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Baumgartner v. First Church of Christ, Scientist: Religious Healers' Exemption From Liability

Rebecca Carlins

Casenote

Baumgartner v. First Church of Christ, Scientist: Religious Healers' Exemption From Liability

I. INTRODUCTION

Religious healers generally are exempt from criminal and civil liability.[1] This exemption germinates from the first amendment's free exercise of religion clause.[2] As a consequence of the right to practice religion absent governmental interference, religious healers typically are not required to comply with the standards of the medical profession.[3]

Recently, in *Baumgartner v. First Church of Christ, Scientist*,[4] the Illinois Appellate Court for the First District affirmed the dismissal of a wrongful death suit against a Christian Science healer.[5] In *Baumgartner*, Christian Science healers had treated John Baumgartner's acute prostatitis.[6] The Christian Science healing method was unsuccessful and Baumgartner died.[7] Thereafter, his estate filed a wrongful death suit. The suit was dismissed for failure to state a cause of action.[8] The appellate court held that adjudication of the case would violate the first amendment because it would require extensive judicial investigation and evaluation of religious tenets and doctrines.[9]

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1. *See infra* notes 61-64 and accompanying text.

2. The first amendment provides, in pertinent part, "Congress shall make no law . . . prohibiting the free exercise [of religion] . . . ." U.S. CONST. amend. I.

For religious healers to be protected by the free exercise clause, they must be engaged in the bona fide exercise of their religion and they must be sincere in their beliefs. *See* United States v. Ballard, 322 U.S. 78, 84 (1944).

3. *See infra* notes 61-64 and accompanying text. *See also* People v. Cole, 219 N.Y. 98, 113 N.E. 790, 794 (1916) (Christian Science practitioners are not subject to public health regulations governing medical doctors).

4. 141 Ill. App. 3d 898, 490 N.E.2d 1319, *cert. denied*, 107 S. Ct. 317 (1986).

5. *Id.* at 909, 490 N.E.2d at 1326.

6. *Id.* at 901, 490 N.E.2d at 1321. Prostatitis is an inflammation of the prostate gland. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1821 (3d ed. 1961).

7. *Baumgartner*, 141 Ill. App. 3d at 902, 490 N.E.2d at 1322.

8. *Id.*

9. *Id.* at 906, 490 N.E.2d at 1324. For further background regarding "church and state" issues, see generally, P. KURLAND, OF CHURCH AND STATE AND THE SUPREME COURT (1961); R. MILLER & R. FLOWERS, TOWARD BENEVOLENT NEUTRALITY: CHURCH, STATE AND THE SUPREME COURT (1977); J. MURRAY, THE PROBLEM OF

This note will analyze *Baumgartner* and the considerations that are at stake in imposing liability upon religious healers. First, the note will discuss the balance between the state's interest in regulating the activities of religious healers and an individual's interest in freely practicing religion. The note also will consider the individual's right to refuse medical treatment on religious or privacy grounds. Focusing on Christian Science healers, the note then will discuss the Medical Practice Acts that are in effect in most states, and the case law regarding civil liability of religious healers. Following a discussion of *Baumgartner*, this note will reevaluate the respective interests in regulating religious healing.

II. BACKGROUND

A. Police Power of the State

Under its police power, a state has inherent authority to promote and protect public health, safety, morals, comfort, and welfare.[10] Courts will interpret literally laws that derive from the exercise of police power.[11] Consequently, laws designed to prevent danger to health and safety need not be based on certainty of effectiveness. It is sufficient that they are adopted to prevent hazards to the public health and safety.[12] A state, however, does not have a free reign to exercise its police power; the exercise of police power must be discharged reasonably and be based on public necessity.[13]

RELIGIOUS FREEDOM (1965); L. PFEFFER, CHURCH, STATE, AND FREEDOM (1967); THE WALL BETWEEN CHURCH AND STATE (D. Oaks ed. 1963).

10. United States v. Lee, 455 U.S. 252, 257-58 (1982); Wisconsin v. Yoder, 406 U.S. 205, 220 (1972); Windsor Park Baptist Church v. Arkansas Activities Ass'n, 658 F.2d 618, 621 (8th Cir. 1981); Simpson v. Wells Lamont Corp., 494 F.2d 490, 493 (5th Cir. 1974); T. COOLEY, CONSTITUTIONAL LIMITATIONS 1225-26 (1927).

The police powers of the states were not included in the grants of power to the federal government, and therefore were reserved to the states, through the tenth amendment. South Carolina v. United States, 199 U.S. 437, 440-41 (1905); Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 558 (1902); Jordan v. Gaines, 136 Me. 291, 295, 8 A.2d 585, 587 (1939); Barrett v. Richard, 85 Neb. 769, 776, 124 N.W. 153, 156 (1910).

11. *See, e.g.*, Barsky v. Board of Regents, 347 U.S. 442, 449 (1954); Stephens v. Dennis, 293 F. Supp. 589, 595 (N.D. Ala. 1968); State v. Sanner Contracting Co., 109 Ariz. 522, 524, 514 P.2d 443, 445 (1973); State v. Vachon, 140 Conn. 478, 482, 101 A.2d 509, 512 (1953).

12. *See* Jacobson v. Massachusetts, 197 U.S. 11, 35 (1905); Rogowski v. City of Detroit, 374 Mich. 408, 420-21, 132 N.W.2d 16, 22-23 (1965); Viemeister v. White, 179 N.Y. 235, 72 N.E. 97, 98-99 (1904).

13. *See In re* Hennessy, 95 Cal. App. 762, 765, 273 P. 826, 828 (1929); People *ex rel* Barmore v. Robertson, 302 Ill. 422, 427, 134 N.E. 815, 817 (1922); Adams, Inc. v. Louisville and Jefferson County Bd. of Health, 439 S.W.2d 586, 591 (Ky. 1969); Walker v. City of Charlotte, 276 N.C. 166, 172, 171 S.E.2d 431, 435 (1970); Leet v. City of Eastlake, 7 Ohio App. 2d 218, 222, 220 N.E.2d 121, 124 (1966). Discretion in enacting laws is vested

In addition, the exercise of police power cannot violate an express constitutional provision.[14]

A state, through the exercise of its police power, may regulate those areas of businesses and occupations that involve harm, injury, or detriment to public welfare and safety.[15] Traditionally, the medical profession has been subject to extensive state regulation.[16] For instance, a state can require that only qualified persons practice a profession.[17]

B. The Conflict Between States' Rights and the The Free Exercise Clause

The first amendment's free exercise clause provides that Congress shall make no law prohibiting the free exercise of religion.[18] Although the literal language of the first amendment's free exercise clause is absolute, the clause has been subject to a bifurcated interpretation since the 1878 decision of *Reynolds v. United States*.[19] In *Reynolds*, the United States Supreme Court held that the first amendment provides only limited protection of religious practices and activities.[20] Giving considerable deference to the state's police powers, *Reynolds* held that religious practices and activities may be regulated by the state through the valid exercise of its police power.[21] Accordingly, the Court held that the constitutional guarantee to religious freedom did not prohibit laws proscribing bigamy, though the practice of bigamy was an essential tenent of the defendant's religion.[22]

More than sixty years later, the Supreme Court adopted an alter-

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in the state legislature, pursuant to its police power, to determine interests of the public, and what measures are necessary for the protection of such interests. T. COOLEY, CONSTITUTIONAL LIMITATIONS 1231.

14. *Id.* at 1226-27.

15. *See* Finish Line Exp., Inc. v. City of Chicago, 59 Ill. App. 3d 419, 424, 375 N.E.2d 526, 530, *rev'd on other grounds*, 72 Ill. 2d 131, 138-39, 379 N.E.2d 290, 292-93 (1978); Figura v. Cummins, 4 Ill. 2d 44, 49, 122 N.E.2d 162, 165 (1955); People *ex rel.* Barnet v. Thillens, 400 Ill. 224, 234-35, 79 N.E.2d 609, 614 (1948).

16. *See* Klein v. Department of Registration and Educ., 412 Ill. 75, 78, 105 N.E.2d 758, 761, *cert. denied*, 344 U.S. 855 (1952).

17. *See* People *ex rel* Illinois State Dental Soc'y v. Sutker, 76 Ill. App. 3d 240, 245, 395 N.E.2d 14, 17, *cert. denied*, 447 U.S. 930 (1979).

18. For the text of the free exercise clause, see *supra* note 2. In Cantwell v. Connecticut, 310 U.S. 296 (1940), the first amendment was applied to state action.

19. 98 U.S. 145 (1878).

20. *Id.* at 166.

21. *Id.* The *Reynolds* court held the defendant, a member of the Mormon Church, guilty of violating the state's laws against polygamy, despite the fact that the practice was approved and advocated by church doctrine. *Id.*

22. *Id.* at 165.

native approach to governmental interference with religious activities. In *Cantwell v. Connecticut*,[23] the Court asserted that a state's right to interfere with the free exercise of religion was not as broad as *Reynolds* may have indicated.[24] *Reynolds* and its progeny advanced the position that when the state was acting in pursuit of non-religious ends,[25] and regulating conduct rather than religious beliefs,[26] the free exercise clause did not bar state action. In *Cantwell*, however, the Court held that a state could not restrict the free exercise of religion unless it did so under a statute narrowly drawn to define and punish specific conduct that constituted a clear and present danger to a substantial state interest.[27] Although the Supreme Court has never overruled *Reynolds*,[28] and occasionally reverts back to its standard,[29] the majority of cases

23. 310 U.S. 296 (1940).

24. *Id.* at 303-04.

25. Braunfeld v. Brown, 366 U.S. 599, 600 (1961) (state law that, pursuant to its police power, enforced a uniform day of rest for the health and welfare of its citizens upheld); Jacobson v. Massachusetts, 197 U.S. 11, 39 (1905) (state, pursuant to its police power, may require compulsory vaccinations regardless of religious beliefs in order to protect the general health of all its citizens); Lawson v. Commonwealth, 291 Ky. 437, 438-39, 164 S.W.2d 972, 973 (1942) (state may, under its police power, enforce statutes against snakehandling in religious ceremonies); State v. Marble, 72 Ohio St. 21, 38-40, 73 N.E. 1063, 1066-68 (1905) (state, under its police powers, may apply the regulations of its Medical Practice Act against Christian Science healers).

26. Although courts have the power of limited regulation of religious conduct, courts may not inquire into the truth of particular religious doctrines. *See* United States v. Ballard, 322 U.S. 78 (1944). The defendants in *Ballard* were charged with a scheme to defraud through representations involving their religious doctrines or beliefs. *Id.* at 79. The Court held that the free exercise clause barred the submission to the jury of the truth or falsity of the defendant's healing claims. *Id.* at 86. The Court, however, held that a jury could be required to decide whether the defendants were sincere in their beliefs. *Id.* at 84.

27. *Cantwell*, 310 U.S. at 311. In *Cantwell*, the state statute at issue prohibited any person from soliciting money or valuables for any alleged religious cause, unless a certificate was first procured from a designated official. *Id.* at 301-02. The state official who issued the certificate had the power to withhold his approval if he determined that such cause was not religious. *Id.* The court held that this statute was a restraint upon the free exercise of religion and a deprivation of liberty without due process of law, in violation of the fourteenth amendment. *Id.* at 304. The *Cantwell* Court abandoned *Reynolds*' implication that religious conduct was wholly outside first amendment protection; instead the Court suggested that conduct, though subject to greater regulation than belief, may be protected under appropriate circumstances. *Id.* at 303-04.

28. *Reynolds* continues to be widely cited as the judicial origin of the dichotomy of religious belief and action. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 1054-55 (1983).

29. *See* Beauharnais v. Illinois, 343 U.S. 250, 266 (1952); Feiner v. New York, 340 U.S. 315, 320-21 (1951); Hughes v. Superior Court, 339 U.S. 460, 465-66 (1950); Kovacs v. Cooper, 336 U.S. 77, 88-89 (1949); Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942); C. ANTIEAU, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 219 (1960).

have adhered to *Cantwell*.[30]

The tension between states' rights and the free exercise clause has not concerned the right to pursue particular religious beliefs, but rather it has related to the right to act in pursuit of those beliefs. Normally, problems arise when the government, acting in pursuit of non-religious objectives, forbids conduct prescribed by an individual's religious beliefs,[31] or when the government compels or encourages conduct forbidden by an individual's religious beliefs.[32] In these circumstances, courts generally have applied the strict scrutiny test espoused by *Cantwell*. Hence, state negation of fundamental freedoms can be sustained only when the prohibited conduct clearly and presently endangers the public peace or safety, or some other substantial state interest.[33] The Supreme Court also has added the requirement that any restriction on religious autonomy must be enacted in the form of the least restrictive means of achieving the compelling state interest.[34]

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30. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 847-49 (1978).

31. *See, e.g.*, Nally v. Grace Community Church, 157 Cal. App. 3d 912, 204 Cal. Rptr. 303, 308-09 (1984) (court allowed malpractice suit to be brought against clergy for unsuccessfully counseling a suicidal adult); People v. Woody, 40 Cal. Rptr. 69, 77, 394 P.2d 813, 821 (1964) (state statute that proscribed the right of American Indians for the religious use of peyote, a powerful hallucinagenic, struck down); Lawson v. Commonwealth, 291 Ky. 437, 438-39, 164 S.W.2d 972, 973 (1942) (enforcement of anti-snake handling statutes, prohibiting the handling of snakes in religious ceremonies upheld); State v. Marble, 72 Ohio St. 21, 38-40, 73 N.E. 1064, 1066-68 (1905) (application of the state Medical Practice Act to Christian Science healers held constitutional).

32. *See, e.g.*, United States v. Lee, 455 U.S. 252, 261 (1982) (federal government's right to refuse to exempt Amish employers from paying social security taxes on wages paid upheld); Thomas v. Review Bd. Ind. Empl. Sec. Div., 450 U.S. 707, 719 (1981) (state refusal to provide unemployment benefits to a Jehovah's Witness who left a factory job because of his religious beliefs struck down); Wisconsin v. Yoder, 406 U.S. 205, 234 (1972) (state statute requiring 14- and 15-year old Amish students to attend school until age sixteen struck down); Sherbert v. Verner, 374 U.S. 398, 410 (1963) (state denied right to refuse unemployment compensation to Seventh Day Adventist, whose religion did not allow him to take a job requiring work on Saturdays); Braunfeld v. Brown, 366 U.S. 599, 608 (1961) (Sunday closing law applies to Orthodox Jewish merchants, despite the fact that their businesses may be impaired because their religious beliefs prohibit Saturday work); Jacobson v. Massachusetts, 197 U.S. 11, 39 (1905) (court held individual may be required to receive a vaccination against contagious disease, even if his religion prohibits such procedures); Application of the President and Directors of Georgetown College, Inc., 331 F.2d 1000, 1008-09 (D.C. Cir. 1964) (medical treatment compelled on theory that the state's interest in safeguarding patients life outweighs the rights of religious liberty at stake); *In re* Estate of Brooks, 32 Ill. 2d 361, 374, 205 N.E.2d 435, 442 (1965) (refusal of competent adult to receive a blood transfusion or other life-saving medical care on religious grounds upheld).

33. C. ANTIEAU, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 218 (1960).

34. L. TRIBE, *supra* note 30, at 846.

C. *The Right to Refuse Medical Treatment*

An issue closely related to the conflict between states' rights and the free exercise clause is an individual's right to refuse medical treatment. When an individual refuses life-saving medical treatment, the interest in preserving life could compel state intervention.[35] On the other hand, constitutional protection has been given to an individual's right to make choices absent governmental interference in areas such as procreation,[36] marriage,[37] child-rearing,[38] and child bearing.[39] Consistent with this right to personal autonomy, courts have upheld individuals' refusal of medical treatment on religious or privacy grounds.[40]

Thus, in the absence of a compelling state interest, a competent adult has a right to refuse medical treatment.[41] The right to re-

35. *See, e.g., In re* Spring, 380 Mass. 629, 634, 405 N.E.2d 115, 119 (1980); Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 741, 370 N.E.2d 417, 425 (1977).

36. *See* Skinner v. Oklahoma, 316 U.S. 535, 538 (1942) (court invalidated an Oklahoma statute which provided for compulsory sterilization of persons convicted three times of felonies showing moral turpitude).

37. *See* Griswold v. Connecticut, 381 U.S. 479, 497-98 (1965) (state statute prohibiting the use of contraceptives held unconstitutional).

38. *See* Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (state statute requiring children to attend public schools, preventing them from attending private and parochial schools held unconstitutional); Meyer v. Nebraska, 262 U.S. 390, 403 (1923) (state law which prohibited the teaching of foreign languages to young children held unconstitutional).

39. *See* Roe v. Wade, 410 U.S. 113, 153 (1973) (state criminal abortion laws held to violate the Due Process Clause of the Fourteenth Amendment, including women's qualified right to terminate her pregnancy.

40. *See, e.g.*, Bartling v. Superior Court, 163 Cal. App. 3d 186, 195, 209 Cal. Rptr. 220, 225 (1984); Satz v. Perlmutter, 362 So. 2d 160, 164 (Fla. Dist. Ct. App. 1978), *aff'd*, 379 So. 2d 359, 360 (Fla. 1980); *In re* Matter of Quinlan, 70 N.J. 10, 40-41, 355 A.2d 647, 671, *cert. denied*, 429 U.S. 922 (1976); Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417, 437 (1977).

Although a specific right to personal autonomy is not contained in the United States Constitution, the Supreme Court has determined that several provisions in the Bill of Rights create a penumbra, or zone of privacy. *See* Griswold v. Connecticut, 381 U.S. 479, 481-86 (1965). For example, the fourth amendment's ban on unreasonable searches and seizures implies a penumbra which protects privacy interests, as do the third, fifth, and ninth amendments. *Id.* at 484. Additionally, the fourteenth amendment interest in liberty protects fundamental rights, including those not specifically enumerated in the Bill of Rights. *Id.* at 486 (Goldberg, J., concurring).

41. *See supra* note 40, and *see infra* note 42 and accompanying text. *See generally* Byrn, *Compulsory Lifesaving Treatment for the Competent Adult*, 44 FORDHAM L. REV. 1 (1975); Cantor, *A Patient's Decision to Decline Life-saving Medical Treatment: Bodily Integrity versus the Preservation of Life*, 26 RUTGERS L. REV. 228 (1973); Paris, *Compulsory Medical Treatment and Religious Freedom: Whose Law Shall Prevail?*, 10 U.S.F. L. REV. 1 (1975); Note, *The Time of Death—A Legal, Ethical, and Medical Dilemma*, 18 CATH. LAW. 243 (1972); Note, *Compulsory Medical Treatment: The State's Interest Re-evaluated*, 51 MINN. L. REV. 293 (1966); Note, *The Tragic Choice: Termination of Care*

fuse medical treatment, however, is not absolute. If an individual's refusal of medical treatment is challenged, the court must balance the state's interest in the health and welfare of its citizens against the individual's right to maintain religious or personal beliefs.[42] If the state's interest is compelling, it overrides the individual's right to refuse medical treatment. For example, to prevent the spread of communicable diseases, courts have ordered individuals to be vaccinated against their will.[43] Similarly, a court has appointed a guardian to authorize transfusions for an unconscious adult notwithstanding the parents' religious objections.[44] The state's in-

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for Patients in a Permanent Vegetative State, 51 N.Y.U. L. REV. 285 (1976); Comment, *The Right to Die*, 7 HOUS. L. REV. 654 (1970).

42. *See* Bouvia v. Superior Court, 179 Cal. App. 3d 1127, 1138, 225 Cal. Rptr. 297, 301 (1986), *review denied*, No. B019134 (Cal. S. Ct. June 5, 1986) (LEXIS, States library, Cal. file) (competent adult patient who understood risks involved had right to refuse medical treatment, and state's interest in preserving life did not outweigh individual's right to refuse treatment); Bartling v. Superior Court, 163 Cal. App. 3d 186, 195, 209 Cal. Rptr. 220, 225 (1984) (competent adult patient with nonterminal illness had right to have life support equipment disconnected though such action would hasten death); Foody v. Manchester Memorial Hosp., 40 Conn. Supp. 127, 134-35, 482 A.2d 713, 719 (1984) (state's interest in the preservation of life did not outweigh right of patient to exercise right to refuse further life-sustaining treatment though patient's prognosis was extremely poor); Severns v. Wilmington Medical Center, Inc., 421 A.2d 1334, 1350 (Del. Super. 1980) (husband, as guardian, has standing to invoke wife's constitutional rights to apply for an order authorizing removal of life-sustaining supports); Satz v. Perlmutter, 362 So. 2d 160, 164 (Fla. Dist. Ct. App. 1978), *aff'd*, 379 So. 2d 359, 360 (Fla. 1980) (patient, a competent adult with a terminal condition had the right to refuse or discontinue medical treatment based upon the constitutional right to privacy); *In re* Quinlan, 70 N.J. 10, 40-41, 355 A.2d 647, 671, *cert. denied*, 429 U.S. 922 (1976) (patient's right to privacy outweighed state's interest in the preservation and sanctity of human life when patient's vital processes were maintained by mechanical respirator); *In re* Storar, 52 N.Y.2d 363, 376-77, 438 N.Y.S.2d 266, 272-73, 420 N.E.2d 64, 71, *cert. denied*, 454 U.S. 858 (1981) (competent adult has common law right to decline or accept medical treatment, though the treatment may be beneficial or even life-saving); Eichner v. Dillon, 73 A.D.2d 431, 454, 426 N.Y.S.2d 517, 536 (1980) (terminally ill but competent patient has right to refuse medical treatment or to have it withdrawn, though death may result); Matter of Melido, 88 Misc. 2d 974, 974-75, 390 N.Y.S.2d 523, 524 (1976) (competent adult's refusal to submit to blood transfusion upheld when adult childless and not pregnant).

43. Zucht v. King, 260 U.S. 174, 177 (1922) (city ordinance making vaccination a prerequisite to school attendance did not impinge upon fourteenth amendment rights); Jacobson v. Massachusetts, 197 U.S. 11, 39 (1908) (state statute requiring compulsory vaccinations upheld as a valid exercise of police power); Wright v. DeWitt School Dist. No. 1, 238 Ark. 906, 908, 385 S.W.2d 644, 648 (1965) (state regulation requiring all students to be vaccinated against smallpox as perquisite to attending school was reasonable regulation and did not violate constitutional right to free exercise of religion). *See also* People v. Privitera, 23 Cal. 3d 697, 708-09, 153 Cal Rptr. 431, 438, 591 P.2d 919, 925-26, *cert. denied*, 444 U.S. 949 (1979) (right to privacy under the state constitution did not encompass a right of access to drugs unapproved by the designated federal agency).

44. John F. Kennedy Memorial Hosp. v. Heston, 58 N.J. 576, 579, 279 A.2d 670, 673 (1971).

terest in orderly prison administration also tips the balance in favor of the state. Thus, a court has compelled a prisoner to undergo life-saving treatment without his consent.[45]

Other cases in which the state's interest in ordering medical treatment has been sustained have involved parents who refused medical treatment for their minor or mentally retarded children.[46] In those cases, courts have allowed the state to intervene and provide medical treatment despite the parents' objections on religious or privacy grounds.[47] In ordering medical treatment for a child over the parents' objections, the courts sometimes have utilized the doctrine of *parens patriae*. Under this doctrine, the state has the responsibility to protect those who cannot protect themselves.[48]

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45. Commissioner of Correction v. Myers, 379 Mass. 255, 265, 399 N.E.2d 452, 458 (1979).

46. *See* People in Interest of D.L.E., 645 P.2d 271, 275-76 (Colo. 1982) (approval of conventional medical treatment for child suffering from life-threatening condition due to refusal to comply, on religious grounds, with medical treatment plan); *In re* President and Directors of Georgetown College, Inc. 331 F.2d 1000, 1007-08 (D.C. Cir.), *cert. denied*, 377 U.S. 978 (1964) (state's interest in the welfare of children justified compulsory medical treatment when necessary to save the life of the mother and infant child); People *ex rel.* Wallace v. Labrenz, 411 Ill. 618, 626, 104 N.E.2d 769, *cert. denied*, 344 U.S. 824 (1952) (authorization to administer blood transfusion to child upheld); Raleigh Fitkin-Paul Morgan Memorial Hosp. v. Anderson, 42 N.J. 421, 423, 201 A.2d 537, 538 (1964), *cert. denied*, 377 U.S. 985 (1964) (administration of blood transfusions to pregnant woman who opposed on religious grounds, if the transfusions were necessary to save the woman's or her child's life authorized by court); *In re* Winthrop University Hosp., 128 Misc. 2d 804, 804-05, 490 N.Y.S.2d 996, 996-97 (1985) (order directing a mother to receive a transfusion during surgery if necessary to save her life upheld, despite her objections on religious grounds, in light of the state's interest in saving her one-month old infant). For a further list of decisions concerning minors, see Note, *Shorter v. Drury: Refusal to Permit Treatment Constitutes Express Assumption of Risk Which Can Reduce the Liability of a Negligent Physician*, 17 LOY. U. CHI. L.J. 481, 490 n.59 (1986).

47. *See supra* note 46 and accompanying text.

48. *See* Prince v. Massachusetts, 321 U.S. 158, 168-69 (1943) (state, as *parens patriae*, may restrict the parents' control by requiring school attendance and regulating or prohibiting the child's labor, and in many other ways); Opinion of the Justices, 123 N.H. 554, 560-61, 465 A.2d 484, 489 (1983) (state's interests as *parens patriae* may justify compulsory medical or psychiatric treatment of mental patients); Eichner v. Dillon, 73 A.D.2d 431, 455-56, 426 N.Y.S.2d 517, 536 (1980) (state's general interest in the preservation of life, coupled with its responsibility to act as *parens patriae* for minors or incompetents, may require the acceptance of medical treatment); People *ex rel.* Thorpe v. Clark, 62 A.D.2d 216, 228, 403 N.Y.S.2d 910, 918 (1978) (court has inherent power in its role as *parens patriae* to insure that before mentally retarded juveniles are committed, their best interests are secured in a uniform manner); *In re* Weberlist, 79 Misc. 2d 753, 755-56, 360 N.Y.S.2d 783, 786 (1974) (in considering decision by the state to exercise power of *parens patriae*, and dictate compulsory medical procedures for mentally retarded individual, individual's right to be free from interference must be balanced against the individual's need to be treated).

D. Christian Science Healers

Christian Science is known for its spiritual healing practices.[49] Spiritual healing, performed by Christian Science practitioners and Christian Science nurses, includes the belief that disease can be cured by prayer and without medical intervention.[50] Christian Science healers, however, do not purport to be doctors.[51] The treatment consists entirely of disciplined prayer that brings the ailing person to "a deeper understanding of his spiritual being as the child of God."[52] Because the Christian Science faith teaches that all disease stems from the mind, disciplined prayer is believed to be the crucial factor in ridding the body of disease.[53]

Christian Science nurses and practitioners, engaged in fulltime healing and nursing work, are accredited by the Christian Science Church.[54] The Church's official organ, the Christian Science Journal, contains a directory of qualified nurses and practitioners. To be listed, the nurses and practitioners must have a specified amount of experience and have demonstrated an ability in nursing or healing work.[55]

In recent years, Christian Science has been acknowledged as a healing system by courts,[56] insurance companies, legislatures,[57] and members of the medical profession.[58] In the insurance field, for example, many companies specifically cover and pay for Christian

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49. The Christian Science faith has been described as follows:

> Christian Science is a religious denomination founded in the United States in 1879 by Mary Baker Eddy (1821-1910), author of the book that contains the definitive statement of its teachings, *Science and Health With Key to the Scriptures*. About one-third of its nearly 3,000 congregations are located in 56 countries outside the United States, with membership concentrated in areas with strong Protestant traditions. It is widely known for its practice of spiritual healing, an emphasis best understood in its historical background and teaching.

4 ENCYCLOPEDIA BRITANNICA MACROPAEDIA 562-65 (1984).

50. John & Peterson, *Legal Status of Christian Science Treatment*, 1964 MED. TRIAL TECH. Q. 13, 15 [hereinafter John and Peterson].

51. Talbot, *The Position of the Christian Science Church*, 309 NEW ENG. J. MED. 1641, 1642 (1983).

52. *Id.*

53. *Id.*

54. John & Peterson, *supra* note 50, at 15.

55. *Id.*

56. *See* Northern Trust Co. v. Commissioner of Internal Revenue, 116 F.2d 96, 98 (7th Cir. 1940); Baumgartner v. First Church of Christ, 141 Ill. App. 3d 898, 900, 490 N.E.2d 1319, 1321 (1986); Essex County Div. of Welfare v. Harris, 189 N.J. Super. 479, 481-82, 460 A.2d 713, 714 (1983).

57. *See infra* note 64.

58. John & Peterson, *supra* note 50, at 13.

Science treatment in lieu of medical treatment.[59] Those insurance policies include accident and health, automobile liability, basic hospital disability, general liability and major medical policies.[60]

E. The Medical Practice Acts and Criminal Liability

Medical Practice Acts ("Acts") have been enacted in forty-three states and the District of Columbia.[61] The Acts regulate the medical profession by providing criminal penalties for the unauthorized practice of medicine.[62] The increasing acknowledgment of religious healing has been manifested in the exemption of religious

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59. *Id.* at 15.

60. *Id.*

61. *See* ALA. CODE §§ 34-24-50 to -78 (1975); ALASKA STAT. §§ 08.64.010-.380 (1962); ARK. STAT. ANN. §§ 72-601 to -637 (1947); ARIZ. REV. STAT. ANN. §§ 32-1401 to -1455 (1976); CAL. BUS. & PROF. CODE §§ 2000-2510 (1974); COLO. REV. STAT. §§ 12-36-101 to -136 (1985); CONN. GEN. STAT. §§ 20-8 to -14 ((1983); D.C. CODE ANN. §§ 2-1301 to -1363 (1981); DEL. CODE ANN. tit. 24, §§ 1701-1794 (1974); FLA. STAT. §§ 458.301-.349 (1983); G.A. CODE ANN.§§ 84-901 to -936 (Harrison 1985); HAW. REV. STAT. §§ 453-1 to -16 (1976); IDAHO CODE §§ 54-1801 to -1841 (1947); ILL. REV. STAT. ch. 111, para. 4401-4477 (1985); IOWA CODE §§ 148.1-.10 (1983); KAN. STAT. ANN. §§ 65-2801 to -2890 (1985); LA. REV. STAT. ANN. §§ 37:1261-1290 (1974); ME. REV. STAT. ANN. tit. 32, §§ 3263-3296 (1964); MASS. GEN. L. ch. 112, § 2-12H (1984); MICH. COMP. LAWS §§ 338.1801 - 1817 (1979); MISS. CODE ANN. §§ 73-25-1 to -39 (1972); MO. REV. STAT. §§ 334.010-.260 (1978); MONT. CODE ANN. §§ 37-3-101 to -405 (1983); N.C. GEN. STAT. §§ 90-1 to -21 (1963); N.D. CENT. CODE §§ 43-17-01 to -41 (1978); NEB. REV. STAT. §§ 71-101 to -172 (1943); N.H. REV. STAT. ANN. §§ 329:1-30 (1955); N.J. STAT. ANN. §§ 45:9-1 to -27.9 (1978); N.M. STAT. ANN. §§ 61-6-1 to -32 (1978); N.Y. PUB. HEALTH LAW § 230 (1953); OHIO REV. CODE ANN. §§ 4731.01-.99 (Anderson 1953); OKLA. STAT. tit. 59, §§ 481-518 (1981); OR. REV. STAT. §§ 677.010-450 (1953); PA. STAT. ANN. tit. 63, §§ 422.1-45, (Purdon 1968); S.C. CODE ANN. §§ 40-47-10 to -270 (Law. Co-op. 1976); S.D. CODIFIED LAWS ANN. §§ 63-6-101 to -413 (1986); TEX. REV. CIV. STAT. ANN. art. 4495b-4512 (Vernon 1976); UTAH CODE ANN. §§ 58-12-126 to -39 (1953); VA. CODE ANN. §§ 54-273 to -325.15 (1950); VT. STAT. ANN. tit. 26, §§ 1311 - 1400 (1975); WIS. STAT. §§ 448.01-.51 (1981); W. VA. CODE §§ 30-3-1 to -10 (1966); WYO. STAT. §§ 33-16-102 to -152 (1977).

Forty of these states specifically exempt spiritual or religious healers from liability by statute, stating that the Medical Practice Act shall in no way interfere with the practice of religion. Iowa, Mississippi, Missouri, and Ohio are the only states that do not list religious healers under the exemption clause. For an interpretation of the exemption clause, see Dolan v. Galluzzo, 77 Ill. 2d 279, 283, 396 N.E.2d 13, 16 (1979) (a plaintiff may not successfully establish a standard of care for one health care specialty offering the testimony of someone who practices a different specialty); Spead v. Tomlinson, 73 N.H. 46, 48, 59 A. 376, 377 (1904) (affirmation of a directed verdict for a Christian Science practitioner when the plaintiff sought to recover for medical malpractice).

62. *See, e.g.*, ILL. REV. STAT. ch. 111, para. 4471 (1985). Paragraph 4471 of the Illinois Revised Statute provides:

> "a person who violates this act for the first time is guilty of a Class A misdemeanor. Any person who has been previously convicted under this act, and who subsequently violates any of the sections is guilty of a Class 4 felony. In addition, whenever any person is punished as a repeat offender under this section, the Director of the Department of Registration and Education shall pro-

healers from regulation under the majority of the Acts.[63] This view is premised on the proposition that religious healers merely are engaging in their first amendment right to exercise religion freely.[64]

Illinois exemplifies the majority view on state regulation of religious healers.[65] In Illinois, the issue of whether religious healers are guilty of illegally practicing medicine has arisen in a few criminal cases.[66]

Religious healers have escaped criminal liability under the the-

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ceed to obtain a permanent injunction against such person under Section 36.1 of this act".

Id. See also CAL. BUS. & PROF. CODE § 2426 (West 1974) ("Any violation shall result in a fine not less than 100 dollars and not more than 600 dollars, not less than 60 days in jail and not more than 180 days in jail, or both"); CONN. GEN. STAT. § 20-14 (1983) ("A first violation of the statute results in a fine of not less than 200 dollars and not more than 1,000 dollars, and imprisonment for not more than 2 years, or both. Each subsequent offense will result in a fine not less than 500 dollars and not more than 2,000 dollars, and imprisonment for not more than 5 years or both"); D.C. CODE ANN. § 2-1333 (1981) ("A first offense will result in a fine of not more than 5,000 dollars or imprisonment for not more than 6 months, or both. Subsequent offenses will result in a fine not more than 10,000 dollars or imprisonment for not more than 2 years, or both"); HAW. REV. STAT. § 453-13 (1976) ("A violation will result in a fine not more than 500 dollars or imprisonment for not more than 6 months, or both. Each day's violation constitutes a separate offense").

63. *See infra* note 64.

64. The wording of statutes which exempt religious healers varies slightly from state to state. For example, the Illinois statute provides:

> This Act shall not apply to dentists, pharmacists, optometrists, or other persons lawfully carrying on their particular profession or business under any valid existing act of this state regulatory thereof, nor to persons rendering gratuitous services in cases of emergency, nor to persons treating human ailments by prayer or spiritual means, on an exercise or enjoyment of religious freedom.

ILL. REV. STAT. ch. 111, para. 4474 (1985).

Most of the Medical Practice statutes exempt religious healers under a section that lists persons to whom the provisions shall not apply. *See, e.g.*, ALASKA STAT. § 08-64-370 (1962) (exempts anyone practicing the religious tenets of any church); CAL. BUS. & PROF. CODE § 2063 (1974) (the act shall not interfere with the practice of religion); N.J. STAT. ANN. § 45:9-18.1 (1978) (exempts healing by spiritual or mental means provided no material means and no manipulation is utilized). A number of these statutes specifically exempt Christian Science healers. *See* COLO. REV. STAT. § 12-36-106 (1985) (exempts the practice of religious worship and the practice of Christian Science with or without compensation); CONN. GEN. STAT. 1983 § 20-9 (1983) (exempts Christian Science practitioners); HAW. REV. STAT. 1976 § 453-2 (1976) (act does not apply to Christian Scientists as long as they don't pretend to have knowledge of medicine); LA. REV. STAT. ANN. § 37:1290 (1974) (exempts the practice of Christian Science or religious rules); MASS. GEN. L. ch. 112, § 7 (1984) (exempts Christian Science Practitioners); MONT. CODE ANN. § 37-3-103 (1983) (exempts Christian Science practice with or without compensation); WIS. STAT. § 448.16 (1981) (exempts the practice of Christian Scientists).

65. *See supra* note 64 and accompanying text.

66. *See infra* notes 68-73.

ory that they were not engaged in the unlawful practice of medicine.[67] For example, one court held that the conviction of a healer for violation of the Medical Practice Act was erroneous because the defendant was licensed as a healer by the Spiritualist Association of Illinois, Inc. and thus fell within the class of persons exempted by statute.[68]

In cases in which the healer was held to be liable under the Medical Practice Act, the defendants did not have the exempted status of religious healers and thus were found to be practicing medicine.[69] For example, the Illinois Supreme Court has held that the treatment by rubbing limbs is not treatment by mental or spiritual means, even though the practitioner claimed to heal through the influence of spirits and laying hands on the patient.[70] Therefore, the practitioner did not fall under the statute exempting religious healers from the Medical Practice Act.[71] Physical manipulation and laying hands on a patient also have been held to constitute the practicing of medicine.[72] Similarly, two Illinois courts held that osteopathy and magnetic healing constituted practicing medicine even though mental suggestions were used in the treatment.[73]

Not all states exempt religious healers from criminal liability. For example, Ohio has taken the position that religious healers are not exempt from criminal liability.[74] In *Ohio v. Marble*,[75] Christian Science healers challenged the constitutionality of a provision in the Ohio Medical Practice Act[76] that required testing and licensing of the medical professionals.[77] The Ohio Supreme Court held that the statute did not unconstitutionally discriminate against the Christian Science method of healing. The court stated that because the Christian Science practitioner may obtain a certificate to practice medicine by meeting the same requirements as any other person, the statute does not have to provide the Christian Science

67. *See infra* note 68.

68. People v. Klinger, 292 Ill. App. 321, 324, 11 N.E.2d 40, 41-42 (1937).

69. *See infra* notes 70-73.

70. People v. Krause, 291 Ill. 64, 67, 125 N.E. 726, 727 (1920).

71. *Id.*

72. People v. Moser, 176 Ill. App. 625, 628 (1913).

73. People v. Gordon, 194 Ill. 560, 570-71, 62 N.E. 858, 861 (1902); People v. Jones, 92 Ill. App. 447, 448-49 (1900).

74. *See infra* notes 75-80.

75. 72 Ohio St. 21, 73 N.E. 1063 (1905).

76. *Id.* at 23, 73 N.E. at 1063.

77. *Id.* at 25-26, 73 N.E. at 1064.

practitioner with a special examination and limited certificate.[78] The court also determined that the statute was a valid exercise of the state's police power.[79] Hence, the court held that Christian Science treatment constituted the practice of medicine within the meaning of the statute.[80]

F. Medical Malpractice and Civil Liability

Although most Medical Practice Acts shield religious practitioners from criminal liability,[81] one court has held a religious practitioner liable under a tort theory.[82] In *Nally v. Grace Community Church*,[83] a California appellate court allowed the prosecution of a tort action for intentional infliction of emotional distress against the defendants, three pastors and the church, on the principle that remedies should exist for harm caused by extreme and outrageous conduct withstanding an accompanying expression of religious beliefs.[84] Furthermore, the court held that, while the defendants' religious beliefs were protected absolutely by the first amendment, their religious acts were not.[85] Thus, because counselling was an affirmative act, the appellate court held that the defendants could

78. *Id.* at 39-40, 73 N.E. at 1068.

79. *Id.* at 34, 73 N.E. at 1066 (citing Dent v. West Virginia, 129 U.S. 114, 122 (1889)).

80. *Marble*, 72 Ohio St. at 30-31, 73 N.E. at 1065.

81. *See supra* note 64.

82. Nally v. Grace Community Church, 157 Cal. App. 3d 912, 204 Cal. Rptr. 303 (1984). Because the California Supreme Court ordered that the opinion of the appellate court not be officially published, the discussion of the opinion cites only to the California Reporter.

83. 157 Cal. App. 3d 912, 204 Cal. Rptr. 303.

84. 204 Cal. Rptr. at 308. In *Nally*, parents brought a wrongful death action against the church and its pastors after their adult son, who had been counselled by the pastors for severe depression, committed suicide. *Id.* at 303. Although the California Medical Practice Act exempts religious healers from criminal liability, the appellate court reversed a summary judgment for the defendant pastors and church, holding that substantial fact issues existed regarding the pastors engaged in extreme and outrageous conduct, and whether their counselling was a substantial factor in the causation of the son's suicide. *Id.* at 308-309. The plaintiffs alleged that the defendant pastors exacerbated Kenneth Nally's pre-existing feeling of guilt, anxiety and depression. They also alleged that by virtue of defendants' undue influence and control over Kenneth Nally, the defendants effectively required him to spend time in isolation and prevented him from contacting or consulting with persons not affiliated with the Church. *Id.* at 310. The court concluded that a reasonable inference could be drawn that the Church and defendants followed a policy of counselling suicidal persons under which, if one was unable to overcome one's sins, suicide was an acceptable and even a desirable alternative to living. *Id.* at 306. The court also added that it was possible the defendants recklessly caused suicidal persons extreme emotional distress through their counseling methods when those persons did not measure up to the pastors' religious ideals. *Id.* at 306.

85. *Id.* at 307.

be held liable for the tortious consequences of their counseling, although the counselling was undertaken in the pursuit of religious beliefs.[86] On remand, however, the trial court ruled in favor of the defendants. Thereafter, the California Supreme Court ordered that the opinion of the appellate court not be officially published, stating that it could no longer be cited as precedent.[87]

Thus the ultimate disposition of the foregoing California decision was unfavorable to those bringing civil suits against religious healers. Nevertheless, two years later in *Baumgartner v First Church of Christ, Scientist*,[88] an Illinois plaintiff again raised this controversial issue in a civil suit against a Christian Science practitioner and nurse.

III. DISCUSSION

Baumgartner v. First Church of Christ, Scientist

On October 31, 1974, John Baumgartner ("Baumgartner") contracted acute prostatitis.[89] Baumgartner immediately contacted Paul Erickson ("Erickson"), a Christian Science practitioner and advised him of the illness.[90] Baumgartner requested that Erickson provide him with Christian Science treatment.[91] Erickson went to Baumgartner's home and administered hot baths and spiritual treatment.[92] Baumgartner's condition did not change. Erickson then contacted Ruth Tanner ("Tanner"), a Christian Science nurse, for assistance in rendering Christian Science healing.[93] Baumgartner's condition began to deteriorate.[94] Nevertheless, neither Baumgartner nor his wife called a medical doctor. Instead Baumgartner continued with the Christian Science healing provided by Erickson and Tanner.[95] Baumgartner's condition worsened and he died ten days after the onset of his illness.[96]

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86. *Id.*
87. 157 Cal. App. 3d 912, 204 Cal. Rptr. 303.
88. 141 Ill. App. 3d 898, 491 N.E.2d 74 (1986).
89. *Id.* at 901, 490 N.E.2d at 1319.
90. *Id.*
91. *Id.* Erickson was a Christian Science practitioner. *Id.* He had provided John Baumgartner with Christian Science healing on several prior occasions. *Id.* Furthermore, he was Baumgartner's teacher and adviser on Christian Science. *Id.* Erickson had been instructed by the Church in the methods of Christian Science healing and was listed in The Christian Science Journal as a certified practitioner. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.* at 902, 490 N.E.2d at 1322.
96. *Id.* At the time of his death, John Baumgartner was a wealthy industrialist. *Id.*

Thereafter, Baumgartner's wife initiated a wrongful death action against the Church, Erickson, and Tanner.[97] The complaint alleged ordinary negligence, intentional and reckless misconduct, medical malpractice, and Christian Science malpractice.[98] The trial court dismissed the entire complaint for failure to state a cause of action and the plaintiff appealed.[99]

The plaintiff alleged that the defendants committed medical malpractice,[100] contending that the practice of Christian Science was more than a religious movement,[101] that Christian Science held itself out as an equivalent to the science of medicine and as an alternative to medical treatment,[102] and that Christian Science was extending itself into the field of public health, an area the state could regulate because of its compelling interest.[103] The plaintiff further argued that because the defendants placed themselves within the medical community, they must be judged by its standards.[104] Therefore, the plaintiff contended that the practitioners and the Church could be liable for failing to diagnose and treat Baumgartner's illness, for failing to consult with persons having greater medical knowledge and expertise, and for providing medical treatment without the requisite training and instruction.[105] The plaintiff further asserted that once the Christian Science healers undertook activities within the secular arena, they could not use

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He was survived by his wife Mary Baumgartner and his two minor children. *Id.* The complaint alleged that prior to his death John Baumgartner changed his will at the insistence of Erickson, and made the Church a residual beneficiary of approximately one-half of his multi-million dollar estate. *Id.*

97. *Id.* At the time of this action, Erickson was deceased. *Id.* at 900, 490 N.E.2d at 1320. The Northern Trust Company was made defendant as executor of Erickson's estate. *Id.*

98. *Id.* at 902, 490 N.E.2d at 1322. There were actually five counts in the complaint. The constructive trust count, however, will not be discussed.

99. *Id.*

100. Brief of Plaintiff-Appellant at 24, Baumgartner v. First Church of Christ, Scientist, 141 Ill. App. 3d 898, 490 N.E.2d 1319 (1986).

101. *Id.* at 14.

102. *Id.*

103. *Id.*

104. *Id.* at 25.

105. *Id.* at 25-26 (citing Williams v. Piontkowski, 337 Ill. App. 101, 84 N.E.2d 843 (1949)). In *Williams*, the court held that a chiropractor who had led a patient to believe he was licensed to perform obstetrics was held to the same standards as a medical practitioner, because the patient had placed herself in the chiropractor's care on that basis. *Williams*, 337 Ill. App. at 101, 84 N.E.2d at 843. *See also* Mattei v. Wooley 69 Ill. App. 654, 655 (1897) (defendant guilty of medical malpractice for holding himself out as capable of providing appropriate care and treating plaintiff's cut finger which later required amputation).

the guise of their religious motives to escape accountability.[106]

The Illinois Appellate Court for the First District, however, held that the plaintiff failed to state a cause of action for medical malpractice.[107] Although the defendants had been retained by John Baumgartner for Christian Science treatment, the plaintiff claimed that Erickson and Tanner were under a legal duty to comply with the standards of the medical profession.[108] The court determined plaintiff's contention was without merit because legislative and judicial distinctions between medical and spiritual treatment deny the existence of a legal duty to comply with the standards of the medical profession in rendering spiritual treatment.[109]

The court further reasoned that a plaintiff could not establish a standard of care for Christian Science healing by offering the testimony of someone who practices medicine.[110] In this context, the court noted that the plaintiff had not alleged that Erickson and Tanner held themselves out as medical practitioners or that Baumgartner had expected or asked them to render medical treatment.[111] The court also emphasized that Baumgartner specifically had requested Christian Science treatment and could not reasonably have expected anything other than spiritual healing from Tanner and Erickson.[112]

In another count in the complaint, the plaintiff alleged that Erickson and Tanner deviated from the standard of care of an ordinary Christian Science practitioner and nurse.[113] The court, however, also held that this count failed to state a cause of action.[114] The court asserted that, under the first amendment, the only entity with the authority and power to determine whether there had been a deviation from "true" Christian Science practice was the Christian Science Church.[115] Accordingly, the court con-

106. Brief of Plaintiff-Appellant, *supra* note 100, at 13.
107. *Baumgartner*, 141 Ill. App. 3d at 904, 490 N.E.2d at 1323.
108. *Id.* at 902, 490 N.E.2d at 1322.
109. *Id.* (citing ILL. REV. STAT. ch. 111, para. 4474 (1981)).
110. *See supra* note 61.
111. *Baumgartner*, 141 Ill. App. 3d at 903, 490 N.E.2d at 1323.
112. *Id.* at 904, 490 N.E.2d at 1323.
113. *Id.*
114. *Id.*
115. *Id.* The court held that adjudication of the present case would require the court to make an extensive investigation and evaluation of religious tenets and doctrines. *Id.* at 906, 490 N.E.2d at 1324. First, the standard of care of an "ordinary" Christian Science practitioner would have to be established. *Id.* Second, the court would be required to determine whether Erickson and Tanner deviated from those standards. *Id.* The court, however, found that the first amendment precluded such an extensive judicial inquiry into religious matters. *Id.*

cluded that the first amendment barred judicial consideration of whether certain religious conduct conformed to the standards of a particular religious group.[116]

The plaintiff further argued that the defendants were negligent because they had breached a duty of care towards Baumgartner and this caused his death.[117] The plaintiff asserted that having undertaken the task to treat Baumgartner, Erickson and Tanner were obligated to exercise reasonable care and skill.[118] The plaintiff noted that the Church had provided a health care system for its followers.[119] Therefore, according to the plaintiff, the Church had a duty to exercise care and skill in the training, direction, and supervision of its agents. The plaintiff further contended that Erickson and Tanner breached their duty by failing to withdraw from treating Baumgartner. The plaintiff emphasized that the defendants had actual or constructive knowledge that the Christian Science treatment was not curing his illness, and that Baumgartner would die without immediate medical attention.[120]

The plaintiff also alleged that the defendants had wrongfully advised Baumgartner not to obtain medical care and misrepresented that the Christian Science treatment was curing Baumgartner.[121] The plaintiff asserted that defendants' misrepresentations were made intentionally and with reckless disregard of Baumgartner's safety.[122] The plaintiff contended that the exercise of reasonable care by the defendants would have resulted in the discovery of Baumgartner's life threatening situation.[123] The court, however,

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116. *Id.* at 904, 490 N.E.2d at 1323 (citing Thomas v. Review Bd., 450 U.S. 707 (1981)). *See also* Serbian E. Orthodox Diocese for the United States of Am. v. Milivojevich, 426 U.S. 696, 708-09 (1976) (Illinois Supreme Court improperly inquired into the appropriateness of the removal of a bishop from his post and the reorganization of church diocese).

The court also noted past Illinois cases consistently had declined to interpret religious doctrines. *Baumgartner*, 141 Ill. App. 3d at 904, 490 N.E.2d at 1323 (citing Chase v. Cheney, 58 Ill. 509 (1871); Pfeifer v. Christian Science Comm., 31 Ill. App. 3d 845, 334 N.E.2d 876 (1975)). In *Chase*, the court refused to consider the question of whether an Episcopal Minister had deviated form the Book of Common Prayer. *Chase*, 58 Ill. 509, 535. In *Pfeifer*, the court affirmed the dismissal of a complaint alleging that a Christian Science practitioner's lessons deviated form the tenets of Christian Science. *Pfeifer*, 31 Ill. App. 3d at 849-50, 334 N.E.2d at 877.

117. Brief of Plaintiff-Appellant, *supra* note 100, at 21-26.

118. *Id.* at 22. The plaintiff in *Baumgartner* emphasized that the defendant's services were not gratuitous. *Id.*

119. *Id.*

120. *Id.* at 23.

121. *Id.* at 23-24.

122. *Id.* at 24.

123. *Id.*

concluded that, because the first amendment precluded a determination of whether defendants had breached a duty, the counts alleging negligence and intentional and reckless disregard did not establish causes of actions.[124] The court stressed that a reasonable care determination would require a searching inquiry into Christian Science beliefs and the validity of those beliefs.[125] The court, however, held that the first amendment precluded that inquiry.[126]

IV. ANALYSIS

Baumgartner represents a hands-off policy concerning the free exercise of religion. Stating that adjudication would violate the first amendment because it would require an intrusive judicial inquiry into religious beliefs, the court upheld a blanket dismissal of a complaint against two Christian Science healers and their Church.[127] Although the *Baumgartner* court adhered to precedent, it may have been too hasty in summarily dismissing the case.

For example, the plaintiff's argument that Christian Science is more than a religious movement because it has entered the field of public health was meritorious.[128] In addition to being a religion, Christian Science is a health care institution. Christian Science practitioners and nurses practice spiritual healing full-time for compensation.[129] Moreover, the Church is actively involved in healing activity: it certifies healers after a requisite amount of training, it regulates the specifics of healing activities, and it lists healers in the official Church publication.[130] Furthermore, because the Church receives reimbursement from insurance programs, it maintains Christian Science treatment as a bona fide health care system.[131] Thus, the Church is active in essential phases of the health care business: training, direction and regulation, promotion, compensation, and obtaining third party reimbursement.[132]

Because Christian Science engages in compensated health care activities, and the lives of numerous individuals are involved, there is a compelling argument that there should be greater judicial and legislative scrutiny into these activities. While Christian Scientists

124. *Baumgartner*, 141 Ill. App. 3d at 907-8, 490 N.E.2d at 1325.
125. *Id.*
126. *Id.* at 908, 490 N.E.2d at 1325.
127. *Id.* at 906, 490 N.E.2d at 1324.
128. Brief of Plaintiff-Appellant, *supra* note 100, at 14.
129. *Id.* at 22.
130. *See supra* notes 54-55 and accompanying text.
131. Brief of Plaintiff-Appellant, *supra* note 100, at 15.
132. *Id.* at 17.

are not engaging in the practice of medicine, arguably they are involved in more than the practice of religion. Because Christian Science has extended itself into the public health field, the state has a compelling interest to regulate. Moreover, the state has the authority, under its police power, to hold the practitioners and the Church accountable for their negligence.[133] Hence, when a church undertakes treatment of physical ailments, it should be required to comply with established standards for the protection of the individual and society.[134]

A return to the *Reynolds* interpretation of the first amendment may be one method of controlling religious healers. Under *Reynolds*, the state had broad power to regulate religious activities that interfered with legitimate societal interests.[135] According to *Reynolds*, the first amendment provides absolute protection of religious beliefs; religious activities, however, may be scrutinized and regulated by the state.[136] Thus, consistent with *Reynolds*, the courts should recognize a police power to scrutinize and regulate religious healing activity.[137] This interpretation of the first amendment — giving the state power to regulate religious activities, but providing absolute protection for religious beliefs — achieves a proper balance between states' rights and the free exercise clause. Furthermore, the interpretation properly weighs the state's interest in protecting public health and safety and the right of religious healers to exercise religion freely.

Exercise of this state interest would permit causes of action against religious healers for torts such as negligence, fraud, undue influence, and intentional infliction of emotional distress.[138] Though such actions will infringe minimally upon religious freedom, the interference is justified because it achieves the state's legitimate aim of promoting public health and safety.[139]

V. CONCLUSION

Although the *Baumgartner* decision adhered to judicial precedent, the court failed to recognize valid arguments made by the

133. *Id.* at 14.
134. *Id.* at 15.
135. Reynolds v. United States, 98 U.S. at 165; *see supra* note 21 and accompanying text.
136. *See supra* notes 19-22 and accompanying text.
137. *See* Reynolds v. United States, 98 U.S. 145, 166 (1878).
138. *See* Nally v. Grace Community Church, 157 Cal. App. 3d 912, 104 Cal. Rptr. at 308.
139. *See supra* note 10.

plaintiff regarding the liability of religious healers. The court, in making a blanket dismissal of the plaintiff's complaint, narrowly interpreted the state's ability to scrutinize and regulate the activities of religious healers.

When a compelling state interest, such as the interest in the health and safety of its citizens is involved, the state should have broader powers to scrutinize and regulate religious activities. This interpretation strikes a proper balance between states' rights and the free exercise clause.

REBECCA CARLINS