

## New Jersey Vaccine Mandates: The Confluence of Regulations, Rights, and Religion

Vaccines rank among the top ten public health achievements of the past century, along with food safety, control of infectious diseases, healthier mothers and babies, automobile safety, fluoridation of drinking water, family planning and others. The sad irony is that our success in eradicating scourges like smallpox, polio and diphtheria is threatened by unfounded fears regarding vaccine complications. Across the nation, the public health community is confronting a backlash against state vaccination requirements spearheaded by small but vocal groups of anti-vaccine activists concerned about vaccine safety and issues of personal choice.<sup>1</sup> In New Jersey's case, legislation to tighten religious exemption regulations is the current focal point for their lobbying efforts.

Mandatory childhood vaccination was a key element in our success in the war against deadly infectious diseases. Voluntary efforts do not ensure enough children are vaccinated to prevent efficient person-to-person transmission of vaccine-preventable disease—often called “herd immunity.” Without susceptible people to infect, infectious agents hit a dead end and the disease outbreak ultimately dies out. Children are at higher risk for these diseases and are more likely to spread it to vulnerable populations such as infants, immunocompromised people and the elderly.

Every state in the nation has a law requiring school children to be vaccinated against serious illness such as measles, mumps, rubella, polio and others. All states exempt individuals with medical conditions that put them at risk for complications from the vaccine, and all but two states provide

for religious exemptions. Nineteen states allow parents to opt their children out of the vaccines over philosophic or moral concerns.<sup>2</sup> States that only require a simple statement of objection, rather than a more rigorous exemption process, are seeing a significant increase in outbreaks of vaccine-preventable disease.<sup>3,4,5</sup>

This controversy is not new. In 1902, Henning Jacobson refused an order of the Cambridge, Massachusetts Board of Health requiring him to take a smallpox vaccination, claiming that the requirement violated his personal liberty. He was fined \$5 as a result. He appealed his case to the US Supreme Court, which sided with the Board saying that the “...community has the right to protect itself against an epidemic of disease.”<sup>6</sup> *Jacobson v. Massachusetts* became the seminal case codifying the principle that community wellbeing can trump individual liberty and that public health agencies have the authority to impose these requirements.

In its decision, the Supreme Court allowed for medical exemptions, but denied exemptions for religious or philosophic beliefs. The courts have generally held in other cases that the religious freedoms guaranteed by the First Amendment can be curtailed, when necessary, to protect public health.<sup>7</sup>

States are not constitutionally required to grant religious exemptions, but when they do the procedure by which exemptions are granted must comport with the Constitution. For example, the government cannot require proof of membership or regular attendance at services of an “established” religion before granting an exemption. To do so would run afoul of the First Amendment

prohibition against the government establishing a religion. However, it can require proof of the sincerity of one's religious belief; applying the principles used to assess the veracity of the conscientious objectors to required military service. No conversions are allowed on the way to the draft board.

It is this issue of the nature of the religious objection against the vaccination mandate that is in question in New Jersey. State law mandates that parents provide proof of a child's appropriate immunization against a variety of diseases prior to attendance at daycare, school or college.<sup>8</sup> The law leaves enforcement to local public health and school officials. Standards for granting exemptions have varied across jurisdictions and some officials may have been requiring proof of church membership rather than examining the sincerity of the beliefs.<sup>8</sup>

In response to a request for guidance from local officials, the New Jersey Department of Health and Office of Attorney General issued interim policies and ultimately regulations that said no inquiry into the nature of a family's religious belief could be made before granting an exemption.<sup>8</sup> All that could be required was a written statement from the parents that included the word “religion” or “religious.” Officials could not inquire how long the belief was held; whether the child received some but not all vaccines, or if other family members were vaccinated; if their primary concern was the safety of the vaccine; or if they would vaccinate against the disease if it presented itself in the community. In essence, anyone could claim a religious exemption for reasons that had nothing to do with religion.

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A preliminary analysis of school immunization reports revealed that the number of students with active religious exemptions statewide went from 1,625 in 2007, prior to the change in standards, to 6,204 in 2011 or 1.2% of the sampled population (Harris: unpublished data). While it can't be proven that the regulatory change allowed for more religious exemptions, anecdotally there was evidence (via online forums) that parents whose objections to vaccinations were more philosophical or safety-related were exchanging tips on how to obtain an exemption based on religious objection.

These new regulations effectively converted New Jersey's current law limiting

vaccine mandate exemptions to medical or religious grounds into a law allowing liberal philosophical exemptions. The data supported the concern that the number of under-immunized children was quickly approaching a level similar to states with lax philosophical exemption standards, putting the state at risk of major outbreaks.

The New Jersey state legislature is considering a bill (S 1759)<sup>9</sup> that will make explicit the process for granting religious exemptions and follow judicial precedent allowing for appropriate verification of religious exemption claims. Recent outbreaks of pertussis<sup>10,11</sup> and mumps are just a foreshadowing of what might

be coming if the state continues to allow parents unqualified access to the religious exemption process.

Immunity against vaccine-preventable disease is a community resource, bequeathed to us by generations past and current who rolled up their sleeves for shots that protected not only themselves but everyone else. ■

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