nexus between the objection to immunization and [her] religious beliefs—if any—has not been shown.”⁵⁵

Credibility. Because the question of whether a belief is sincerely held is one of fact, courts focus special attention on the parents’ demeanor and credibility in analyzing the sincerity of their religious belief: “[I]n determining whether a belief is ‘truly’ or ‘sincerely’ held, the trial court must rely heavily on its unique ability to observe the demeanor of witnesses and to weigh their credibility.”⁵⁶ When parents’ testimony is consistent, “direct and very credible,” courts have found their religious beliefs regarding immunization to be sincerely held.⁵⁷ But when courts have found parents’ testimony internally inconsistent, or inconsistent with statements previously made to school officials or in documents supporting their application for an exemption, they have denied religious exemptions on the grounds that parents’ beliefs are not sincerely held.⁵⁸ For example, a mother’s “lack of forthrightness” in answering

both a school superintendent’s and a lower court’s questions regarding the relationship between her religious belief and her opposition to immunization was cited as a factor by the Second Circuit in denying her a religious exemption.⁵⁹ In another case, the parents testified that their opposition to immunization was rooted solely in their “personal, unique” understanding of the Bible. However, the court determined that much of the parents’ testimony, as well as portions of documents submitted in support of their request for an exemption were “not the product of the plaintiffs’ own deeply held conviction, but rather more plausibly . . . expressions the plaintiffs borrowed from outside sources [anti-vaccination Web sites and studies regarding the health risks of vaccination].” The court concluded that although “repetition verbatim of boilerplate religious sentiments and biblical quotations would not, on its own, render the [parents’ in-court] statements incredible, [the parents’] insistence that their objections to immunization are the result of their personal, individualized interpretation of scripture arrived at through personal spiritual contemplation gives . . . reason to doubt the sincerity of the expressed beliefs.”⁶⁰

Conclusion

Conflicting Policies

A state’s decision about whether its exemption statute authorizes inquiries into the bona fides of parents’ avowed religious beliefs necessarily depends on a delicate balance between, on one side, protection of the public health and, on the other, parental autonomy and religious freedom. In many states, school and public health officials have performed this balancing test and have chosen to grant exemptions to all parents who apply, without inquiring into the sincerity of their religious beliefs or the connection between those beliefs and their objection to immunization.

The issue which we are called upon to decide implicates two very important social policies—the desire to protect the public health and welfare and the desire to protect a parent’s fundamental right to raise his or her child according to the religious tenets that he or she chooses. After considerable reflection, we conclude that the legislature intended that when, as here, the two policies collide, greater protection be afforded to the latter by prohibiting any inquiry . . . into the bona fides of the parent’s or guardian’s objection.⁶¹

The courts in states like Florida and Wyoming have acknowledged that this approach permits some parents to obtain

53. *Id.*

54. *Christine M.*, 595 N.Y.S.2d at 617; see also *Sherr*, *Turner*, *Berg*, and *Lewis* (cases cited above), in which religious exemptions were granted. (Two sets of parents sought exemptions in *Sherr*. The court granted one set of parents an exemption and denied the other set an exemption.)

55. *Friedman v. Clarkstown Cent. Sch. Dist.*, 75 Fed. Appx., 815, 818, 2003 WL 22134539, at *2 (2d Cir. Sept. 16, 2003).

56. *Christine M.*, 595 N.Y.S.2d at 615.

57. *Lewis*, 710 F. Supp. at 515.

58. *E.g.*, *Sherr*, 672 F. Supp. at 96; *Christine M.*, 595 N.Y.S.2d at 617.

59. *Friedman*, 75 Fed. Appx. at 819.

60. *Farina*, 116 F. Supp. 2d at 512, 508.

61. *Curry*, 722 So. 2d at 877.

religious exemptions for nonreligious reasons.⁶² Yet, for a variety of valid reasons—the relatively low rate of exemptions in most states, inadequate resources to conduct a systematic inquiry into every parent's religious objections, confidence that parents will generally act in the best interests of their children's health, and the inherent difficulty (and danger to the free exercise of religion) of investigating a parent's state of mind—most states do not view a policy of investigating religious objections to immunization as either wise or practicable.⁶³

Other states have favored the policy of ensuring the public health by allowing only parents with deeply held, religiously based objections to immunization to obtain exemptions. And a small number of states, through mandatory “informed refusal” programs, ensure that parents fully understand the public health implications of the decision they are making, by requiring them to learn about the benefits of immunization and the risks—to both their child and the larger community—of deciding against immunization. Such programs also seek to combat misinformation about vaccination side effects that may improperly influence a parent's decision to seek an exemption.

Policy Alternatives

North Carolina educators and policymakers concerned about the public health effects of religious exemptions from immunization could take several steps to (1) limit applications for religious exemptions to parents with sincere, deeply held objections and (2) educate all parents about the risks and benefits of immunization.

Inquiry into Parents' Beliefs

First, public health officials could conceivably order a child to be vaccinated over parents' religious objection or exclude an unvaccinated child from school after conducting an inquiry into the bona fides of the parents' religious beliefs. To take this drastic step, they would need to conclude that either (1) the parents' beliefs are not in fact “religious” or (2) the beliefs are not sincerely held. In any such inquiry, to avoid inflicting an unconstitutional burden on parents' freedom of religion,

62. For example, in *LePage*, the Wyoming court noted: “[w]e recognize the genuine concern that there could be increased requests for exemption and a potential for improper evasion of immunization”). 18 P.3d at 1181. In *Curry*, the Florida court observed: “It is true that the intent we have attributed to the legislature will permit parents and guardians to obtain exemptions based upon untruthful representations that immunization would conflict with their religious beliefs.” 722 So. 2d at 878.

63. “Should an individual be forced to present evidence of his/her religious beliefs to be scrutinized by a governmental employee? If parents have not consistently expressed those religious beliefs over time, should they be denied an exemption? Can parents have beliefs that are both philosophical and religious without disqualifying their exemption request? Should the government require a certain level of sincerity as a benchmark before an exemption can be granted?” *LePage*, 18 P.3d at 1181.

officials would need to take great care not to base their decisions on their own judgment of whether or not an underlying religious belief is reasonable or true. If officials then decide not to grant a religious exemption and the parents contest the decision in court, a North Carolina court might not follow New York's interpretation of its own very similar religious exemption statute; it might instead hold that the North Carolina statute does not authorize *any* analysis of the sincerity of parents' religious belief.

Immunization Education

Second, local school and health officials could hold voluntary information sessions for parents at which they listen to parents' concerns and explain the benefits, as well as the known and possible risks of vaccinations. Additionally, public health officials could prepare and distribute written materials that summarize these risks and benefits. Such materials would be especially helpful in dispelling myths and rumors about the dangers of immunization that abound on the Internet.

Some local public health officials have asked for voluntary meetings with parents who apply for religious exemptions to discuss the medical and legal consequences of their decision not to immunize. State public health lawyers have generally advised against such meetings, out of concern that parents may feel coerced into attending, or that public health officials might inadvertently make improper inquiries about the parents' beliefs. Local officials who choose to hold such meetings should clearly inform parents that the meetings are voluntary. They should focus the meetings on the risks and benefits of immunizing children and on the potential legal consequences of not doing so (specifically, the exclusion from school and quarantine of an unvaccinated child during a disease outbreak). Most of all, local officials should avoid lecturing parents or questioning the validity of their religious objections to immunization.

Informed Refusal Program

Finally, North Carolina policymakers could establish a mandatory “informed refusal” program for parents requesting a religious exemption. Before receiving an exemption, parents would be required to meet with a public health official to discuss the risks and benefits of both immunization and exemption and to sign a form stating that they understand those risks and benefits. Such a program would (1) ensure that parents are not seeking an exemption based on misinformation about the health risks of vaccination and (2) help parents understand that the decision not to vaccinate poses a danger to both the child and the larger community. Most importantly, a mandatory informed refusal program, like voluntary immunization education, would assist parents in making more meaningful choices about their children's health. ■